

## **Report No. 93**

# **Sunset review of the anti-dumping duties on hot rolled plates and sheets of steel originating in or imported from the Russian Federation and the Ukraine: Final determination**

The International Trade Administration Commission of South Africa herewith presents its  
**Report No. 93: SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON HOT  
ROLLED PLATES AND SHEETS OF STEEL ORIGINATING IN OR IMPORTED FROM  
THE RUSSIAN FEDERATION AND THE UKRAINE: FINAL DETERMINATION**



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**PRETORIA**

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# **INTERNATIONAL TRADE ADMINISTRATION COMMISSION**

## **SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON HOT ROLLED PLATES AND SHEETS OF STEEL ORIGINATING IN OR IMPORTED FROM THE RUSSIAN FEDERATION AND THE UKRAINE: FINAL DETERMINATION**

### **SYNOPSIS**

In accordance with the provisions in Article 11.3, of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition, unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would likely lead to continuation or recurrence of dumping and injury.

On 30 May 2003, the Commission notified the SACU industry through Notice No.1560 in *Government Gazette* No. 24893, that unless substantiated request is made by it indicating that the expiry of the duties on hot rolled plates and sheets of steel originating in or imported from the Russian Federation and the Ukraine would likely lead to the continuation or recurrence of dumping and injury, the anti-dumping duties on hot rolled plates and sheets of steel originating in or imported from the Russian Federation and the Ukraine will expire on 28 May 2004.

The trade representatives of the countries involved were notified and provided with a copy of the notice which was published in the *Government Gazette*.

On 14 May 2004, the Commission formally initiated a review of the anti-dumping duties on hot rolled plates and sheets of steel originating in or imported from the Russian Federation and the Ukraine. Notice of the initiation of the investigation was published in Notice No.794 in *Government Gazette* No. 26332 dated 14 May 2004.

The investigation was initiated after the Commission considered that there was *prima facie* proof that expiry of the duty would likely lead to the continuation or recurrence of dumping of the subject product originating in or imported from the Russian Federation and the Ukraine and that there was *prima facie* proof of the likely continuation and/or recurrence of material injury.

Exporters review questionnaires and importers review questionnaires were sent to the various known interested parties. One exporter in the Russian Federation, JSC Severstal (Severstal), and one exporter in the Ukraine, Ilyich Iron and Steel Works of Mariupol (Ilyich), submitted complete responses. Three imports, Clyde Steel (Pty) Ltd, Steelbank Merchants (Pty) Ltd and Reprinter South Africa cc., submitted complete responses. As there were no exports of the subject product to SACU during the period of investigation (POI) for dumping, the importers only submitted comments.

For purposes of its preliminary decision, the Commission decided that the expiry of the duties is likely to lead to the continuation or recurrence of dumping from the Russian Federation (excluding Severstal) and the Ukraine but that the expiry of the duties is not likely to lead to the continuation or recurrence of material injury.

After considering all parties' comments and representations in respect of the "essential facts" letters, the Commission made a final determination, that the expiry of the duties is likely to lead to the continuation or recurrence of dumping from the Russian Federation (excluding Severstal) and the Ukraine but that the expiry of the duties is not likely to lead to the continuation or recurrence of material injury.

The Commission, therefore, recommended to the Minister of Trade and Industry that the anti-dumping duties on hot-rolled plates and sheets of steel originating in or imported from the Russian Federation and the Ukraine, be terminated.



## **1. PETITION AND PROCEDURE**

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### **1.1 LEGAL FRAMEWORK**

This investigation was conducted in accordance with the International Trade Administration Act, 2002 (ITA Act), the Anti-Dumping Regulations (ADR) and the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Anti-Dumping Agreement).

In accordance with the provisions in Article 11.3, of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition, unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would likely lead to continuation or recurrence of dumping and injury.

### **1.2 APPLICANT**

The application was lodged by Iscor Limited, being a manufacturer of the subject product in the SACU.

### **1.3 INVESTIGATION PROCESS**

On 30 May 2003, the Commission notified the SACU industry through Notice No.1560 in *Government Gazette* No. 24893, that unless substantiated request is made by it indicating that the expiry of the duties on hot rolled plates and sheets of steel originating in or imported from the Russian Federation and the Ukraine would likely lead to the continuation or recurrence of dumping and injury, the anti-dumping duties on hot rolled plates and sheets of steel originating in or imported from the Russian Federation and the Ukraine will expire on 28 May 2004. A response to the review questionnaire was received from Iscor on 7 January 2004.

The investigation was initiated through Notice No.794 in *Government Gazette* No. 26332 on 14 May 2004. Exporters and importers review questionnaires were sent to various known interested parties. One exporter in the Russian Federation, JSC Severstal (Severstal), and one exporter in the Ukraine, Ilyich Iron and Steel Works of Mariupol (Ilyich), submitted complete responses. Three imports, Clyde Steel (Pty) Ltd, Steelbank Merchants (Pty) Ltd and Reprinter South Africa cc., submitted complete responses. As there were no exports of the subject product to SACU during the dumping POI, the importers only submitted comments.

The Commission made a preliminary decision that the expiry of the duties is likely to lead to the continuation or recurrence of dumping from the Russian Federation (excluding Severstal) and the Ukraine but that the expiry of the duties is not likely to lead to the continuation or recurrence of material injury.

Interested parties were invited to comment on the Commission's "essential facts" letters containing the Commission's preliminary decision.

The Commission confirmed its preliminary decision and made a final determination that the expiry of the duties is likely to lead to the continuation or recurrence of dumping from the Russian Federation (excluding Severstal) and the Ukraine but that the expiry of the duties is not likely to lead to the continuation or recurrence of material injury.

#### **1.4 INVESTIGATION PERIOD**

The investigation period for dumping was from 1 January 2003 to 31 December 2003. The injury investigation involved evaluation of data for the period 1 July 1995 to 30 June 2003. An estimate for 2004 of what the situation will be if the duties expire, was also considered.

## **1.5 PARTIES CONCERNED**

### **1.5.1 SACU industry**

The SACU industry consists of Iscor Flat Steel Products, Saldanha Steel and Highveld Steel. Iscor Limited (Iscor Flat Products and Saldanha Steel) submitted the information contained in this report.

### **1.5.2 Exporters/Foreign Manufacturers**

The following exporters/manufacturers responded to the Commission's questionnaires:

#### **Russian Federation:**

Joint Stock Company Severstal (Severstal)

#### **Ukraine:**

Ilyich Iron and Steel Work of Mariupol (Ilyich)

### **1.5.3 Importers**

The following SACU importers responded to the Commission's questionnaires:

1. Clyde Steel (Pty) Ltd
2. Steelbank Merchants (Pty) Ltd
3. Reprinter South Africa cc

The information submitted by Reprinter South Africa cc was received after the deadline for submission of questionnaires. Extension was only granted to Clyde Steel (Pty) Ltd and Steelbank Merchants (Pty) Ltd. ITS, the consultant for

Severstal and these importers, requested that the information submitted by Reprinter South Africa cc be taken into consideration for purposes of its preliminary determination as the late submission did not delay the investigation process. It stated that this is based on the fact that other interested parties only submitted their information later. It further stated that as no imports of the subject products over the period of investigation took place, the submission by Reprinter South Africa cc will not influence the investigation.

The Commission decided not to take the information submitted by Reprinter South Africa cc into consideration for purposes of its preliminary decision as it was submitted late. The Commission did consider the information submitted by Reprinter purposes of its final determination.

#### **1.5.4 Representative organizations**

Comments were received from the South African Capital Equipment Export Council, that represents the value chain in the steel industry.

## 2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

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### SUBJECT PRODUCT

#### Description

The subject product is described as hot rolled plates, coils and sheets of steel.

#### Application/end use

The subject products are used in a variety of applications in the mining, construction, agriculture, processing, automotive and general engineering industries and the "do-it-yourself" market.

#### Tariff classification

The subject product is classifiable as follows:

Tariff Sub-Heading	Description	Unit	Rate of customs duty		
			General	EU	SADC
7208	Flat Rolled Products of Iron or Non-Alloy Steel of a width of 600mm or more, Hot Rolled, not clad plated or coated:				
7208.10	In Coils, not further worked than Hot Rolled with patterns in relief.	kg	5%	1.65%	free
7208.2	Other in Coils, not further worked than Hot Rolled, Pickled:				
7208.25	Of a thickness of 4,75mm or more.	kg	5%	1.65%	free
7208.26	Of a thickness of 3mm or more but less than 4,75mm.	kg	5%	1.65%	free

7208.27	Of a thickness of less than 3mm.	kg	5%	1.65%	free
7208.3	Other in Coils, not further worked than Hot Rolled:				
7208.36	Of a thickness exceeding 10mm.	kg	5%	1.65%	free
7208.37	Of a thickness of 4,75mm or more but not exceeding 10mm.	kg	5%	1.65%	free
7208.38	Of a thickness of 3mm or more but less than 4,75mm.	kg	5%	1.65%	free
7208.39	Of a thickness of less than 3mm.	kg	5%	1.65%	free
7208.40	Not in Coils, not further worked than Hot Rolled, with patterns in relief.	kg	5%	1.65%	free
7208.5	Other not in Coils, not further worked than Hot Rolled:				
7208.51	Of a thickness exceeding 10mm.	kg	5%	1.65%	free
7208.52	Of a thickness of 4,75mm or more, but not exceeding 10mm	kg	5%	1.65%	free
7208.53	Of a thickness of 3mm or more, but less than 4,75mm.	kg	5%	1.65%	free
7208.54	Of a thickness of less than 3mm.	Kg	5%	1.65%	free
7208.90	Other	Kg	5%	1.65%	free
7211	Flat Rolled Products of Iron or Non-Alloy Steel of a width of less than 600mm, not clad plated or coated:				
7211.1	Not further worked than Hot Rolled:				
7211.13	Rolled on four faces or in a closed box pass, of a width exceeding 150mm and of a thickness of not less than 4mm, not in coils, and without patterns in relief.	Kg	5%	1.65%	free
7211.14	Other of a thickness of 4,75mm or more	Kg	5%	1.65%	free
7211.19	Other	Kg	5%	1.65%	free
7225	Flat Rolled Products of other Alloy Steel, of a width of 600mm or more:			1.65%	free
7225.30	Other, not further worked than Hot Rolled, in Coils:	Kg	5%	1.65%	free

7225.40	Other, not further worked than Hot Rolled, not in Coils.	Kg	5%	1.65%	free
7226	Flat Rolled Products of other Alloy Steel, of a width of less than 600mm.				
7226.91	Not further worked than Hot Rolled.	kg	5%	1.65%	free

The subject product is subject to the following anti-dumping duties:

<b>Tariff subheading</b>	<b>Description</b>	<b>Originating in or imported from</b>	<b>Anti-dumping duty</b>
72.08	Flat-rolled products of iron or non-alloy steel, of a width of 600mm or more, hot-rolled, not clad, plated or coated	Russian Federation	81.7%
	Flat-rolled products of iron or non-alloy steel, of a width of 600mm or more, hot-rolled, not clad, plated or coated	Ukraine	94.8%
7211.1	Flat-rolled products of iron or non-alloy steel, of a width of less than 600mm, not clad, plated or coated, not further worked than hot-rolled	Russian Federation	81.7%
	Flat-rolled products of iron or non-alloy steel, of a width of less than 600mm, not clad, plated or coated, not further worked than hot-rolled	Ukraine	94.8%
7225.30	Flat-rolled products of alloy steel (excluding stainless steel, silicon-electrical steel and high speed steel), of a width of 600mm or more, not further worked than hot-rolled, in coils	Russian Federation	81.7%
	Flat-rolled products of alloy steel (excluding stainless steel, silicon-electrical steel and high speed steel), of a width of 600mm or more, not further worked than hot-rolled, in coils	Ukraine	94.8%
7225.40	Flat-rolled products of alloy steel (excluding stainless steel, silicon-electrical steel and high speed steel), of a width of 600mm or more, not further worked than hot-rolled, not in coils	Russian Federation	81.7%



7225.40	Flat-rolled products of alloy steel (excluding stainless steel, silicon-electrical steel and high speed steel), of a width of 600mm or more, not further worked than hot-rolled, not in coils	Ukraine	94.8%
7226.91	Flat-rolled products of alloy steel (excluding stainless steel, silicon-electrical steel and high speed steel), of a width of less than 600mm, not further worked than hot-rolled	Russian Federation	81.7%
	Flat-rolled products of alloy steel (excluding stainless steel, silicon-electrical steel and high speed steel), of a width of less than 600mm, not further worked than hot-rolled	Ukraine	94.8%

### Production process

With regard to the product concerned there are the following possible production processes:

(a) Hot Strip Mill Route:

(1) Iron Manufacturing

Liquid Iron is manufactured by the two blast furnaces that use iron ore, screened sinter and metallurgical coke as main inputs. Liquid iron is transferred to the steel melting plant to be used as an input in the manufacturing of liquid steel.

(2) Steel Manufacturing

At steel making, two main routes exist, e.g.:

- The basic oxygen steel making route
- The electrical steel-making route.

Each of these routes produces its own slabs. Basic oxygen furnaces (BOF's) and electric arc furnaces delivers liquid steel to continuous casting machines. Different grades of steel are produced. The grades differ according to the alloy additions during the secondary metallurgical processes. These continuous casting machines produce slabs for further processing at the mills, i.e. the hot strip mill and the plate mill.

(3) Hot Strip Mill Route

The output of the hot strip mill is a hot rolled coil that can either be sold directly or be processed further through the cold mill route as:

- ❑ Cold-rolled products
- ❑ Galvanised products
- ❑ Tin products
- ❑ Colour coated products

(4) Pickling Line

The hot rolled coil passes through a pickling line where hydrochloric acid removes surface scale arising in the hot-rolling process. After pickling, the steel is thoroughly rinsed, dried and oiled to prevent atmospheric oxidation.

(b) The Plate Mill Route:

(1) Iron Manufacturing

The same process is followed as for the hot strip mill route.

(2) Steel Manufacturing

The same process is followed as for the hot strip mill route

(3) Plate Mill Route:

The output of the plate mill is a plate length of a thickness of 4,75mm or more, and can either be sold directly or be processed further at the normalising plant or can be flame cut to the required dimensions and then dispatched.

The Commission decided that the SACU product and the imported products were "like products", for purposes of comparison, in terms of Article 2.6 of the Anti-Dumping Agreement.

### 3. SACU INDUSTRY

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#### 3.1 INDUSTRY STANDING

Article 11.3 of the Anti-Dumping Agreement provides as follows:

“Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly **substantiated request made by or on behalf of the domestic industry** within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.”

Article 5.4 of the Anti-Dumping Agreement, further provides as follows:

“The application shall be considered to have been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.”

The SACU industry consists of Iscor Flat Steel Products, Saldanha Steel and Highveld Steel. Iscor Limited (Iscor Flat Products and Saldanha Steel) submitted the information contained in this report. Highveld Steel and Vanadium Limited indicated that it supports the petition and provided its production volume.

In its response to the petition, ITS requested the Commission to provide them with the letter of support from Highveld Steel, which the Petitioner marked as confidential.

The Commission decided not to place the letter from Highveld Steel on the public file, as it was marked as confidential by the Applicant, but the Commission confirmed that it received a letter of support for the application from Highveld Steel.

Based on the information supplied by these companies, the application was supported by 100 per cent of the SACU industry. It was evident that the application was supported by domestic producers whose collective output constitutes more than 25 per cent of the total production of the like product produced by the domestic industry and more than 50 per cent of the total production of the like product produced by those expressing an opinion on the application.

The Commission decided that the application can be regarded as being made "by or on behalf of the domestic industry" under the above provisions of the Anti-Dumping Agreement.

## 4. DUMPING

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Article 11.3 of the Anti-Dumping Agreement provides as follows:

"Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, **that the expiry of the duty would be likely to lead to continuation or recurrence of dumping** and injury. The duty may remain in force pending the outcome of such a review."

### 4.1 DUMPING

Section 1 of the ITA Act, provides a definition of the term "dumping". The Act provides as follows:

"'dumping' means the introduction of goods into the commerce of the Republic or the Common Customs Area at an export price contemplated in section 32(2)(a) that is less than the normal value, as defined in section 32(2), of those goods;"

### 4.2 NORMAL VALUE

Normal values are determined in accordance with section 32(2) of the ITA Act. This section provides as follows:

"normal value", in respect of any goods, means-

- (i) the comparable price paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin; or
- (ii) in the absence of information on a price contemplated in subparagraph (i), either-
  - (aa) the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit; or

- (bb) the highest comparable price of the like product when exported to an appropriate third or surrogate country as long as that price is representative;"

Section 32(4) of the ITA Act further provides as follows:

"If the Commission, when evaluating an application concerning dumping, concludes that the normal value of the goods in question is, as a result of government intervention in the exporting country or country of origin, not determined according to free market principles, the Commission may apply to those goods a normal value of the goods, established in respect of a third or surrogate country."

#### **4.3 EXPORT PRICE**

Export prices are determined in accordance with section 32(1) of the ITA Act which provides as follows:

"'export price', subject to subsections (3) and (5), means the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to that sale;"

Section 32(5) and 32(6) of the ITA Act further provides as follows:

"(5) The Commission must, despite the definition of "export price" set out in subsection (2), when evaluating an application concerning dumping that meets the criteria set out in subsection (6), determine the export price for the goods in question on the basis of the price at which the imported goods are first resold to an independent buyer, if applicable, or on any reasonable basis.

(6) Subsection (5) applies to any investigation of dumping if, in respect fo the goods concerned -

- (a) there is no export price as contemplated in the definition of dumping;
- (b) there appears to be an association or compensatory arrangement in respect of the export price between the exporter or foreign manufacturer concerned and the importer or the third party concerned; or
- (c) the export price actually paid or payable is unreliable for any other reason."

#### **4.4 ADJUSTMENTS**

Article 2.4 of the Anti-Dumping Agreement provides as follows:

"A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties."

Both the Anti-Dumping Agreement and the ITA Act provide that due allowance shall be made in each case for differences in conditions and terms of sale, in taxation and for differences affecting price comparability. The Commission considers that for an adjustment to be allowed, quantifiable and verified evidence has to be submitted, and it must further be demonstrated that these differences actually affected price comparability at the time of setting the prices.

#### **4.5 COMPARISON OF EXPORT PRICE WITH NORMAL VALUE**

The margin of dumping is calculated by subtracting the export price from the normal value of the product (after all adjustments have been made). The margin is then expressed as a percentage of the export price. If the margin is less than two percent, it is regarded as *de minimis* in terms of the Anti-Dumping Agreement and no anti-dumping duty will be imposed.



## **4.6 METHODOLOGY IN THIS INVESTIGATION FOR JSC SEVERSTAL IN THE RUSSIAN FEDERATION**

### **4.6.1 Normal Value**

#### **Type of economy**

The Russian Federation is considered to be a country with a free market economy and therefore the definition of section 32(2)(b) of the ITA Act applies.

#### **Actual invoiced sales**

The Commission decided to use the actual domestic sales in the Russian Federation to calculate the normal value. For those accounting codes that were not sold on the domestic market, the Commission decided to do a constructed normal value.

The Commission decided to exclude the sales to Belarus and the Ukraine, included in the domestic sales database, from the calculation of the normal value, as these are considered to be export sales.

The Commission decided to exclude the sales paid by promissory notes, as in some instances payment was received only one year after the invoice date or full payment was not received.

The Commission decided to calculate a constructed normal for all the accounting codes where the domestic sales volume is less than 5 per cent of the export sales volume.

#### **Adjustments to the normal value**

The following adjustments were claimed by Severstal and was allowed by the Commission as it was shown that there was a difference in costs, which was demonstrated to have affected price comparability at the time of the setting of

the prices:

#### *Transport*

An adjustment was made for the transport charges from Severstal to the customers.

#### *Surcharge and discounts*

An adjustment was made for the surcharge payable if the customer requires that additional wood is used in the transportation of the products. This surcharge was included in the invoice price.

An adjustment was made for the discounts given to customers in the event where substandard products were supplied to the customers.

#### *Packaging*

As the Commission found that there is a difference in packaging between the product sold on the Russian Federation domestic market and the product exported, an adjustment was made to exclude the packaging cost from the invoiced price. An adjustment was also made to the export price to exclude the packaging cost from the invoiced price.

#### *Payment terms*

The Commission decided to make an adjustment for the different payment terms, as there are different payment terms on the domestic market.

The Commission decided to use the actual days between the invoice date and the payment date to calculate the adjustment, as the specific payment terms are not in all instances indicated on the invoice or the contract will only specify that pre-payments must be made. The adjustment was calculated in this way to accommodate both the pre-payments and the payments after the invoice date. A weighted average payment date was calculated in instances

where there was more than one payment date. The interest rate used was that of the Central Bank of Russia for each specific period.

#### *Level of trade*

An adjustment was made for the difference in levels of trade between the sales on the Russian domestic market and the export market.

#### **Constructed normal values**

The Commission decided to calculate a constructed normal value for those accounting codes with no domestic sales during the POI. Severstal uses a process cost system where the SG&A cost of the company is allocated to each shop. Severstal used the total cost of the exported product to calculate the constructed normal value. The Commission decided to add the difference between the General and Administrative costs and commercial expenses on the domestic and export markets to the constructed normal values to account for the difference in cost in general and administrative expenses on the domestic and export markets. The Commission decided that the profit as calculated for the domestic sales should be added to the cost of the products.

#### **4.6.2 Export prices**

As there were no exports of the subject product to SACU during the period of investigation for dumping, the Commission decided to use the exports to all other countries by Severstal, as submitted, to calculate the export price.

The Commission decided to exclude the sale of sample steel from the export sales. The Commission further decided to exclude the export sales to a related company where sales to the first independent buyer could not be submitted.

## **Adjustments to the export price**

The Commission made the following adjustments to the export prices for purposes of calculating the ex-factory export prices, where the sales were made directly to an unrelated party:

### *Inland transport*

An adjustment was made for the transport cost incurred by Severstal in the Russian Federation to the port of export.

### *Freight cost*

An adjustment was made for the freight cost (sea freight and rail cost) incurred by Severstal in the foreign country when exporting the products.

### *Customs export charges*

An adjustment was made for the customs charges on exports incurred by Severstal.

### *Payment terms*

An adjustment was made for the different payment terms. The Commission decided to use the actual days between the invoice date and the payment date to calculate the adjustment, in accordance with the method used to calculate the payment terms adjustment for the normal value. The interest rate used was that of the Central Bank of Russia for each specific period.

The Commission decided to make the following adjustments to the export price where the sales were made through a related company:

### *Insurance*

An adjustment was made for the insurance paid on transactions where the

insurance was included in the invoice price.

*Transport cost*

An adjustment was made for the inland transport expenses incurred by the related company when delivering the product to the port.

*Handling, Storage and Inspection*

An adjustment was made for the handling, storage and inspection cost incurred by the related company when exporting the product.

*Sea freight*

An adjustment was made for the sea freight cost incurred by the related company when exporting and delivering the product to the customer.

*Letter of Credit (LC) expenses*

An adjustment was made for the LC expenses incurred by the related company when customers are paying by letter of credit.

*Payment terms*

An adjustment was made for the different payment terms. The actual days between the payment date and invoice date was used to calculate this adjustment. The interest rate used was that of the Central Bank of Russia for each specific period.

**4.6.3 Margin of dumping**

The weighted average margin of dumping for Severstal was calculated to be a negative 4.02%

## **4.7 METHODOLOGY IN THIS INVESTIGATION FOR ALL OTHER EXPORTERS FROM THE RUSSIAN FEDERATION**

### **4.7.1 Normal Value**

#### **Type of economy**

The Russian Federation is considered to be a country with a free market economy and therefore the definition of section 32(2)(b) of the ITA Act applies.

#### **Normal value calculation**

It is the Commission's policy to calculate the normal value for non-cooperating exporters based on the highest normal value for the subject product in the same country without any adjustments.

The Commission decided to use the weighted average selling price, based on the actual domestic sales of Severstal, without any of the adjustments, to calculate the normal value for the non-cooperating exporters in the Russian Federation.

### **4.7.2 Export prices**

It is the Commission's policy to use the lowest export price for the exported product from the same exporting country, after all adjustments, to calculate the export price for all non-cooperating exporters.

The Commission decided to use the export price of Severstal, with all adjustments, to calculate the export price for the non-cooperating exporters in the Russian Federation.

#### **4.7.3 Margin of dumping**

The margin of dumping for all non-cooperating exporters in the Russian Federation was calculated to be 18.1%.

### **4.8 METHODOLOGY IN THIS INVESTIGATION FOR ILYICH IRON AND STEEL WORKS OF MARIUPOL IN THE UKRAINE**

#### **4.8.1 Normal Value**

##### **Type of economy**

The Ukraine is considered to be a country with a non-market economy and therefore the definition of section 32(4) of the ITA Act applies.

The Petitioner originally nominated Brazil as a suitable third country for the Ukraine.

The Commission decided to use the Russian Federation as a third country for the normal value calculation for exporters in the Ukraine, as the information submitted by Severstal could be verified and the Commission found that the level of economic development of the Russian Federation is on the same level as that of the Ukraine.

##### **Normal value calculation**

The Commission decided to use the actual domestic sales of Severstal on the domestic market in the Russian Federation as the normal value for the Ukraine.

### **Adjustment to the normal value**

The Commission decided to make the following adjustment to the normal value:

#### *Transport cost*

The Commission decided to make an adjustment for the transport cost to the invoiced price to calculate the ex-factory selling price.

### **4.8.2 Export prices**

As there were no exports of the subject product to SACU during the period of investigation for dumping, the Commission decided to use the actual exports sales to all other countries by Ilyich Iron and Steel Works to calculate the export price.

#### **Adjustments to the export price:**

The Commission made the following adjustments to the export prices for purposes of calculating the ex-factory export prices:

#### *Transportation*

An adjustment was made for the transport cost where it was included.

#### *Transshipment cost in the port*

An adjustment was made for transshipment cost where applicable.

#### *Customs tax*

An adjustment was made for the customs tax payable on exports.



#### **4.8.3 Margin of dumping**

The margin of dumping for Ilyich Iron and Steel Works in the Ukraine was calculated to be 25.3%.

### **4.9 METHODOLOGY IN THIS INVESTIGATION FOR ALL NON-COOPERATING EXPORTERS IN THE UKRAINE**

#### **4.9.1 Normal Value**

##### **Type of economy**

The Ukraine is considered to be a country with a non-market economy and therefore the definition of section 32(4) of the ITA Act applies.

The Petitioner nominated Brazil as a suitable third country for the Ukraine for purposes of calculating the normal value.

The Commission decided to use the Russian Federation as a third country for the normal value calculation for exporters in the Ukraine, as the information submitted by Severstal could be verified and the Commission found that the level of economic development of the Russian Federation is on the same level as that of the Ukraine.

##### **Normal value calculation**

It is the Commission's policy to calculate the normal value for non-cooperating exporters based on the highest normal value for the subject product in the same country without any adjustments.

The Commission decided to use the actual domestic sales of JSC Severstal on the domestic market in the Russian Federation as the normal value for the Ukraine.

The Commission decided to make an adjustment for the transport cost to the invoiced price to calculate the ex-factory selling price.

#### **4.9.2 Export prices**

It is the Commission's policy to use the lowest export price for the exported product from the same exporting country, after all adjustments, to calculate the export price for all non-cooperating exporters.

The Commission decided to use the export price of Ilyich Iron and Steel Works, with all adjustments, to calculate the export price for the non-cooperating exporters in the Ukraine.

#### **4.9.3 Margin of dumping**

The margin of dumping for all non-cooperating exporters in the Ukraine was calculated to be 25.3%.

### **4.10 OTHER INFORMATION SUBMITTED BY THE PETITIONER, ITS AND THE MINISTER OF ECONOMY OF THE UKRAINE**

#### **4.10.1 Other anti-dumping investigations**

The Petitioner indicated that there were other anti-dumping investigations against the Russian Federation and the Ukraine since the imposition of provisional payments in SACU on 27 November 1998. The Petitioner attached a list with these investigations for the Commission to consider.

In response to this, ITS stated that the Commission is referred to the most recent decision by the Canadian Authority.

The Petitioner stated that note is taken of the contents of the decision referred to. The Petitioner stated that it however fails to see the relevancy to the situation pertaining to the SACU industry as set out above.

#### **4.10.2 International supply and demand for the subject product**

The Petitioner stated that according to CRU International publication of October 2003, the supply and demand for hot rolled products worldwide, for 2003, is estimated at 162.7 million tons. The Petitioner stated that it is important to note that the production in the CIS countries is stated as 15.1 million tons, whereas the consumption is stated as 5.7 million tons. It stated that, therefore, it implies that the implied net CIS exports equal 9.4 million tons.

The Petitioner stated that the availability of 9.4 million tons in the CIS countries for export and the calculated dumping margins as per its calculations once again reiterate the need for the Commission to act decisively in this application so as to prevent the South African steel industry being injured materially. The Petitioner stated that this clearly indicates a major threat of injury to the South African market.

The Petitioner stated that it is further of paramount importance to notice that based on the forecast of CRU International for 2004 and 2005 the implied net export of the CIS countries accordingly increase to 9.96 million tons in 2004 and to 10.2 million tons in 2005.

The Petitioner stated that a bleak future is therefore anticipated for the South African steel industry should the Commission decide not to favourable consider this application for remedial action.

In response to this, ITS stated that the Petitioner stated that the production in the CIS countries are 15.1 million tons and consumption in these countries are 5.7 million tons. It stated that the simple assumption is made by the Petitioner that if exports, therefore, equals 9.4 million tons, these volumes will be channelled towards SACU if the anti-dumping duties with regard to the Russian Federation and the Ukraine are revoked.

ITS stated that what the Petitioner refrains from mentioning is the global steel trend and availability of steel.

The Petitioner stated that it submits that the exporter not only wrongly but selectively quoted its response in this regard. It stated that it is clear from the response that the Petitioner never alleged or implied that the total additional exports will flow to the SACU region as such.

#### **4.10.3 Freely disposable capacity and state of the economies in the Russian Federation and the Ukraine**

The Petitioner stated that the freely disposable hot rolled capacity of the Russian Federation and the Ukraine, as per the CRU International of October 2003, is as follows:

Russian Federation:	17.2 million tons per annum
Ukraine:	6.6 million tons per annum

The Petitioner stated that this amounts to massive 23.8 million tons per annum.

The Petitioner stated that the macro economic data for the CIS countries continues to point to strong domestic sheet demand. It stated that in the Russian Federation, which accounts for around three-quarters of the total CIS sheet consumption, industrial production has increased in five consecutive quarters with preliminary figures for the third quarter of 2003 pointing to an increase of 3 per cent year-on-year. It stated that the Russian Federation manufacturing and construction have shown strong growth and the Russian Federation Purchasing Manager's index has remained above the 50 point mark for most of 2003, indicating continued growth in the manufacturing sector. It stated that meanwhile in the Ukraine, in August, year-to date IP (Industrial Production) was up by 14 per cent year-on-year.

In response, ITS stated that it is important to note that the threat of injury to the SACU industry was based to a large extent on the fact that the steel market in the Ukraine and the Russian Federation "*collapsed*". It stated that as exports of steel provided an important source of funds to "*finance*

*restructuring*" it posed a threat to the SACU industry.

ITS stated that it is a well-known fact that the market situation in the Russian Federation has changed dramatically since the imposition of the anti-dumping duties. It stated that the Petitioner acknowledges this fact and states, inter alia, that "*...the data for the CIS continues to point to strong domestic sheet demand*". It stated that, therefore, it is clear that this factor could not be a cause of a threat of injury.

The Petitioner stated that it submits that it never disputed the recovery of the Russian Federation steel industry as such. It stated that ITS however once again selectively applied demand and supply statistics in support of its argument. It stated that what is important is the fact that CIS production increased by 15.4 per cent between 2002 and 2004, whereas CIS consumption, for the same period, increased by only 13 per cent, leaving once again an additional 2 per cent available for exports. It stated that this information has been submitted in Iscor's response. It stated that the Russian Federation production increased by 17.4 per cent between 2002 and 2004, whereas the Russian Federation consumption, for the same period, increased by only 12.0 per cent, leaving once again an additional 5.4 per cent available for exports. It stated that considering the constraints of several anti-dumping duties or other restrictive measures in place against the exporters, SACU would represent a suitable marketing target for the exporters.

#### **4.10.4 Other information**

The Petitioner submitted that apart from the information submitted which clearly indicates the ability and propensity that the Russian Federation and the Ukraine indeed pose a threat to injure the South African domestic steel industry, that the following information is relevant to the fact that the expiry of the duty would likely lead to the recurrence of dumping:

- It is noteworthy that the Russian Federation and the Ukraine combined have a Hot Rolled capacity of 23.8 million tons per annum.

- The Petitioner stated that notwithstanding the Russian Federation and Ukraine hot rolled capacity of 23.8 million tons per annum, it is important to note that the total current production of the CIS countries is in the order of 15.1 million tons (2003 Forecast) for the CIS as a whole. It stated that this implies that the Russian Federation and the Ukraine can at least increase their production of hot rolled material with 8.7 million tons per annum (from 15.1 million tons to 23.8 million tons), in the event of the other CIS countries not increasing its production. It stated that these additional tonnages could only be disposed of on the export market as the CIS currently produces roughly 62 per cent of their production for the export market (2003 Forecast: 15.1 million tons production, 5.7 million tons Domestic and 9.405 million tons exports).
- The strengthening of the South African Rand against the other major currencies.

#### **4.10.5 Market economy status of the Russian Federation**

In its application, the Petitioner indicated that it believes that the Russian Federation should still be regarded as a non-market economy.

ITS, in response to the petition, stated that the allegations made by the Petitioner with regard to the alleged subsidization and market economy status of the Russian Federation are irrelevant to the sunset review in view of the fact that the Commission has already granted the Russian Federation free market economy status.

The Petitioner stated that although the Russian Federation has been acknowledged as a market economy, its acceptance as a WTO member is still pending. It stated that until admission it is classified as an economy in transition and it can hence not be regarded as a fully-fledged WTO member.

The Commission decided that the Russian Federation should be treated as a free

market economy.

#### **4.10.6 Market economy status of the Ukraine**

The Minister of Economy of the Ukraine submitted a letter requesting the Commission to regard the Ukraine as a free market economy.

In response to this letter from the Minister of Economy of the Ukraine, the Petitioner stated the following:

“Note can in this regard be taken of some of the fallacy of some of the arguments raised in the letter;

1. The Minister finds support for the argument for repeal of the anti-dumping duties in the fact that a mere 1898 tonnes of steel products were exported to SACU in 2003 and it can hence be safely assumed that Ukraine's exports to SACU will remain negligible if anti-dumping duties are to be repealed.

Other to state that the 1898 tons do not include subject goods, by far the most popular steel product exported from the Ukraine, it can be argued that the presence of anti-dumping duties indeed prevented the imports and served as deterrent factor for the imports of subject goods. Termination of the duties will inevitably lead to a repetition of the situation before imposition of the anti – dumping duties where SACU suffered a flood of imports causing serious injury to the industry and applicant in particular.

2. Account should be taken of the convincing evidence adduced as part of the application that Ukraine remains a nett exporter of steel products and in particular the subject goods. The Minister's reasoning with regards the differences in rates of growth of the production versus the domestic consumption, needs to be put in perspective. As per CRU International of the October 2003 publication, the total Ukrainian Hot Rolled capacity amounts to 6.57m ton per year. The Ukrainian production increased by 11.2 per cent from 2002 to forecast 2004, whereas the domestic consumption for the same period increased by 15.5 per cent. The Minister indicated and argued this increase in the rate of domestic consumption

growth compared to the rate of growth in production. What the Minister neglected to point out is the fact that the domestic consumption amounts to a meagre 0.5m ton per year compared to a capacity of 6.57m ton per year. The Ukrainian domestic consumption therefore only accounts for 7.8 per cent of the capacity (in 2002 terms), leaving (6.05m tons or 92.2 per cent) of capacity available for exports. This proves that Ukraine remains a nett exporter of steel products and in particular the subject goods. It also nullifies the Minister's attempt to indicate that the higher percentage increase in domestic consumption versus production is an indication that the threat of injury is drastically reduced. It is further common knowledge that the international steel industry is prone to continue boom/bust business cycles and the contention by the Minister that the international demand cycle is such that Ukraine will not cause injury to the SACU market if the anti-dumping duties are repealed, need to be placed in context. In this regard the response of the Ukrainian respondent is specifically meaningful in so far as Question A.4.2 is concerned. The question pertains to the intended exports to SACU and whether these are to be influenced by exports to other countries and the respondent significantly stated the following

"In case we lose our main market we'll have to look for new ones "

The only reasonable conclusion is that SACU will be a viable option for the respondent and the fact that the respondent is only running at 79% capacity, lends gravity to the situation.

3. A further notion by the Minister is that world wide excess steel capacities have been curbed by the efforts at OECD level and that where production of steel and demand is more or less at equilibrium, no real threat of and likelihood of future dumping of subject goods from Ukraine exists.

Other to draw attention to the fact that no formal agreement in this regard was reached at OECD level as yet, the allegation of reduced capacities on a world wide basis is wrong. In fact, several production facilities moth balled were recharged after the current increase of international steel prices, something that is not expected to endure for long.



4. In so far as the requests for the acknowledgement of Ukraine as a market economy is concerned, Applicant wished to draw attention to the fact that Ukraine is not accepted as a market economy in terms of WTO provisions. It is further also significant that the respondent did not raise the issue at all in the non-confidential response and appear to be satisfied with the application of third country provisions and the selected third country.”

It is the Commission's policy to consider the market economy treatment on a company-by-company basis on request from an exporter. The exporter from the Ukraine indicated in its response to the Commission's questionnaire that it is in agreement with using the Russian Federation as a third country to calculate the normal value for the Ukraine.

#### **4.11 CONFIDENTIALITY OF INFORMATION**

The Petitioner requested that the information submitted by Severstal under normal value, export price and the dumping margin, be indexed in order for the Petitioner to comment on it.

The Commission noted the request from the Petitioner, but found that it was impossible for the exporter to index information for only one year.

#### **4.12 CONCLUSION - DUMPING**

For purposes of its final determination, the Commission considered all the comments received from the interested parties and found that the expiry of the duties is likely to lead to the continuation or recurrence of dumping from the Russian Federation (excluding Severstal) and the Ukraine. The following margins of dumping were calculated:

<b>Exporter</b>	<b>Dumping margin</b>
All exporters from the Russian Federation (excluding Severstal)	18.1%
Ilyich Iron and Steel Works	25.3%
All other exporters from the Ukraine	25.3%

## 5. MATERIAL INJURY

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Article 11.3 of the Anti-Dumping Agreement provides as follows:

"Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, **that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury**. The duty may remain in force pending the outcome of such a review."

### 5.1 DOMESTIC INDUSTRY FOR THE PURPOSE OF DETERMINATION OF INJURY

Article 3 of the Anti-Dumping Agreement is entitled "Determination of injury". Footnote 9 to the word "injury" provides as follows:

"Under this agreement the term 'injury' shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article."

## 5.2 GENERAL

Article 3.1 of the Anti-Dumping Agreement provides as follows:

"A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both.

- (a) the volume of the dumped imports and the effects of the dumped imports on the prices in the domestic market for the like products, and
- (b) the consequent impact of these imports on domestic producers of such products".

Article 4.1 of the Anti-Dumping Agreement further provides as follows:

"For purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic industry as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products,...".

The following injury analysis relates to Iscor Limited, which constitutes more than 80 per cent of the total domestic production of the subject product. The Commission decided that this constitutes "a major proportion" of the total domestic production, in accordance with Article 4.1 of the Anti-Dumping Agreement.

Information with regard to the injury indicators reflects the Petitioner's position for the years ensuing the imposition of the current anti-dumping duties, as well as a substantiated estimate of what the effect of the expiry of the duty will have on the Petitioner.

## **5.3 IMPORT VOLUMES AND EFFECT ON PRICES**

### **5.3.1 Import volumes**

With reference to Article 3.1(a), Article 3.2 of the Anti-Dumping Agreement provides as follows:

"With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member."

In any dumping investigation, the Commission normally uses audited import statistic from the south African Revenue Service (SARS) to determine the volume of the subject product entering the SACU from the countries under investigation and other countries. It considers these statistics to be the most reliable.

The Commission confirmed that the import statistics used by it for purposes of the initiation of the investigation, its preliminary decision and for purposes of its final determination are the audited import statistics as supplied by SARS to the Commission.

The following table shows the volume of all the imports under tariff subheadings 7208, 7211.1, 7225.30, 7225.40 and 7226.91 from July 1997 to June 2003 in tons as obtained from SARS:

<b>Tons</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
<b>Alleged dumped imports:</b>						
Russian Federation	53 188	3 288	13 621	116 829	0	0
Ukraine	17 915	3 835	0	0	0	0
<b>Total alleged dumped imports</b>	<b>71 103</b>	<b>7 123</b>	<b>13 621</b>	<b>116 829</b>	<b>0</b>	<b>0</b>
Imports from other countries	98 823	182 345	58 100	59 981	46 864	34 887
<b>Total imports</b>	<b>169 926</b>	<b>189 468</b>	<b>71 721</b>	<b>176 810</b>	<b>46 864</b>	<b>34 887</b>

The Petitioner stated that no material had been imported from the Russian Federation and the Ukraine for the last 15 consecutive months. It stated that this could directly be attributed to the imposition of the anti-dumping duties that have been imposed since 27 November 1998.

The Petitioner stated that the expiry of the anti-dumping duties is however expected to lead to the continuation or recurrence of material injury. It stated that this is basically as a result of the fact that the Russian Federation and the Ukraine steel industries have massive excess capacity available for the subject product.

The Petitioner stated that it is clear that the expiry of the anti-dumping duties would be likely to lead to the recurrence of dumping as well as that it would inflict injury to the South African industry mainly as a result of the following:

- (1) The strengthening of the SA Rand against the other major currencies.
- (2) The fact that the Russian Federation and the Ukraine

combined have a hot rolled capacity of 23.8 million tons per annum.

- (3) Notwithstanding the Russian Federation and the Ukraine hot rolled capacity of 23.8 million tons per annum, it is important to note that the total current production of the CIS Countries is in the order of 15.1 million tons (2003 forecast). It stated that this implies that the Russian Federation and the Ukraine can at least increase its production of hot rolled material with 8.7 million tons (from 15.1 to 23.8 million tons), in the event that the other CIS Countries not increasing its production. It stated that their additional tonnages could only be effected on the export markets as the CIS currently produces roughly 62 per cent of their production for the export market.

The Petitioner stated that in the tables below it is reporting the exports from the Russian Federation and the Ukraine (as per ISSB statistics) to all exporting marketing areas prior and subsequent to the imposition of the South African anti-dumping duties in order to indicate the implications of the application of the Russian Federation and the Ukraine export strategies on the South African Industry should the said dumping duties be repealed.

The Petitioner stated that from these tables it is quite clear that the Russian Federation steel industry, notwithstanding the massive growth in the Russian Federation economy and consequently the domestic demand for steel, the Russian Federation steel industry has maintained its high level of exports, which existed prior to the imposition of the South African ant-dumping duty. It stated that this is indicative of the Russian Federation strategy of shifting excess tonnages wherever possible in the international market. It stated that it is, therefore, safe to conclude that the repeal of the current ant-dumping duty will necessarily

result in a massive inflow of Russian imports into South Africa.

The Petitioner stated that the steel industry likewise massively increased its exports to other export marketing areas from a miniscule 5640 tons in 1999 to a massive 6.5 million tons for annualized 2003, to all other exporting marketing areas, after the imposition of the South African anti-dumping duties on the subject product.

The Petitioner stated that the above statistics clearly indicate the strategy of the Ukraine steel industry, namely to dispose of its excess capacity to all available export marketing areas.

It stated that it, therefore, follows that the repeal of the South African anti-dumping duties on hot rolled material imported from the Ukraine will necessarily lead to a massive influx of the subject product into the SACU with resultant disastrous injury implications for the domestic steel industry.

The Petitioner stated that based on the above it is clear that the repeal of the anti-dumping duties on hot rolled material from the Russian Federation and the Ukraine will definitely material injure the domestic steel industry.

The following tables were submitted by the Petitioner as substantiation of the extent to which the said countries are able to inflict injury to inter-alia the SACU domestic market.

The following table indicates the export of the subject product from the Russian Federation to all countries as per the ISSB statistics:

### Export statistics from the Russian Federation

PERIOD	VOLUMES (Metric tons)	VALUE (SA Rand)	UNIT PRICE (Rand/Ton)
1997	5 190 303	5 515 509 825	1 062.66
1998	7 707 336	9 013 480 063	1 169.47
1999	6 798 831	6 403 032 710	941.78
2000	7 172 427	9 881 025 005	1 377.64
2001	5 335 437	7 492 734 013	1 404.33
2002	6 974 558	14 181 018 024	2 033.25
January 2003 to March 2003	1 628 562	3 405 919 320	2 091.37
Annualised 2003	6 514 248	13 623 677 280	2 091.37

The following table indicates the export of the subject product from the Ukraine to all countries as per the ISSB statistics:

### Export statistics from the Ukraine

PERIOD	VOLUMES (Metric Tons)	VALUE (SA Rand)	UNIT PRICE (Rand/Ton)
1997	1 719	23 596 323	1 331.70
1998	870	1 541 135	1 771.42
1999	5 640	7 143 258	1 266.54
2000	3 420	4 157 807	1 215.73
2001	2 805 539	4 141 966 640	1 476.35
2002	6 206 742	11 833 723 576	1 906.59
January 2003 to March 2003	1 620 211	3 106 406 041	1 917.28
Annualised 2003	6 480 844	12 425 624 164	1 917.28

In response to the petition, ITS stated that the Petitioner indicates that imports from the Russian Federation were 22 245 tons in 1997, declining to a mere 10 073 tons in 1998.

ITS stated that in its Report the Board on Tariffs and Trade (the Board), predecessor to the Commission, indicated that the import volume from the Russian Federation was 35 883 tons in the first 8 months of 1998. It stated that on the basis of this unsubstantiated increase in import volumes, the Board then made, we submit, an incorrect final finding that there was a threat of material injury leading to the existing anti-dumping duties.



ITS stated that it is thus clear that there never was a threat of material injury with regard to the Russian Federation imports. It stated that a continuing threat of injury is per definition non-existent.

The Commission confirmed that the audited import statistics obtained by the Commission from SARS indicated that the import volume from the Russian Federation was 53 188 tons. It noted, therefore, that the tonnage of 10 073 indicated by the Petitioner is incorrect and the information does show that there was an increase in imports.

The Petitioner stated that other to state that the Board obviously had more excess to accurate import statistics, the Petitioner can make no further comments other than to rely on a substantiated and well-founded finding made by the Board, which preceded the imposition of the anti-dumping duties. It stated that to dispute a finding of the Board five years after it was made is not only unsound in law but clearly illustrates the fact that the exporter has no grounds to contest the re-imposition of the anti-dumping duties.

ITS further stated that the allegation is made that "massive excess capacity" exists in the Russian Federation. ITS referred the Commission to its response under global overview submitted in the material injury section.

ITS stated that it is important to note that the threat of injury of the SACU industry was based to a large extent on the fact that the steel market in the Ukraine and the Russian Federation "*collapsed*" and that the exports of steel provided an important source of funds to "*finance restructuring*" and therefore posed a threat to the SACU industry.

ITS stated that it is again confirmed by the Petitioner that the market situation in the Russian Federation changed since the imposition of the anti-dumping

duties as the Russian Federation market showed *"massive growth"*.

ITS stated that it is thus clear that as the Russian market showed *"massive growth"* compared to the collapse in 1998, the threat of injury no longer exists.

ITS further stated that this is confirmed as the Petitioner states that the Russian Federation did not change its export approach since 1998, *"Russian Steel Industry has maintained its high level of exports which existed prior to the imposition of the South African anti-dumping (sic) duty"*.

ITS stated that the Petitioner, however, makes a strange assumption, *"This is indicative of the Russian strategy of shifting excess tonnage wherever possible in the international market. It is therefore safe to conclude that the repeal of the current ant-dumping (sic) duty will necessary result in a massive inflow of Russia imports into South Africa"*.

The Petitioner stated that it submits that no "strange assumption" exists as alleged if account is taken of the record in so far as trade actions against the Russian Federation as well as Ukraine are concerned.

ITS stated that it is clear from the export figures of the Russian Federation to all countries, as supplied by the Petitioner in this paragraph, that the Russian Federation export volumes remained very stable over the years even after the anti-dumping duties were imposed by South Africa.

ITS stated that these figures confirm that as the domestic market in the Russian Federation grows, the steel manufacturers supply the domestic market with the excess capacity while the export market remains stable. It stated that the assumption of the Petitioner that the strategy of the Russian Federation is to shift excess tonnage wherever possible in the international market is therefore totally incorrect.

The Petitioner stated that it never contested the growth in the domestic market of the Russian Federation. The Petitioner stated that it however wants to point out that between 2002 and 2004 CIS production increased by 2.1 million tons per year whilst CIS consumption increased by only 0.7 million tons per year. It stated that this leaves an additional 1.4 million tons available for exports without even considering the “available spare capacity to produce” of 8.7 million tons per year for 2003.

In response to Severstal’s questionnaire, the Petitioner stated that Severstal alleged that it did not export the subject product to South Africa during the period of investigation. It stated that the official SA Customs statistics however indicates that 50 567 tons of subject products were imported into the Republic of South Africa ex the Russian Federation during 2000. It stated that Severstal should take note that the period of investigation for purposes of determining injury is set out in the Initiation Notice to be 1 July 1995 to 30 June 2003.

In response to this, ITS stated that Severstal is one of a large number of mills in the Russian Federation. It stated that to assume that imports from the Russian Federation must be from Severstal is a bit naïve. ITS further stated that the period of investigation for purposes of dumping is 1 January 2003 to 31 December 2003 and it confirm that it did not export the subject product to SACU during the period of investigation.

The Commission confirmed that the period of investigation for the purposes of determining the dumping is 1 January 2003 to 31 December 2003. During this period, no imports from the Russian Federation was recorded in the import statistics received from SARS.

### **5.3.2 Effect on Domestic Prices**

With reference to Article 3.1(a), Article 3.2 of the Anti-Dumping Agreement further provides as follows:

“With regard to the effect of the dumped imports on the prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.”

#### **Price undercutting**

Price undercutting is the extent to which the landed cost of the imported product is lower than the ex-factory selling price per unit price of the SACU product.

The landed cost of the imported product was calculated by using the ex-factory export prices of Severstal in the Russian Federation, and Ilyich Iron and Steel Works in the Ukraine. Based on the information submitted by Severstal in the cold-rolled steel investigation in 2002, a weighted average rail cost per ton from Severstal to the harbour could be calculated. From the same cold-rolled investigation, based on the importers' information, the landed cost as a percentage of the FOB price could be calculated for the Russian Federation. It was assumed that the same percentage can be applied to the exports from the Ukraine. The abovementioned landed costs excluded the anti-dumping duties.

The Petitioner stated that the estimate for its ex-works selling price per unit for 2004, in the event of the duty expiring, had been estimated at three index points higher than the 2003 price level and can mainly be attributed to:

- The estimated price for 2004 had been set at a certain level as it is

expected that the SACU market will be flooded by imports from the Russian Federation and the Ukraine in the event of the anti-dumping duties been lifted, and therefore drastically reduce the effect of the anticipated price increases in the domestic market for 2004.

The Petitioner stated that it should be noted as has previously been explained, it bases its domestic prices on international competitive price levels. It stated that the estimate for 2003/2004 had been arrived at by using the actual price levels realized during July to December 2003, as well as the estimated price levels for the period January to June 2004. It stated that to this end it should further be noted that for the first 5 months of the 2003/2004 financial year, it in actual fact realized lower than expected price levels in the domestic market. It further stated that, however, towards the end of November to the beginning December 2003, the international competitive price level of which it's domestic price levels are derived of, suddenly started spiraling upwards. It stated that it should further be noted that there is a time lag between date of order acceptance and date of dispatch. It stated that it is also a fact that it adjusts its domestic prices in line with international competitive price levels by announcing International Price Parity Discounts, with which the announced domestic price levels are adjusted upwards or downwards on an interim base. It stated that it is further noteworthy, that at least six weeks notice is given to customers of the said. It stated that, therefore, in its estimate for January to June 2004 it allowed for a price increase in April 2004 and another increase during May 2004 for the subject merchandise. The Petitioner stated that although the mentioned price increases will realize a certain increase in the June 2003 to June 2004 price levels, it will only materialize a much smaller increase on average between the financial year 2002/2003 and the financial year 2003/2004. It stated that it furthermore accounted for the negative effect on prices in the event of the expiry of the duties by allowing for an average negative impact on

prices for the 2004 estimate.

- The strengthening of the SA Rand against the major other currencies. The Petitioner stated that this inevitably would lead to more imports that will have a downward effect on the average local prices.
- The Petitioner's price strategy whereby the domestic prices are adjusted with an International Price Parity Discount (IPPD) in order to arrive at international competitive price levels.

In response to the petition, ITS stated that it is clear that during the period 2001 to date no subject products were imported from the Russian Federation.

ITS stated that the assumption made in the petition that *"the above price undercutting margins were based on reputable information ex Iron & Steel Statistical Bureau"* is thus worthless and should be rejected. It stated that the information submitted in the petition is therefore incorrect and sketches an unrealistic scenario.

The Commission noted that the abovementioned comments were based on the price undercutting margins calculated by the Petitioner in its petition.

ITS further stated that it also wishes to point out that the statement that was made by the Petitioner that *"the repeal of the said ant-dumping (sic) duties will lead to the continuation or recurrence of material injury to the South African steel industry"* is factually incorrect as the SACU industry never suffered material injury, but were alleged to have suffered a threat of material injury, which it disputes.

ITS stated that it is interesting to note that the continuing strong upward trend in the net ex-works price of the Petitioner, even if the anti-dumping duties were to be revoked. It stated that it is, therefore, evident that the withdrawal of the anti-dumping duties will not impact on the pricing strategy of the

Petitioner.

In response to these comments from ITS, the Petitioner stated that it submits that it has complied in all material aspects with applicable statutory provisions in determining price undercutting under circumstances where there were no imports for the period indicated. It stated that the methodology followed represent a valid and accountable basis for determining price undercutting.

The Petitioner stated that it further wishes to submit that the exporter refrained from any exports to SACU due to the imposition of the anti-dumping duties. It stated that the revocation of these duties will obviously imply a recurrence of the dumping of subject goods, which in turn will cause injury to the domestic industry.

The Commission noted that there will be less than 1.5 per cent price undercutting from the Russian Federation and less than 2.5 per cent price undercutting from the Ukraine in the event of the expiry of the anti-dumping duties.

### **Price depression**

Price depression occurs when the domestic industry experiences a decrease in its selling prices over time.

The table below shows the domestic industry's domestic selling prices since the imposition of the anti-dumping duties, and an estimate in the event of the duty expiring:

	1999	2000	2001	2002	2003	2004 Estimate if the duties expire
Petitioner's price (R/ton)	100	110	127	139	184	188

**This table was indexed due to confidentiality using 1999 as the base year.**

The Petitioner stated that the estimate was calculated as indicated under price undercutting.

The Petitioner stated that it is important to note that it followed the international price trends by applying the International Price Parity Discount (IPPD) formula. It stated that based on the net present value per ton on a June 2003 basis, its prices on average increased from 1999 to 2003, compared to the lower average annual Production Price Index (PPI) over the same period. It stated that it thereby marginal increased its average selling prices on June 2003 net present value basis over the four years.

The Petitioner stated that with regards the estimates for 2004 it is quite apparent from the table that price depression will indeed occur mainly as a result of the impact of imports from the Russian Federation and the Ukraine in the event of the duty expiring. It stated that based on June 2003 net present value basis it is quite clear that its net ex-factory price in Rand/ton is expected to be lower than the price level of 2002/2003. It stated that this is a clear indication of price depression in net present value terms. The Petitioner referred the Commission to its response under price undercutting for a detailed explanation on the impact of the Russian Federation and the Ukraine imports and its effect on the domestic price levels in the event of the expiry of the duty. It stated that from the above it is quite clear that notwithstanding a price increase of 2,6 per cent on average during 2003/2004, that in real terms the actual price indeed declined to a level below that of the previous year in June 2003 net present value terms. The Petitioner stated that this would therefore impact negatively on its bottom line earnings.

ITS stated that the table indicates that the Petitioner, as in the initial investigation, did not experience price depression, but in fact increased its



prices over the period 1998 to 2004.

ITS stated that it is important to note that over the period 1998 to 2004 total imports of the subject product from all countries decreased by 81 per cent to a mere 13 852 tons. It stated that in the table the Petitioner alleged that in 2004 (July 2003 – June 2004) it will reduce its prices marginally even without any imports from the Russian Federation.

ITS stated that as the Petitioner publicly states, it applies the International Price Parity Discount (IPPD) formula. It stated that prices will fluctuate as indicated in the table as a result of said policy and not owing to possible imports from the Russian Federation. ITS stated that it submits that the small volume of imports from the Russian Federation, i.e. 10 073 tons, as was the case in 1998, cannot begin to have any impact on the Petitioner's pricing.

The Petitioner, in response, stated that it denies the allegations made by ITS and wishes to refer it to its comments above on the effects of imports on domestic prices.

### **Price suppression**

Price suppression is the extent to which increases in the cost of production of the product concerned, cannot be recovered in selling prices. To determine price suppression, a comparison is made of the percentage increase in cost with the percentage increase in selling price (if any), and whether or not the selling prices have increased by at least the same margin at which the cost of production increased.

The following table shows the Petitioner's average costs of production and its actual selling prices for the subject product since the imposition of the anti-dumping duties and an estimate in the event of the duty expiring:

	1999	2000	2001	2002	2003	2004 Estimate if the duties expire
Petitioner's price (R/ton)	100	110	127	139	184	188
Cost of production	100	117	124	139	154	167
Cost as a % of selling price	100	107	98	100	85	88

**This table was indexed due to confidentiality using 1999 as the base year.**

The Petitioner stated that the cost of production in the event of the expiry of the anti-dumping duties is estimated to increase on average with 8 per cent in 2004, compared to 2003 costs. It stated that it is however important to note that this increase is the net result of the expected increase in total cost of production after taking into account the following factors:

- (a) The positive effect on cost as a result of the re-engineering program.
- (b) The positive effect on cost as a result of product rationalization and the effect thereof on costs, specifically with regards effective production scheduling and production batch optimization.
- (c) The positive effects of the above mentioned have been partially countered by the expected negative influences on cost as a result of the expected inflow of the subject product from the Russian Federation and the Ukraine, in the event of the expiry of the duties, specifically with regard to the impact of these imports on the cost, profit, volume relationship, which will undoubtedly negatively effect it's cost structures inter-alia as the result of the unfavourable product mixture and the effect thereof on the efficiency of its production operations.

The Petitioner stated that the selling prices are expected to increase on average by 2.6 per cent in 2004 if compared to 2003 price levels, in the event of the expiry of the anti-dumping duties. The Petitioner referred the Commission to price undercutting for a detailed explanation of the effect on its prices.

The Petitioner stated that the table clearly shows the average increase in total cost of production to be 13.6 per cent, on average per year from 1999 to 2003. It stated that this was achieved due to massive re-engineering and restructuring programs which lead to the application of world best practices and the retrenchments of some 12 000 people at the Vanderbijlpark Works alone.

The Petitioner stated that the net selling price for the same period increased on average by 20,8 per cent per year, i.e. 7,2 per cent more than the increase in total cost of production, mainly as a result of the impact of product mixture which is a direct result of its rationalization of product lines and hence the more favourable product mixture sold at relatively higher prices, but at a lower cost of production, as a result of the afore mentioned cost saving programs.

The Petitioner stated that any surge in imports, in the event of the expiry of the duties, of the subject product into South Africa will definitely impact negatively on it's product mixture as well as the favourable cost, volume, profit relationship that currently exists as a direct result of the steps it took during the re-engineering, restructuring, product rationalization, and world best practice programs.

The Petitioner stated that the repeal of the said anti-dumping duties would, therefore, nullify all the efforts and the subsequent successes it gained by implementing the said programs.

The Petitioner stated that from its abovementioned responses, it naturally follows that any imports contributing to price depression or suppression will inflict injury to the domestic steel industry and will, furthermore, to the detriment of the South African economy as a whole and more specifically the steel industry, lead to the intensification of the demand for more imports.

The Petitioner stated that the table under price depression clearly indicates that on a June 2003 net present value basis, price depression will occur between the estimated 2004 and 2003 prices, mainly as a result of the inflow of imports from the Russian Federation and the Ukraine in the event of the expiry of the duty. It stated that it is furthermore important to note that price suppression could not be proved. It stated that the reason for this clearly vests in its massive re-engineering and re-structuring programs, coupled with its product rationalization program which lead to the application of world best practices and the retrenchment of some 12 000 people at Vanderbijlpark Works alone.

The Petitioner stated that it, therefore, follows that all its efforts with regards the afore mentioned programs will almost be nullified in the event of the expiry of the duties, allowing the Russian Federation and the Ukraine to import the subject product into SACU at prices below the total cost of production of the SACU Industry.

ITS stated that it is clear that during the periods 2000/2001 and 2002/2003 the Petitioner increased its prices well above cost of production increases. It stated that production costs at Saldana also decreased over the period July 1998 and 2004, while selling prices increased during the same period.

ITS stated that it is also clearly depicted in the cumulative increase in net selling prices of the Petitioner of 88.3 per cent over the period 1998 to 2004, compared to the total cost of production increases of 66.6 per cent over the same period. It stated that it is thus clear that there is no price suppression as

was the situation in the initial investigation. It stated that the Petitioner confirms that price suppression does not exist.

ITS stated that it is also submitted that as the Petitioner applies the International Price Parity Discount (IPPD) formula, imports into the SACU market can have little, if any, effect on the pricing structure of the Petitioner, especially if the volume is insignificant as is the case with the Russian Federation.

In response, the Petitioner stated that it confirms that no price suppression existed at the time of the submission. It stated that it, however, wishes to iterate that the presence of price suppression is not an essential factor to prove a threat of injury as other elements relevant and indicative of the threat posed by the exporter have been proven on substantive grounds by the Petitioner.

ITS stated that the Petitioner acknowledges that it underwent restructuring and re-engineering since 1998. It stated that it is thus evident that during the initial investigation the Petitioner was not functioning at optimal efficiency levels and blamed it on the alleged dumping from the Russian Federation.

ITS stated that the Petitioner argues that *“any surge of imports in the event of the expiry of the duties, of the subject Merchandise into South Africa will definitely impact negatively on ISCOR’s product mixture as well as the favourable cost, volume, profit relationship that currently exist as a direct result of the steps ISCOR took during the re-engineering, restructuring, product rationalization...”*.

ITS stated that from the above it is clear that it was not the protection that the anti-dumping duties gave the SACU industry that ensured that it could capture sufficient market share, but the positive effect, which the restructuring and re-engineering had on the Petitioner’s operations.

ITS stated that it is submitted that as a threat of injury did not exist in the initial investigation, there can be no question of such a threat at this time.

In response, the Petitioner stated that it denies the allegation that it functioned inefficiently, prior to the previous application. It stated that the exporter should take note of the changed environment of specifically the steel industry in general and specifically pertaining to product niches and demand patterns for different products in different regions at different periods. It stated that although re-engineering obviously did contribute to the Petitioner's competitive position as one of the world's most effective steel producers, imposition of the definitive anti-dumping duties allowed the domestic industry the protection it was entitled to.

ITS stated that it is clear that the Petitioner never suffered any price suppression and depression prior to the imposition of the anti-dumping duties in 1998, as well as during the period 1998 to 2003. It stated that it is submitted that if the anti-dumping duties were to be revoked, exports from the Russian Federation will not pose any threat to the Petitioner. It stated that this statement is based on the trend in world steel markets and the situation in the Russian Federation. It stated that as indicated above, there would little or no imports coming into the SACU market from the Russian Federation.

In response, the Petitioner stated that it denies the allegation that revocation of the duties will not pose any threat to the Petitioner. It stated that the exporter announced its intent in the past to proceed with exports to SACU and considering the exporter's record in so far as trade actions are concerned, it is reasonable to conclude that exports will recommence at dumped prices. It stated that no substantiation exists to believe the allegation that imports to SACU will be negligible or non-existent.

In response, ITS stated that the Petitioner is making an unsubstantiated allegation. It stated that the Commission will no doubt deal with the facts.

### 5.3.3 Consequent Impact of The Dumped Imports on The Industry

With reference to Article 3.1(b), Article 3.4 of the Anti-Dumping Agreement provides the following:

"The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance."

#### 5.3.3.1 Actual and potential decline in sales

The following table shows the Petitioner's sales volume of the subject for the 3 years prior to the imposition of the current anti-dumping duty and for the years ensuing the imposition of the current anti-dumping duty and an estimate in the event of the expiry of the duty:

Sales volume in metric ton	1996	1997	1998	1999	2000	2001	2002	2003	2004 Estimate if the duties expire
Petitioner	100	101	103	81	102	107	121	138	134
Other SACU producer	100	133	136	115	62	47	64	17	17
Total SACU	100	107	109	87	94	96	111	116	113

This table was indexed due to confidentiality using 1996 as the base year.

The Petitioner stated that a marginal decrease (2.5 per cent) in the demand for its sales in SACU had been forecasted. It stated that this forecast had been arrived at by taking in to account its actual domestic sales for July 2003

to December 2003, and by adding the expected sales for January to June 2004, after taking due cognizance of the effect that imports from the Russian Federation and the Ukraine will have in the event of the expiry of the anti-dumping duty.

The Petitioner stated that it forecasted the other SACU Producer's portion of the decrease in the domestic demand for the product concerned to be a decrease of 1,6 per cent.

The Petitioner stated that the total sales in SACU for the estimate of 2004 would consequently also decrease by 2,5 per cent as it is the major role player in producing the subject product in SACU.

The Petitioner stated that the total sales in SACU during the 3 years preceding the anti-dumping duties in 1998 resulted in an average domestic sales tonnage of 105 index points per year of the product concerned. It stated that in the 5 years subsequent to the implementation of the anti-dumping duties, total sales of the subject product in SACU amounted to an average of 101 index points per year.

The Petitioner stated that this clearly shows that the total demand in SACU for the subject product on average decreased by 4.5 per cent per annum for the period subsequent to the implementation of the anti-dumping duties.

The Petitioner stated that it is, therefore, quite clear that the repeal of the anti-dumping duties and the expected subsequent influx of imported hot rolled products from the Russian Federation and the Ukraine will have a devastating effect on the domestic steel industry, with a projected decline in sales and consequently impact negatively on profits, productivity and return on investments.

The Petitioner stated that it is quite clear from this that since 2000/2001 the Domestic Sales volumes in SACU, increased gradually from an indexed 96



tons in 2000/2001 to an indexed 116 tons in 2002/2003. It stated that, however, the expiry of the anti-dumping duty on hot rolled products from the Russian Federation and the Ukraine is estimated to result in a influx of imports into the SACU to the extent that the estimated domestic sales volume in the SACU for 2004 is expected to decrease by 2,5 per cent to a level of an indexed 113 tons as indicated in the estimate for 2004.

The Petitioner stated that any tonnage imported would adversely affect its market share and, therefore, result in a decrease in the utilization of plant capacity, with the unfortunate consequence of further retrenchments. It stated that it is, therefore, clear that in the event of imports of hot rolled products from the Russian Federation and the Ukraine being allowed to enter SACU anti-dumping duty free, that additional downward pressure in sales and consequently profitability of the Industry, will be the result.

ITS in response stated that it is clear that the sales volume of the Petitioner has shown a constant increase since June 1995 to 2004. It stated that taking into account the fact that the import volume was a mere 10,073 tons in 1998, it is impossible that the sales of the Petitioner will decrease in 2004 as it projects. ITS stated that it believes that the basis of the forecast is seriously flawed.

In response, the Petitioner stated that it rejects the notion that the forecast is seriously impaired. It stated that it also wishes to draw attention to the fact that despite the imposition of anti-dumping duties, the exporter exported 50 568 tons of subject goods in 2000 to SACU.

ITS stated that the Petitioner states that subsequent to the imposition of the anti-dumping duties in 1998 the demand for the SACU product decreased by 4.5 per cent. It stated that it is evident that there are other factors in the market that are causing the shift in demand from the SACU industry. It stated that it follows that the decrease in demand will anyway be present even if the

anti-dumping duties are not revoked.

ITS stated that to link the decreased demand to the possible influx of the subject product from the Russian Federation if the anti-dumping duties were to be revoked, is based on mere "*allegation*" and a "*remote possibility*".

In response, the Petitioner stated that it never alleged that other factors did not impact on the market as stated by the exporter. It stated that it is however a known fact that the revocation of anti-dumping duties are usually followed by an substantial increase in imports to the relevant market. It stated that it is therefore entitled to make the reasonable conclusion that this trend will once again follows if the duties are revoked.

#### 5.3.3.2 Profit

The following table shows the Petitioner's profit for the 3 years prior to the imposition of the current anti-dumping duty and for the years ensuing the imposition of the current anti-dumping duty and an estimate in the event of the expiry of the duty:

	1996	1997	1998	1999	2000	2001	2002	2003	2004 Estimate if the duties expire
Profit in Rand per ton	100	71	52	54	38	78	75	182	163
Profit margin on selling price	100	71	55	55	36	63	55	102	89

This table was indexed due to confidentiality using 1996 as the base year.

The Petitioner stated that in the event of the expiry of the anti-dumping duties on hot rolled products imported from the Russian Federation and the Ukraine and as a result of the decline in the domestic demand as well as the negative impact of the strengthening of the SA Rand against other major currencies it is expected that the average price for the subject product for 2004 will be 2,6 per cent net, higher than the average price that realized in 2003, therefore, it

is estimated that the average price for the subject product for 2004 will be estimated 188 indexed points net.

The Petitioner stated that the profit situation is further negatively impacted by the expected increase of 8 per cent in cost of production vis-a vis 2003. It stated that this amounts to a cost of production of roughly 167 indexed points per ton.

The Petitioner stated that the Commission should note that only a 2,6 per cent increase in domestic price is expected to realize for the 2004 estimate, notwithstanding the current sharp increase in international price levels since December 2003 on which its domestic price levels are determined. It stated that the June 2004 price levels are expected to be 27 per cent higher than June 2003, however it is expected that on average for the 2003/2004 financial year only 5,2 per cent will materialize in the event of the non expiry of the anti-dumping duties. It stated that, however, as has been stated above in the event of expiry of the anti-dumping duties, it is expected that an average on price increase of only 2,6 per cent will materialize for 2003/2004 financial year as a result of the expected influx of the subject product from the Russian Federation and the Ukraine.

The Petitioner stated that this profit margin on selling price is lower than the 2003 profit margin on selling price.

The Petitioner stated that from the table it is quite evident that the profit margin on selling price decreased dramatically from 1996 to 1999. It stated that this trend culminated in its application for remedial action to the Commission.

The Petitioner stated that the subsequent imposition of anti-dumping duties against the Russian Federation and the Ukraine in November 1998 clearly resulted in an improvement in its profit margin on selling price. It stated that it should be noted that the imposition of the anti-dumping duties, coupled with

its concerted effort to increase efficiencies and thereby profitability through the re-engineering process during 2000, resulted in positive trends in the profit margin on selling price from 2001 to 2003.

The Petitioner stated that unfortunately the probable expiry of the anti-dumping duties on hot rolled products imported from the Russian Federation and the Ukraine as well as the strengthening of the SA Rand against other major currencies coupled with the weakening in the domestic demand since April 2003, resulted in the estimated profit margin on selling prices for 2004 being down. It stated that this could mainly be attributed to the dampening effect that the influx of imports will have on the average price levels to be achieved and the consequent effect on the profit margin on selling prices.

The Petitioner stated that it should furthermore be noted that the profit margin on selling price, as has been estimated for 2004, would not have been able to be achieved had it not re-engineered its plants.

The Petitioner stated that note should further be taken that in the event of the expiry of the anti-dumping duties, the profit margin on selling price will be under severe pressure and the continued production of the subject product will be entering the "grey area" of economic viability as the steel industry is a capital intensive industry, and it is well known that internationally excess capacities are available. It stated that the SA steel industry is thus in a dire need of protection against volumes and dumped imports from inter-alia, but more specifically the Russian Federation and the Ukraine.

In response, ITS stated that the profit situation of the Petitioner appears to be quite healthy and will not be influenced if the anti-dumping duties with regard to the Russian Federation were to be revoked.

ITS stated that it is noted that the Petitioner states that only a "2.6% increase in domestic price is expected to realise for 2004". It stated that as we all

know the price increase in 2004 to date amounts to 23.5 per cent.

ITS stated that it is also evident that even if the anti-dumping duties were to be revoked, the profit situation of the Petitioner will not be affected as it is dependent on international price levels.

In response, the Petitioner stated that ITS, once again quoted its response out of context. It stated that it confirms its explanation provided above, which reflects a true and valid picture of the situation and expectations in so far as prices are concerned. It stated that it further wishes to emphasize that ITS should take due note of the difference in price level increases versus the additional income that will be realized during a specific period in question.

ITS stated that it wishes to draw the Commission's attention to the fact that in the original investigation the Board made a determination that *"the Petitioner did not suffer a decline in profitability"*. It stated that, therefore, the allegation made in this petition that *"the subsequent imposition of anti-dumping duties against Russia and Ukraine in November 1998 clearly resulted in an improvement in ISCOR's profit..."* could be misleading and must be rejected.

ITS stated that as the imports from the Russian Federation never caused injury to the Petitioner, the withdrawal of the anti-dumping duty will pose no threat of material injury especially as the Petitioner has increased its *"efficiencies and thereby profitability through the re-engineering process during 2000"*.

In response, the Petitioner stated that it submits that the fact that it has indeed improved its position in so far as profitability is concerned after imposition of the anti-dumping duties, is proof of the fact that it indeed suffered injury in so far as its profitability is concerned. It stated that its improved situation can further be contributed to the fact that it was not exposed to dumped imports from the exporter, which allowed it to increase its

profitability. The Petitioner stated that should the exporter be allowed to export dumped products in future to SACU, the Petitioner will obviously be prone to injury and subsequent financial losses.

### 5.3.3.3 Output

The following table outlines the Petitioner's domestic production volume of the subject product 3 years prior to the imposition of the current anti-dumping duty and for the years ensuing the imposition of the current anti-dumping duty and an estimate in the event of the expiry of the duty:

Metric tons	1996	1997	1998	1999	2000	2001	2002	2003	2004 Estimate if the duties expire
Petitioner's output	100	92	98	72	82	120	127	148	135

**This table was indexed due to confidentiality using 1996 as the base year.**

The output will be the production of the subject product whether exported or sold on the SACU domestic market.

The Petitioner stated that after taking into account all variables impacting on the total output, it has calculated the most practical estimate of output for 2004 to be 135 indexed metric tons. It stated that this had been decided upon after inter-alia taking into account the following factors:

- Probable influx of hot rolled imports as a result of the expiry of the anti-dumping duties.
- The strengthening of the SA Rand against the other major currencies, which will necessarily, lead to a further surge in imports.
- The slowdown in demand for domestic steel consumption, which is expected to last approximately until August 2004.

The Petitioner stated that the information as portrayed in the table is quite interesting. It stated that it clearly shows the relatively high output that it enjoyed in the 3 years immediately preceding the imposition of the Russian Federation and the Ukraine anti-dumping duties. It stated that since 1999 the domestic consumption declined drastically and only started its recovery in 2001. It stated that it peaked in 2003 with an all time high SACU output.

The Petitioner stated that as has previously been pointed out the Russian Federation and the Ukraine have massive excess capacities available and as have been demonstrated previously, these 2 countries operate an international marketing strategy that has no or very little regard for injury inflicted onto countries exported to. It stated that it, therefore, follows once again that the repeal of the anti-dumping duties will lead to the continuation or recurrence of material injury of the SA steel industry. It stated that it would be ironic if by repealing the said duties the SA steel industry would be deprived of cashing in on any stabilization of the SACU demand or increases there of in the near future.

In response, ITS stated that it is apparent that the output of the Vanderbijlpark plant decreased since July 1995 to 2004 even with the anti-dumping duties in place. It stated that this indicates that other factors are influencing the production of the Petitioner. It stated that the consolidated output of both the plants declined from July 1995 to June 2000 even with the anti-dumping duties in place. It stated that only in July 2000 did it increase. It stated that the whole SACU industry's output increased since July 1995 to 2004.

ITS stated that a further aspect to bear in mind is that the Petitioner had record output levels in 2003 and it can reasonably be expected that projections based on this record level can be skewed.

ITS stated that the reason for the decline in output was already given by the

Petitioner as *"After consultation with our major Customers it was deemed realistic to decrease the expected volume for 2004"*.

ITS further stated that the Petitioner expected a *"slowdown in demand for Domestic steel consumption to last approximately until August 2004"* It stated that, therefore, the reduction in 2004 cannot begin to be causally linked to an anticipated withdrawal of the anti-dumping duties.

In response, the Petitioner stated that although the Petitioner recognises that other factors relevant to the domestic market may impact on domestic consumption, it is a known fact that imports of dumped products usually affect output substantially. It stated that it therefore rejects the allegation that the reduction in 2004 cannot be linked to an anticipated withdrawal of the anti-dumping duties. It stated that logic demands the conclusion that an increase in imports of dumped products may cause a decline in output of the domestic producer due to a decline in demand for the domestically produced product.

The Petitioner stated that it further does not agree with the statement of the exporter that it can reasonably be expected that the projections for 2004 had been based on the record levels of 2003. It stated that it clearly pointed out in its application that proper account need to be taken of all variables impacting on total output.

ITS stated that the Petitioner confirms that the trend portrayed is interesting, as the output of the SACU industry was high prior to the imposition of the anti-dumping duties and then declined until 2001 when it started to recover. It stated that it is evident that the dumping duties did not address the internal problems of the SACU industry. It stated that, therefore, the withdrawal of the anti-dumping duties against the Russian Federation cannot be linked to any alleged threat of material injury.

ITS stated that as to the allegation of the existence of *"massive excess"*



capacity in the Russian Federation, it is indicated in its global overview that the Russian Federation is utilising in excess of 90 per cent of their capacity at this stage and it is expected to increase as the demand in China increases.

In response, the Petitioner stated that it finds it strange that the exporter denies and disputes findings of international reputable reports pertaining to the capabilities and access capacities of the Russian steel industry. It stated that it further submits that the protection that it received indeed addressed the problem of increasing amounts of dumped products on the domestic SACU market originated from the Russian Federation and Ukraine.

#### 5.3.3.4 Market share

The following table shows the market share for the subject product for the 3 years prior to the imposition of the current anti-dumping duty and for the years ensuing the imposition of the current anti-dumping duty and an estimate in the event of the expiry of the duty, in volume:

Sales volume in metric ton	1996	1997	1998	1999	2000	2001	2002	2003	2004 Estimate if the duties expire
<b>Market share percentage:</b>									
<b>Petitioner</b>	100	94	86	81	105	100	109	120	119
<b>Other SACU producer</b>	100	122	111	111	61	44	55	17	17
<b>Total SACU</b>	100	99	91	87	97	90	100	101	100
<b>Alleged dumped imports:</b>	0	0							100
<b>Russian Fed</b>			100	0	25	225	0	0	
<b>Ukraine</b>			100	0	0	0	0	0	
<b>Other imports</b>	100	133	233	500	167	167	133	100	33

This table was indexed due to confidentiality of the information

The import volumes prior to January 1997 are not available to the investigators. Therefore, the market share for 1996 and 1997 were calculated using the import statistics as supplied by the Petitioner. These import statistics only indicate one volume for the Russian Federation and the Ukraine.

In providing the estimate, the Petitioner only indicated that the total volume of the alleged dumped imports from both the Russian Federation and the Ukraine.

The Petitioner stated that it projected its market share percentage by volume for the estimate of 2004 to be 2,5 per cent lower than that of 2003. It stated that the table clearly shows its sales in SACU declined from 2002/2003 to the estimate of 2004.

The Petitioner stated that this forecast had been arrived at by taking into account its actual domestic sales for July 2003 to December 2003, and by adding the expected sales for January 2004 to June 2004, after taking due cognizance of the effect that imports from the Russian Federation and the Ukraine will have in the event of the expiry of the anti-dumping duties.

The Petitioner stated that the above table clearly shows that from 1996 to 1998 its market shares expressed in percentage by volume decreased. It stated that during the same period its total market share as well as the rest of the SACU Industry declined from 1996 to 1998, prior to the institution of the duties. It stated that the imposition of these duties was indeed legitimate and important for the future viability of the steel industry in SACU.

The Petitioner stated that the above table clearly shows that subsequent to the institution of the anti-dumping duties against the Russian Federation and the Ukraine during November 1998, its market share expressed as a percentage of volume indeed increased from 1999 to 2003. It stated that it

should be noted that Saldanha Steel had been commissioned during 1999/2000, which attributed to the increase in market share percentage.

The Petitioner stated that this clearly illustrates the effectiveness of the institution of the anti-dumping duties in November 1998. It stated that for the sake of comprehensiveness it should be noted that it has already elaborated on the various factors that would likely lead to the continuation or recurrence of material injury should the anti-dumping duties be repealed. It stated that it would, therefore, only mention the factors that will negatively impact on the repeal of the anti-dumping duties and subsequently inflict material injury onto the domestic steel industry. It stated that these factors are:

- (1) A massive influx of hot rolled material imported from the Russian Federation and the Ukraine as a result of the excess capacities available in the said countries, due to the proven strategy of the said countries to dispatch there excess production into every available export marketing area.
- (2) It is further noteworthy that the Russian Federation even shipped plus/minus 50 000 tons of hot rolled material to SACU during 2000, notwithstanding the anti-dumping duties imposed since November 1998. This clearly indicates the ability and willingness of at least the Russian Federation to inflict material injury to the SACU industry at will.
- (3) The strengthening of the SA Rand against the other major currencies.

ITS stated that the Petitioner's market share must have increased if the market has not contracted as the Petitioner's import volumes indicate that all the imports of the subject product declined since 1996 by 81 per cent.

In response, the Petitioner stated that it wishes to point out that it did submit a comprehensive and detailed analysis of the whole market share situation. It

stated that it further submits that it never disputed that its market share increased subsequent to the institution of the anti-dumping duties against the Russian Federation and Ukraine. It stated that ITS once again preferred to selectively quote from its response.

#### 5.3.3.5 Productivity

Using the production and employment figures sourced from the Petitioner, its productivity in respect of the subject product is shown for the 3 years prior to the imposition of the current anti-dumping duty and for the years ensuing the imposition of the current anti-dumping duty and an estimate in the event of the expiry of the duty:

	1996	1997	1998	1999	2000	2001	2002	2003	2004 Estimate if the duties expire
<b>Metric ton per employee</b>	100	106	126	123	163	255	326	356	352

**This table was indexed due to confidentiality using 1996 as the base year.**

The production figures used to calculate the productivity be the production of the subject product whether exported or sold on the SACU domestic market.

The Petitioner stated that after taking into account all variables impacting on the total output, it has calculated the most practical estimate of output for 2004. It stated that this had been decided upon after inter-alia taking into account the following factors:

- (i) Probable influx of hot rolled imports from the Russian Federation and the Ukraine as a result of the expiry of anti-dumping duties.
- (ii) The strengthening of the SA Rand against the other major currencies which will necessarily, from a theoretical point of view lead to a surge in imports.
- (iii) The slowdown in demand for domestic steel consumption.

- (iv) Operational problems on the hot strip mill severely hampered production during the first 5 months of 2003/2004 financial year and consequently impacted negatively on the attained output for 2004.

The Petitioner stated that concerning the trends it is imperative to note that it continuously through the years, in its endeavor to apply best practices available, re-engineered the total process at the Vanderbijlpark Works that unfortunately lead to massive retrenchments. It stated that the net result, however, was that the new systems and procedures resulted in more efficient planned values which in turn inter-alia lead to massive improvements of employee productivity (units per employee). It stated that the headcount decreased from 9 358 in 1996 to a meager 3 892 in 2003 with a consequent improvement in employee productivity from 100 indexed units/employee in 1996 to 356 indexed units/employee in 2003.

The Petitioner stated that note should be taken that as part of the re-engineering and restructuring process the hot strip mill south had been decommissioned in May 1999. It stated that, however, in July 2002 it acquired control of, and incorporated Saldanha Works into the Flat Steel Products operation and thereby increasing its capacity. It stated that it is envisaged that the units/employee will stabilize around 352 indexed units/employee as for the estimate for 2004. The Petitioner stated that as a result of the implementation of anti-dumping duties against the Russian Federation and Ukraine in November 1998, plus/minus 50 000 tons were imported from the Russian Federation in 2000. It stated that, however, in its response to the import volumes it submitted a table showing that exports from the said countries increased from 5,191 million tons in 1997 to a massive 13,0 million tons in annualized 2003.

The Petitioner stated that this clearly indicates the ability and the propensity of the two countries to offset excess capacity to available marketing areas at

will. It stated that it is, therefore, realistic to deem it likely that the expiry of the anti-dumping duties will lead to the continuation or recurrence of material injury in the event of the said duties being repealed. It referred the Commission to its comments under import volumes.

ITS stated that it is clear that the Petitioner increased its productivity as a result of the elimination of inefficiencies and not as a result of the imposition of the anti-dumping duties.

ITS stated that the information supplied by the Petitioner with regard to the 50,000 tons that was imported in 2000 is disputed as the Russian agent is not aware of these volumes. It requested the Commission to investigate where the Petitioner obtained this information and advise them accordingly.

The Commission noted the comments from the interested parties on the import volumes. The Commission confirmed that the import statistics used in this report were obtained from SARS by the Commission.

In response, the Petitioner stated that it submits that the matter pertaining to the import of Russian products in 2000 has already been appropriately addressed above as is the case with the allegations pertaining to the Petitioner's increased productivity as a result of increased efficiencies. It stated that it once again submits that increases in productivity can clearly be linked to the deterring effect that dumping duties had on the domestic market.

#### **5.3.3.6 Return on investment**

Return on investment is normally regarded by the Commission as being the profit before interest and tax as a percentage of the net value of assets.

The following table shows the return on investment of the Petitioner for the 3 years prior to the imposition of the current anti-dumping duty and for the

years ensuing the imposition of the current anti-dumping duty and an estimate in the event of the expiry of the duty:

	1996	1997	1998	1999	2000	2001	2002	2003	2004 Estimate if the duties expire
<b>Return on owners equity</b>	8.4%	5.1%	9.6%	4.8%	0.4%	7.5%	5.6%	20.8%	5.9%
<b>Return on total net assets</b>	10.3%	7.6%	11.9%	4.9%	2.2%	6.8%	9.1%	25.6%	7.5%

The Petitioner stated that the estimates for 2004 are deemed to be the most realistic scenarios for 2004. It stated that it should be noted that 2003 had been an extraordinary achievement in all regards, which in all probability will never be achieved again.

The Petitioner stated that it has already elaborated in its response to the preceding questions on the variable factors that ultimately culminate in the return on investment ratio's as set out above. It stated that this in short could be summarized as the ultimate consequences of cost, volume, and price relationship coupled with increase/decrease expenses in exchange rate movements, and the relative impact of the volumes of imports of hot rolled products into the SACU, and the subsequent injury inflicted on the domestic steel industry of current import volumes and prices. It stated that note should be taken that the above estimates are valid for the situation where the anti-dumping duties on the Russian Federation and the Ukraine are deemed not to be repealed in the near future. It stated that it is also noteworthy that the repeal of the anti-dumping duties, currently being the subject of this sunset review will have a devastating effect on the above noted ratio's for the reasons already mentioned above.

ITS stated that the table indicates that the return on owners equity and total net assets increased between July 1999 and 2004, with 2003 being an extraordinary year.

ITS stated that even if the anti-dumping duties are withdrawn in 2004, the return on owners equity is expected to be above the 2001/2002 figure. It stated that the withdrawal of the anti-dumping duties will, therefore, not cause material injury to the SACU industry.

In response, the Petitioner stated that it does not dispute the fact that the return on owners equity and total net assets increased between July 1999 and 2004, with 2003 being an extra-ordinary year. It stated that it likewise does not differ from the statement that if anti-dumping duties are to be withdrawn in 2004, the return on owners equity is expected to be above the 2001/2002 figure. It stated that what it wishes to iterate, is that withdrawal of the anti-dumping duties will inevitably lead to a lower return on owners equity than would be in the case if the duties are retained.

The Petitioner stated that it is therefore not in agreement with the statement by the exporter that the withdrawal of the anti-dumping duties will not cause material injury to the SACU industry.

In response, ITS stated that the Petitioner stated that 2003 was an "extra-ordinary year". It stated that it appears from the six month interim reports of Iscor and Highveld that 2004 is extra-ordinary and that it will continue for at least the rest of 2004.

#### **5.3.3.7 Utilisation of production capacity**

The following table provides the Petitioner's capacity and production for the subject product for the 3 years prior to the imposition of the current anti-dumping duty and for the years ensuing the imposition of the current anti-dumping duty and an estimate in the event of the expiry of the duty:



	1996	1997	1998	1999	2000	2001	2002	2003	2004 Estimate if the duties expire
Utilisation of capacity	84%	94	95	104	75	93	93	96	96

**This table was indexed due to confidentiality using 1996 as the base year.**

The Petitioner stated that the Commission should note that all plants are designed to achieve in practical terms a certain production output. The Petitioner stated that this is referred to as the so called design capacity which is based on a certain product mixture as well as expected planned values, inter-alia, yield and rolling rate. It stated that any fluctuation in product mixture, production scheduling and planned values would result in a different plant capacity than what it had been designed for. It stated that this is commonly referred to as practical or attainable capacity.

The Petitioner stated that the capacity for 2004 did not change since 1999/2000. The Petitioner stated that no major variances in the above regard had been envisaged for estimate 2004 and therefore no adjustments to the capacity had been estimated as such.

The Petitioner stated that its production capacity is based on 3 shifts per day, 24 hours per day, 7 days a week and, therefore, the production capacity can not be increased without additional machinery and equipment. It stated that note should however be taken that it is possible to increase/decrease capacity by changing the product mix or by optimizing the production batch scheduling, if however economically and practically viable. It stated that it is however important to note that the plant is utilized 3 shifts per day, 7 days per week when demand so dictates. It stated that it is further imperative to note that a decline in demand does not necessarily mean that it can shift from 3 shifts per day to a 2 shift basis per day, due to practical and operational

circumstances. It stated that there is, therefore, no direct relationship between the production tonnages and the shifts that the plant is manned. It stated that this will necessarily result in the need for the plant to be manned on a 3 shift basis even if a sharp decline in production occurred as the difference between the threshold tonnages for inter-alia a 2 shift and a 3 shift operations differs vastly. The Petitioner stated that practical production requirements as well as labour legislation are the main contributors to this phenomenon.

The Petitioner stated that it is, therefore, of the utmost importance that the Commission does not repeal the said anti-dumping duties against the Russian Federation and the Ukraine as it will necessarily lead to the influx of imports which will subsequently manifest in distorting the current efficient operating environment that has been created by its product rationalization and re-engineering programs.

ITS stated that from the response of the Petitioner it is evident that it does not wish to have any competition in the SACU market as it states *"the influx of imports which will subsequently manifest in distorting the current efficient operating environment that has been created by the applicants product rationalization and re-engineering programs."*

ITS stated that as a result of the buoyant world steel market and the high capacity utilisation in the Russian Federation it is expected that if the anti-dumping duties were to be withdrawn that no imports from the Russian Federation will take place.

In response, the Petitioner stated that it obviously denies the allegation made pertaining to competition in the SACU market. It stated that it has on several occasions expressed the view that it does not oppose any opposition subject thereto that the opposition is fair and not based on imports of dumped products, which cause injury to the domestic industry. It stated that the issue

pertaining to the Russian Federation exports has already been adequately addressed above.

#### **5.3.3.8 Factors affecting domestic prices**

There are no other known factors which could affect the domestic prices negatively.

#### **5.3.3.9 The magnitude of the margin of dumping**

The Commission calculated the following dumping margins:

<b>Country</b>	<b>Margin of dumping</b>
Russian Federation (excluding Severstal)	18.1%
Severstal in the Russian Federation	(4.02%)
Ukraine (excluding Ilyich)	31.7%
Ilyich in the Ukraine	25.3%

The Commission found that the expiry of the duties is likely to lead to the continuation or recurrence of dumping from the Russian Federation (excluding Severstal) and the Ukraine.

#### **5.3.3.10 Actual and potential negative effects on cash flow**

The Petitioner stated that as a result of the effect that anti-dumping duties had been imposed during November 1998, no imports of dumped material (with the exception of plus/minus 50 000 tons in 2000) entered the SACU market. It stated that it, therefore, follows that the cash flow regarding the specific product had been impeded as a result of the importation of the said 50 000 tons. The Petitioner stated that what is however of more importance is that the expiry of the anti-dumping duties is likely to lead to the continuation or recurrence of material injury. The Petitioner stated that the importation of

the subject product at dumped prices and high volumes will undoubtedly impact negatively on its cash flow as this will result in lower domestic sales for it with a consequent lower income. The Petitioner stated that this will further be aggravated by the distortion of the current cost, volume, profit relationship as a result of lower capacity utilization as well as the negative effects on planned values such as yield and rolling rate due to the smaller product scheduling batches as well as the distortive effect that it would have on product mixes.

The Petitioner stated that the cumulative effect of the above mentioned factors would ultimately result in lower operating profits and thus negatively impact on the cash flow.

ITS stated that it wishes to point out that in the initial investigation the Board did not made a finding that the SACU industry suffered material injury. It stated that, therefore, the allegation made by the Petitioner that the withdrawal of the anti-dumping duties *"is likely to lead to the continuation or recurrence of material injury"* is irrelevant and should be rejected as such.

ITS stated that as a result of the buoyant world steel market and the high capacity utilisation in the Russian Federation it is expected that if the anti-dumping duties were to be withdrawn that no imports from the Russian Federation will take place.

In response, the Petitioner stated that it wishes to draw attention to responses in this regard above. It stated that the arguments further raised herein have already been adequately addressed.

### 5.3.3.11 Inventories

The following table provides the Petitioner's inventories for the subject product for the 3 years prior to the imposition of the current anti-dumping duty and for the years ensuing the imposition of the current anti-dumping duty and an estimate in the event of the expiry of the duty:

	1996	1997	1998	1999	2000	2001	2002	2003	2004 Estimate if the duties expire
Volume	N/A	100	45	61	103	69	54	88	54
Value (R'000)	N/A	100	51	72	116	85	102	158	106

**This table was indexed due to confidentiality using 1997 as the base year.**

The Petitioner stated that the inventory position for the Vanderbijlpark Works as at June 1996 is not available.

The Petitioner stated that it only produces to order and it is, therefore, anticipated that the expiry of the anti-dumping duty should have no impact on the levels of its inventories from a theoretical point of view. It stated that from a practical point of view it is fair to state that in the event of expiry of the duties it would be realistic to expect an influx of hot rolled material from the Russian Federation and the Ukraine. It stated that this will culminate in a lower production destined for the domestic market which will in turn negatively effect the production efficiencies and thereby the efficiencies of order fulfillment. The Petitioner stated that this decline in efficiencies would ultimately result in higher inventory levels with a negative effect on cash flow.

The Petitioner stated that the inventory level of 2003 was exceptionally high and its estimate for 2004 is that it will have a more stable situation with regard the inventory levels.

ITS stated that inventories cannot be indicative of injury as the Petitioner only produces to order. It stated that in the table no distinction is made between export and domestic inventories.

In response, the Petitioner stated that it acknowledges that inventories, if independently analysed, may not necessarily be an indication of injury. However, it stated that if taken in conjunction with other factors relevant to injury, it may well proof the likelihood of recurring dumping, as is the case in the present matter.

ITS further stated that the allegation made that the inventories are influenced by amongst other "*increased imports*" is factually incorrect. It stated that as indicated all imports declined over the investigation period.

In response, the Petitioner stated that it wishes to confirm its statement that inventories are influenced by amongst others increased imports, as set out above.

#### 5.3.3.12 Employment

The following table provides the Petitioner's employment figures for the subject product for the 3 years prior to the imposition of the current anti-dumping duty and for the years ensuing the imposition of the current anti-dumping duty and an estimate in the event of the expiry of the duty:

	1996	1997	1998	1999	2000	2001	2002	2003	2004 Estimate if the duties expire
Units of employment	9 358	8 098	7 259	5 521	4 698	4 419	3 634	3 892	3 618

It should be noted that Saldanha employment figures was incorporate into the above figures from 2000.

The Petitioner stated that the estimate for 2004 with regards employment information had been arrived at after reducing the units of employment for 2003. It stated that this had been done according to the fact that it has once again engaged on a cost cutting exercise, which will inevitably result in retrenchments. The Petitioner stated that it should for the record be stated that as has already being published in the media that the creation of "Shared Services" (Finance, Human Resources, Material management, etc) will result in substantive retrenchments, although exact retrenchment numbers are not known. It stated that it is safe to conclude that management will endeavor a reduction in units of employment. It stated that as has been published in the media the cost cutting exercise is an effort to curb the negative financial impact as a result of the drastic strengthening of the SA Rand against other major currencies.

The Petitioner stated that the information in the table clearly shows that its units of employment on the hot strip mill decreased from 9 358 in 1996 to a meager 3 892 in 2003. It stated that any reduction in throughput of this plant would however necessitate further retrenchments.

The Petitioner stated that as has been explained in its previous responses, the expiry of the anti-dumping duties against the Russian Federation and the Ukraine would have a detrimental effect on the production of hot rolled material destined for the domestic market.

The Petitioner stated that this would consequently result in lower sales/production, which will negatively impact on the operational income, which in turn will increase propensity to retrench more units of employment. It stated that apart from the drastic, socio-economic impact of such measures it will furthermore impact negatively on the efficient operations of the hot strip mill as a whole, thereby impeding on the economic viability of the hot strip mill and consequently on the overall profitability of its operations. It stated that it is, therefore, of the utmost importance not to repeal the anti-dumping duties

imposed against the Russian Federation and the Ukraine, as to avoid material injury being inflicted onto the SACU industry.

ITS stated that as indicated by the Petitioner, the retrenchments have nothing to do with Russian or Ukrainian imports, or for that matter a lack of imports.

ITS stated that as a result of the buoyant world steel market and the high capacity utilisation in the Russian Federation it is expected that if the anti-dumping duties were to be withdrawn, employment will not be affected.

In response, the Petitioner stated that ITS has once again quoted the Petitioner's response out of context and presented a distorted picture of the real facts as presented above.

ITS stated that when evaluating the injury indicator "Employment", the Commission should take into consideration the current negotiations/dispute between Iscor and the trade unions.

#### **5.3.3.13 Wages**

The following table provides the Petitioner's wages for the 3 years prior to the imposition of the current anti-dumping duty and for the years ensuing the imposition of the current anti-dumping duty and an estimate in the event of the expiry of the duty:

	1996	1997	1998	1999	2000	2001	2002	2003	2004 Estimate if the duties expire
Wages	100	105	110	108	120	104	102	116	113

**This table was indexed due to confidentiality using 1996 as the base year.**

The Petitioner stated that its response to employment above has reference in this regard. It stated that it should further be noted that any further



retrenchments as a indirect result of the expiry of the anti-dumping duties will have additional consequences with regards the already hard hit financial and socio economic problems that currently exist in the Vaal Triangle as a result of previous scaling down and re-engineering processes. It stated that what is needed in fact to halt or slow down the deterioration and socio economic disaster currently unfolding in the Vaal Triangle is job creation and financial stability rather than retrenchments and liquidation of operations.

#### **5.3.3.14 Growth**

The Petitioner stated that the growth in the market for the product in respect of which this application is brought had not been inhibited that much after the imposition of the anti-dumping duties since November 1998. It stated that it should be noted that its growth prior to the imposition of the anti-dumping duties had been inhibited, where after the imposition of the duties it became effective. It stated that the potential negative growth in the SACU market has been highlighted throughout its response in this submission and has reference.

The Petitioner stated that from a profitability point of view it is imperative to increase the ratio of domestic to export sales. It stated that the influx of imports would impede in the improvement of ratios toward local sales, thereby negatively effecting the profit situation of the company. It stated that it is, therefore, of the utmost importance to increase the local and export ratio in order to increase operational efficiency, minimize retrenchments, increase profitability and thereby contribute toward a more stable financial environment not only for the company, but also for the Vaal Triangle as such. It stated that this would consequently also have a positive influence on the socio economic situation in the Vaal triangle.

#### **5.3.3.15 Ability to raise capital or investments**

The Petitioner stated that flat steel products' capital expenditure is mainly financed through internally generated cash flow. It stated that cash flow is currently under pressure inter-alia due to the downstream effects of increased imports. It stated that the current focus of capital expenditure is mainly maintenance projects and not to increase the production capacity. It stated that cognizance should be taken of the fact that in the longer term the negative financial impact resulting from increased imports in fact will negatively effect its flat steel products' ability to raise capital or to draw investments should we wish to expand our current production.

#### **5.4 OTHER INFORMATION SUBMITTED BY THE PETITIONER**

The Petitioner indicated that it wished to bring the following to the Commission's attention:

##### **1. Introduction**

The Petitioner stated that the Board on Tariffs and Trade (predecessor of the International Trade and Administrative Commission) in terms of Report No. 3973: "Investigation into the alleged dumping of Hot Rolled Plates and Sheets of Steel originating in Russia and the Ukraine" determined on 28 May 1999 amongst others that "a threat of material injury to the SACU industry existed in respect of the subject goods from Russia and the Ukraine" and that "the threat of material injury is causally linked to the dumping of the subject goods from Russia and the Ukraine". It stated that subsequent to the above-noted, anti-dumping duties were imposed on exports from the noted countries, which exports are now the subject of a review process in accordance to the provisions of Article 11.3 of the World Trade Organisation Agreement on Implementation of Article

VI of the General Agreement on Trade and Tariffs.

The Petitioner stated that the likelihood of future threat is important in the review investigation and that it wishes to bring the following in so far as the imminent threat of dumping by the Russian Federation and the Ukrainian steel manufacturers are concerned, to the attention of the Commission.

2. Freely Disposable Capacity or Imminent Substantial Increases in Capacity of the Exporter

**Global Position of CIS Steel**

The Petitioner stated that in a recent internet article, Dr AS Firoz "CIS Steel – Global Dominance in Midscrisis" (9 August 2003; India Infoline .com.) argues that one of the reasons for the fallen steel prices in the world, can be ascribed to the so called "CIS factor" which redefined the "... contours of global competition in steel".

The Petitioner stated that the disintegration of the USSR completely redefined the global competition in steel trade and the impact thereof can according to the writer best be illustrated as follows:

- i. In 1990, the CIS produced 33 million tons and consumed 32 million tons of flat products. The figures dropped to 24,9 and 13 million tons respectively in 1998. Exports in turn increased from 2.8 million tons in 1990 to 14.1 million tons in 1998. The flow of semi-finished products, billets and slabs, from this region as exports increased from 2.8 million tons to 14.1 million tons during the same period.
- ii. The problem for the competing global industry according to Dr.

Firoz was that the CIS producers literally had no system of accounting of capital related costs. No real costing of raw materials existed. In 1994 it was determined that the CIS costs represent only 33.5 per cent of that of the best known cost efficient producer Nucor (USA product), that used state of the art thin slab casting technology. This situation has not changed so much and the CIS figure of \$236 per ton of steel produced stood against \$442 in the USA, \$420 in Japan, \$310 in South Korea, \$2307 in Brazil and \$330 for Nucor.

- iii. With steel companies in the CIS undertaking modern financial accounting practices, the new investments are being accounted for by the estimating of financial costs. However, the bulk of machinery and assets remained outside the scope of financial accounting and CIS plants, even today, have extremely low financial costs, compared to almost anywhere in the world.
- iv. Subsequently to the above-noted, products could be sold at whatever prices they fetched. The writer refers to the fact that in December 1998 when the global steel prices were at its bottom, against an European and Japanese export price of hot rolled coil of \$190 per ton, the products from Ukraine were easily available at prices below \$130 per ton. Similar materials could not be sold at prices below \$160 per ton in the rest of the world. Russian hot rolled coil with reasonable quality, sold at about \$145 to \$150 per ton.
- v. The article states that much of their own reasonable pricing of CIS steel can be contributed to the fact that CIS producers had little exposure to international trading. Traders from Europe, Singapore and Hong Kong were more bothered about volume than on marketing CIS steel.

The Petitioner stated that the writer's conclusion was that CIS presence in the global steel market kept prices low despite increases in the demand for steel worldwide. It stated that the writer concludes that the low cost CIS Steel with their enormous pricing power will be able to manipulate prices. It stated that once the Russian Federation industry is rebuilt, which is one of the aims of the Russian Federation Government, the effective capacity would jump substantially.

It stated that Dr.Prof.Vladimir Lisin, Chairman of Board of Directors of Novolipetsk Iron & Steel Corporation presented a paper titled "Development Prospects of the Russian Steel Industry" before the first Russian Steel Summit held in Moscow 2-4 June 2003 and stated that a decrease in consumption growth rates along with the capacity increases in the steel industry, gave rise to a sharp increase in production efficiency. The Petitioner stated that the further development in international trade, triggered production / consumption misbalances in the steel industry with a consequent emergence of obsolete and excess production capacities at the top of the global steel costs curve.

It stated that amidst this situation, the Russian Federation industry constitutes an integrated part of global steel market, actively participating in the international organisation of steel production. It stated that all problems in the international steel industry are directly mapped to the Russian Federation. The Petitioner stated that leading the Russian Federation plants were forced to open up new markets actively whilst the domestic consumption in the Russian Federation declined, which resulted in a formation of significant inefficient (about 5 million tons) in excess of (about 10 million tons) capacities in the Russian Federation as well as in other countries and regions. It stated that this has caused the Russian Federation to become one of the world's largest exporters of steel and the share of export shipments from the Russian Federation exceeds 40 per

cent of the output, whilst the Ukraine exports over 80 per cent of steel produced.

The Petitioner stated that attention is also drawn to the fact that between 1995 and 2002 there were 53 anti-dumping investigations initiated against the Russian Federation iron and steel companies, while 40 of these resulted in imposition of anti-dumping duties. It stated that this had led to an almost complete market shutdown for supplies of the Russian Federation flat and long steel products to a number of countries. It stated that the trend would further increase if a number of anti-dumping proceedings persist. The Petitioner stated that according to the article, the year 1998 saw a total of 13 anti-dumping investigations initiated against the Russian Federation producers worldwide. It stated that since then, a trend to "squeeze" the Russian Federation out of most profitable sectors of the foreign market can be traced. It stated that between 1994 and 1998 the Russian Federation produced the share of a semi-finished steel exports by supplying about 15 million tons of rolled steel to the global market. It stated that other measures used against the Russian Federation include quota limitations, which according to Dr. Prof. Vladimar Lisin, takes tougher forms every year, particularly in the EU. It stated that over 700 000 tons of rolled steel shipments became subject to new quota restrictions in the EU in the last 2 years (2001 – 2002).

The Petitioner stated that in a statement by the Canadian Steel Producers Association to the Department of Foreign Affairs International Trade, prepared in preparation for the international trade talks of 1999, the following is remarked in so far as the Russian Federation is concerned:

"Many Russian communities, for example, depend entirely on the local steel plant for their economic activity." and further "An exporter will sell below total cost as long as his revenues cover variable costs of production plus some contribution to fixed capital costs. Some sell at even less return, to maintain employment. Countries with weak currencies (like Russia) have additional motivation to generate foreign

exchange.”

The Petitioner stated that pursuant to the detail pertaining to the Russian Federation and Ukrainian production capacities as set out above, a real likelihood of substantially increased importation into SACU exists. The Petitioner stated that cheap Russian and Ukrainian steel previously flooded US, South Eastern Asian and European markets since the imposition of anti-dumping duties by the Board of Trade and Tariffs in 1999, causing a series of responses from these countries, namely

- In 1998 over 50 anti-dumping actions were lodged against Russian steel companies;
- In February 2002 an agreement was entered into between Russia and the US to limit Russian exports to the US;
- In November 2001 an OECD meeting proposed a 90 million tons production cut in global steel output with Russia contributing 10 million tons production to this;
- In December 2001 the EU retained its total 860 000 tons import quota for Russian steel, but add a further 450 000 tons of boron alloy steel previously excluded from the quota;
- In March 2002 the United States' President ruled on Section 201 compliant by the United States Steel Industry by introducing several tariffs on products imported into the United States;

The Petitioner stated that the obvious question is why so many countries deemed it necessary to impose protective measures against steel imports from particularly the Russian Federation and Ukrainian steel industries. It is submitted that the answer by enlarge, is based on the following reasons:

(i) The Russian Steel Industry is based on Low Productivity with a Low Factor Input Cost

The Petitioner stated that the Russian Federation is the fourth largest national steel industry after China, Japan and USA. (Note- the IISI Outlook places Russia second for 2003). It stated that the competitive positions of the Russian Federation and the Ukrainian steel industry respectively depend on combinations of low productivity with very low input factor prices and plant inherited at low/no cost from the previous era. It stated that the industry consumes more labour, energy and raw material per ton of steel than any of its global competitors, but pays less per unit for those inputs. [See ALT Research and Consulting Company; " Can Russian Steel Compete?" by Jeff Crocker of Technology and Market Strategies.

The Petitioner stated that in an article "Everything You Always Wanted to Know About Russian Steel Export, but Were Afraid to Ask" in Metal Supply and Sales 2003, special Issue questions were posed to Mr. S Afonin, President of the Russian Union of Metal Exporters on the prospects of the Russian Federation Industry. It stated that in response to a specific question how the Russian Federation became the world's largest exporter of steel products, Mr. Afonin stated that Russian Federation producers, in the majority, have a more favourable structure of expenses.

"For far,(sic) the salary is lower, power resources are cheaper and, most unfortunately, low depreciation charges. It allows us to have a lower cost effectiveness of our products comparing to that of our competitors." This led to 60 per cent of all rolled steel products being exported from Russia. In another question posed, Mr. Afonin stated that "the main product we export is hot rolled steel (rolls),



that is used directly as well as for further re-rolling”.

(ii) The Russian Steel Industry remains a highly subsidized industry

The Petitioner stated that in an Washington Times editorial of 16 September 2002 “A Steely resolve in Paris” the following apposite observation was made in so far as the Russian Steel Industry is concerned:

“Clearly, global market distortions of steel have caused the US steel industry to buckle due to over-supply. Russian steel producers, for example, receive support from State-controlled input suppliers, which also provide transport to the industry. And Russian steel makers are subject to lax bankruptcy laws.”

The Petitioner stated that it is in view of the above noted, submitted by the it that it is apparent that the Russian Federation and Ukrainian producers have sold steel and specifically HRC products, which form the subject of this investigation at dumped prices all over the world.

The Petitioner stated that it is also clear that the Russian Federation industry is able to market these products at dumped prices and it is only reasonable to conclude that the Russian Federation Steel industry would like to continue with exports to South Africa. It stated that this is apparent from a press release made on 27 September 2002 in Steel Week.

The Petitioner stated that it is therefore of the opinion that the exporters will export product at hugely reduced prices, which will have a depressing as well as a suppressing effect in so far as future prices are concerned. It stated that it respectfully submits that what happened in other countries in consideration of and the state of the Russian Federation and the Ukrainian industries, the

only reasonable conclusion is that the subject goods will pour into SACU at hugely dumped prices. It stated that the exporters have to compete with other exporting countries for the SACU market and in order to establish markets after an absence of 5 years, it is expected that products will be offered to SACU producers at deflated prices.

(iii) Available Inventories of Russian and Ukrainian Producers

The Petitioner stated that according to the IISI "Short Range Outlook – Autumn 2003 Survey" there were very little changes in so far as the Russian Federation and Ukrainian Steel inventories are concerned.

Dmitri Sivakov in an article "The Fate of Russian Steel stated

"Russia has steel coils and sheets coming out the ears. There is no obvious market nice for this technology at the moment"

(iv) The State of the Russian and Ukrainian Industries

The Petitioner stated that in the above noted article by Dmitri Sivkov "The Fate of Russian Steels" (expert – Russian Business 2003 No 36 391) it states that the Russian Economy, in so far as steel producers are concerned, are marked by an overall inefficiency, lack of engineering insight, and an inadequate domestic market, which doomed the Russian steel industry to lag behind the rest of the world technology for the next 20 years. The Petitioner stated that in an interview with Alexander Abranov, President of Evrazholding, writer said that Western technology has one significant disadvantage; "it requires huge initial investments and has a long pay-back period. Russia's only reasonable strategy

is to get everything possible from existing equipment and keep out their competitors' advantage in the industry"

In response to these comments, ITS stated that the Petitioner revisits the past and does not give any indication of what the situation will be like once the anti-dumping duties are withdrawn.

ITS stated that the Commission is referred to the Expiry Review Report, dated 30 June 2004 of the investigation that was conducted by the Canadian International Trade Tribunal with regard to certain flat hot-rolled carbon and alloy steel sheet products.

In response, the Petitioner stated that it submits that the information submitted clearly indicates the propensity of Russian and Ukrainian producers to dumped products in all available markets without qualification and without consideration of the situation of domestic markets. It stated that to this end, it submits that no evidence was adduced indicating that this trend will not repeat itself, should the Russian producers be afforded the opportunity to recommence with duty free exports to SACU.

## **5.5 COMMENTS SUBMITTED BY SEVERSTAL AND THE IMPORTERS IN THEIR QUESTIONNAIRES**

The following comments were submitted in a central submission by Severstal and the importers in their response to the Commission's questionnaires:

### **1. Background to original investigation**

#### **1.1 Original response by the SACU industry**

The initial petition was submitted by the South African Iron and Steel Institute (SAISI) that represents Highveld Steel and Vanadium Corporation Ltd and

ISCOR Ltd.

SAISI alleged that its members were suffering price undercutting, price depression, price suppression and a decline in output and sales as a result of the dumped imports from Brazil, Russia and the Ukraine.

The dumping margins were calculated for the period June 1997 to May 1998. What is of concern is that the Board in the determination of normal value in Russia used Brazil's normal value, although Brazil did not cooperate in the initial investigation.

Furthermore, the Board considered import information up to August 1998 although it does not fall within the investigation period for the determination of dumping.

The injury information covered the period January 1995 to May 1998.

## **1.2 Determination of the Board**

The Board on Tariffs and Trade ("Board") accepted the petition from SAISI on 6 July 1998. On 17 July 1998 the anti-dumping investigation into the alleged dumping of hot-rolled plates and sheets of steel originating in or imported from Brazil, Russia and the Ukraine was initiated. A second notice was published on 24 July 1998 setting out that all subheadings appearing under tariff subheading 72.08 would be included in the investigation.

During the course of the investigation the Board made a preliminary determination that the products were dumped into the SACU market from Brazil, Russia and the Ukraine. However, the Board found that there was not sufficient evidence of material injury to the SACU industry during the investigation period. The Board, however, found that there was a causal link between the dumping and the threat of material injury with regard to exports from Russia and the

Ukraine.

The Board confirmed its preliminary determination during the final determination on 20 May 1999 and imposed final anti-dumping duties on the subject products imported from or originating in Russia and the Ukraine for a period of 5 years on 28 May 1999.

The Board published its finding in Report No. 3973 ("the Report").

### **1.3 Current position in terms of the South African Regulations and Global practices.**

The South African Anti-dumping regulations ("AD Regulations") provide in AD Regulation 53.1 in line with Article 11.3 of the Agreement on Implementation of Article VI ("Anti-dumping Agreement") of the General Agreement on Tariffs and Trade ("GATT") 1994 of the World Trade Organisation ("WTO") that *"anti-dumping duties shall remain in place for a period not exceeding 5 years from the imposition or the last review thereof"*.

However, it is important to note that the AD Regulations are not in line with global practice as the Anti-dumping Agreement states in Article 11.3 that the *"duty may remain in force pending the outcome of such a review"*. On the other hand, the South African AD Regulations make provision that the anti-dumping duties can remain in place for a period longer than 5 years. They provide that *".....such anti-dumping duty shall remain in force until the sunset review has been finalised."* (Own underlining). The implication is that if the South African authorities were to rescind a duty after a period of five years it cannot be done retroactively. Consequently, the decision will be in contravention of its own regulation 53.1 and therefore also in contravention of WTO prescriptions.

## **2. Global overview**

Taking cognizance of the current situation in the global steel market is central to this investigation. While the applicant focuses almost exclusively on Russian & Ukrainian supply and demand in order to substantiate its case, the Commission's Anti-dumping Regulations correctly require that capacity and price are key elements when dealing with a threat of material injury.

Contrary to the information, Iscor submitted to the Commission in its application we will indicate that the withdrawal of the anti-dumping duties on hot rolled steel will not lead to the recurrence of a threat of material injury. Our assessment is based on the likely volume of the subject imports, the likely price of the subject imports and the likely impact of these imports on the domestic industry.

### **2.1 Guidelines in Commission's Anti-dumping Regulations.**

In its Regulations in Section 54.4, the Commission indicates that the applicant *"...shall provide the Commission with a proper application containing the necessary information to establish a prima facie case that the removal of the anti-dumping duty will be likely to lead to the continuation or a recurrence of injurious dumping."*

Since Russia, and in particular Severstal, did not export the subject product to South Africa since the introduction of the current anti-dumping duties, we are dealing with a threat of injury owing to increased imports in the absence of the anti-dumping duties. The Commission will also have to consider at what price future exports from Russia will enter the domestic market and whether these prices will have a significant impact on the domestic industry. In this regard it should also be taken into consideration that the Commission in its original investigation found that Iscor was not suffering material injury as a result of the alleged dumped exports from Russia, but that there was a threat of material injury. Since this is a sunset review of duties imposed on a threat of material

injury as well as the fact that no imports occurred since the imposition of the anti-dumping duties we are of the opinion that the basis of the sunset review should follow the rules governing an investigation in respect of a threat of material injury.

Section 14 of the Commission's Anti-dumping Regulations indicates that, *"A determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which dumping would cause material injury must be clearly foreseen and imminent."*

The Regulation further states that *"In considering a threat of material injury the Commission shall, in addition to the factors indicated under section 13, and where relevant information is available, consider such factors as:*

- (a) a significant rate of increase of dumped imports into the domestic market of the SACU;*
- (a) sufficiently freely available, or an imminent substantial increase in, capacity of the exporter;*
- (b) the availability of other export markets to absorb additional export volumes;*
- (c) whether products are entering or will be entering the SACU market at prices that will have a significant depressing or suppressing effect on SACU prices; and*
- (d) the exporter's inventories of the product under investigation."*

In analysing Section 14, it is clear that in any review or investigation based on a threat of material injury such threat should be clearly foreseen and imminent. A threat should also take into consideration the freely available capacity of the exporter, the availability of other markets, domestic or export markets which will absorb this capacity as well as the likelihood that these potential exports will enter the country at prices that will have a significant depressing or suppressing effect on domestic prices.

## **2.2 Information submitted by the applicant**

Iskor, in its submission based their entire application regarding the threat of the recurrence of injury in the absence of the anti-dumping duty on the fact that Russia & the Ukraine has the available capacity to export substantial quantities of the product concerned to South Africa and that these exports will take place at prices which will have a significant depressing and suppressing effect on Iscor's prices. This is being done on historic data without taking into account what is currently happening in this market.

The basis of Iscor's case is "The fact that Russia and the Ukraine combined have a Hot Rolled capacity of 23.8 million tons per annum."

Iskor further states that "Notwithstanding the Russian and Ukraine Hot Rolled capacity of 23.8 million tons per annum, it is important to note that the total current production of the CIS Countries is in the order of 15.1 million tons (2003 forecast) for the CIS as a whole. This implies that Russia and Ukraine can at least increase its production of Hot Rolled material with 8.7 million tons (from 15.1 to 23.8 million tons), in the event that the other CIS Countries not increasing its production. Their additional tonnages can only be effected on the Export Markets as the CIS currently produces roughly 62% of their production for the Export Market (2003 forecast: 15.1 million tons production, 5.7 million tons domestic and 9.405 million tons exports)

In the tables below we are reporting the exports from Russia and Ukraine (as per ISSB statistics) to all exporting marketing areas prior and subsequent to the imposition of the South African anti-dumping duties in order to indicate the implications of the application of the Russian and Ukraine export strategies on the South African Industry should the said dumping duties be repealed.

From these tables it is quite clear that the Russian Steel Industry, notwithstanding the massive growth in the Russian economy and consequently the



Domestic demand for steel, the Russian Steel Industry has maintained its high level of exports which existed prior to the imposition of the South African anti-dumping duty. This is indicative of the Russian strategy of shifting excess tonnages wherever possible in the International Market. It is therefore safe to conclude that the repeal of the current anti-dumping duty will necessarily result in a massive inflow of Russian imports into South Africa.

It therefore follows that the repeal of the South African anti-dumping duties on Hot Rolled Material imported from the Ukraine will necessarily lead to a massive influx of the product concerned into the SACU with resultant disastrous injury implications for the Domestic Steel Industry.

Based on the above it is clear that the repeal of the anti- dumping duties on Hot Rolled Material from Russia and the Ukraine will definitely material injury the Domestic Steel Industry.”

The information submitted below clearly indicates that Iscor's submission is based on historical data without taking cognisance of the current developments in the steel market. Iscor further makes the erroneous assumption that all the Russian exports are available for export to South Africa. In this regard it is interesting to note that the arguments we will put forward were also accepted by the Canadian Authorities in a recent decision to terminate anti-dumping duties against Russia.

### **2.3 Severstal's response on the global and Russian capacity**

The withdrawal of the anti-dumping duties on hot rolled steel will not significantly impact on the South African steel industry. As indicated above the Commission needs to consider at least the following three factors in judging the effects of the withdrawal of the anti-dumping duties. These are, (1) the likely volume of the subject imports; (2) the likely price effects of the subject imports; and (3) the likely impact of the subject imports on the domestic industry. We submit that

none of these three factors support the continuance of the anti-dumping duties on Russian hot-rolled steel.

Import Volume: At least eight major market factors characterize the current global supply shortage in hot-rolled steel and support the fact that it is highly unlikely that a withdrawal of anti-dumping duties will result in a surge in South African import volumes.

Steel producers and consumers around the world struggle to adjust to growing steel consumption, a shortage of raw materials, and an under-supply of product. The factors, which indicate that imports of hot-rolled steel will not significantly increase once restrictions end, include: (1) rapid Russian GDP growth and steel consumption; (2) very high capacity utilisation at Russian steel mills; (3) Russian investment in downstream products, which will absorb even more Russian hot-rolled production; (4) surging Chinese steel demand; (5) new Chinese government restrictions on steel capacity; (6) recovery in European Union ("EU") steel markets; (7) the lifting of trade barriers to hot-rolled steel in countries around the world; and (8) global shortages of raw materials, which is a natural market factor limiting global steel production.

As indicated above, the Board's imposition of the original anti-dumping duties was based on a threat of injury owing to a perceived increase in imports of hot rolled products. Even in market conditions vastly different to today, this threat did not materialise. This is notwithstanding the imposition of duties. However, each of the factors discussed below illustrates the vast difference between the Russian hot rolled steel industry in 1998/99 and 2004. As the following analysis confirms, the alleged import threat of five years ago was owing to market factors which will not repeat themselves at any time in the foreseeable future.

#### **Russian GDP growth and demand for steel is at record levels**

In the years preceding the Commission's earlier finding that Russian imports of

hot-rolled steel threatened material injury to the South African industry, Russia's economic problems fostered conditions that resulted in low steel prices and high steel exports. (In this regard it should be taken into consideration that notwithstanding the favourable export conditions, Russia's exports to South Africa remained extremely low.) Russia was experiencing high inflation, rising unemployment, increased debt obligations, extensive investor pessimism, and low investment in domestic industries.<sup>1</sup> Russia's sluggish economy was further exacerbated by unfavourable market conditions and attempted reforms by the Yeltsin administration.<sup>2</sup> By June of 1999, economically, Russia was "in an unprecedented ten-year slump."<sup>3</sup>

The economic problems were further complicated by the extreme industrialisation that Russia underwent during the Soviet era. "Enormous resources were mobilised and poured into this industry, without regard for market forces or efficient use of capital."<sup>4</sup> Russia's economy was dominated by the Soviet Union's costly military-industrial complex, such that "Central planning and the lack of market mechanisms to provide supply and demand signals have denied Russia an economic base that could compete in the post-industrial world of high technology, computers, and telecommunications."<sup>5</sup>

In conjunction with the international decline in oil prices, in 1997-1998, there was

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1 Cohen Ariel, "What Russia Must Do to Recover from Its Economic Crisis", June 18, 1999. Available at <http://www.heritage.org/Research/RussiaandEurasia/BG1296.cfm>. "The economic reforms attempted under Yeltsin between 1992 and 1998 were poorly planned, ineptly executed, and plagued with corruption. They did little to stop the decline."

2 Id.

3 Id. "Russia's economy is in an unprecedented ten-year slump. Foreign debt stands at about \$150 billion, and Russia has little chance of meeting its repayment schedules. Moscow has defaulted on much of its foreign obligations. Domestic and foreign investments stand at 20 percent of their 1990 rates. Estimates of capital flight since 1987 run between \$150 billion and \$300 billion.... According to Moscow's Institute of Economy in Transition, the inflation rate in 1999 is projected to reach 50 percent. Russia's unemployment rate is close to 18 percent. The consumer price index increased 91 percent between July 1998 and January 1999, while average monthly wages dropped over 300 percent from \$177 in July 1998 to \$57 in January 1999."

4 Id.

5 Id.

a 33 percent drop in prices of Russian oil and gas. As oil and gas exports account for 75 percent of Russia's foreign exchange revenue, revenue from oil and gas exports (then declining) could not continue to subsidise Russia's failing economy.<sup>6</sup> Subsequent to the review period, Russia's economic woes were further intensified by the sharp currency devaluation in August 1998, as the "cost of Russia's debt portfolio in rubles almost quadrupled, and Russia's ability to access international markets to refinance its maturing debt declined acutely."<sup>7</sup>

While not one of the above economic factors was the sole cause of the high level of global exports of Russian steel (again only limited exports to South Africa) during the 1990s, these issues collectively contributed to the increase in exports of the subject merchandise from Russia in the mid to late 1990s.

Now, after a decade in which Russia's economy shrank by more than one-half, GDP growth in the Russian Federation has today reached levels that are the envy of most of the industrial world. As currently seen in China, rapid GDP growth will not only increase the Russian standard of living, but will create surging demand for raw materials and commodities such as steel. Indeed, on May 26, 2004, Russian President Putin reiterated to his Parliament the plan announced last year—to double Russian GDP within the decade.<sup>8</sup>

These improvements in the Russian economy will support a stable increase in foreign investments into steel-consuming Russian industries, which, in turn, positively influence the domestic sales of hot-rolled products. Moody's Investor Service raised Russia's investment rating to "investment grade," and the world's financial institutions have responded with great interest.<sup>9</sup> According to estimates

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<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Economist Intelligence Unit (EIU), "Russia: Economy News Analysis," (May 28, 2004), available at Internet address [www.eiu.com](http://www.eiu.com).

<sup>9</sup> Economist Intelligence Unit (EIU), "Russia Financial Services Background," (Jan. 19, 2004), available at Internet address [www.eiu.com](http://www.eiu.com).

by Russia's Ministry of Economic Development and Trade, direct investments into the Russian economy in 2004 are expected to increase up to \$7.5-\$8.0 billion dollars with an annual growth rate of 5 to 7%.<sup>10</sup>

Consequently, Russian steel consumption is also expanding rapidly. The growth rate in major steel-consuming industries in 2003 was high and stable. Apparent consumption of flat-rolled products in Russia increased by 24% in 2003 to over 13.5 million metric tons.<sup>11</sup> As examples, output of Russian pipe and tube increased 18% in 2003 while the output of railcars in Russia increased by over 200%.<sup>12</sup>

Hot-rolled consumption in Russia shows a similar boom. As steel-consuming industries expand, so does the Russian demand for hot-rolled steel. Apparent consumption of hot-rolled products increased by over 31% in 2003 to a total of 8.3 MMT. See table below.

**Apparent consumption of flat-rolled steel products in Russia in 2003**

<b>Kind of steel product</b>	<b>Apparent consumption (million metric tons)</b>	<b>Growth % to 2002</b>
Hot-rolled	8.3	31
Cold-rolled	3.3	11
Cold-rolled coated	2	21

*Source: Metal Expert, #93 (February 2004)*

<sup>10</sup> Economist Intelligence Unit (EIU), "Russia: FDI Outlook" (June 9, 2004), available at Internet address [www.eiu.com](http://www.eiu.com).

<sup>11</sup> Metal Expert, #93, (February 2004).

<sup>12</sup> Metal Expert, #93, (February 2004).

**Severstal's capacity utilisation is near 100%, so it is unable to increase production for exports into the world market, led alone to South Africa.**

Severstal is currently operating at near full capacity in its hot-rolled steel production operations, and would be physically unable to significantly increase production to supply any export surge to South Africa. This full-capacity level reflects both the strong Russian domestic demand for steel and a decision by Severstal and other Russian producers to shift their existing capacities away from hot-rolled products to the production of more finished non-subject products with higher added value and larger profit margins.

**Russian producers' massive investment in downstream products such as galvanised steel is creating captive consumption for Russian steel output, and even less output is available for export**

As mentioned, Severstal and other Russian producers are themselves creating demand for hot-rolled steel by building substantial production facilities in downstream products, which consume hot-rolled steel. The substantial Russian domestic consumption of hot-rolled steel in value-added downstream products reduces the likelihood of increased exports of hot-rolled steel to South Africa.

Russian firms have implemented programs aimed at the reduction of the commercial output of low-processed products like pig iron, semi-finished steel, slabs and hot-rolled flat products. In their place, Russian firms are adding capacities for the production of more profitable finished steel with high added value, such as hot-dipped galvanised or colour coated flat steel sheet and coil. The program will also include the reduction in sales of uncoated cold-rolled steel, used at Russian plants internally as a substrate for production of colour-coated and hot-dipped galvanized ("HDG") steel.

The conclusion is that a significant portion of Russian hot-rolled steel products, which were previously sold commercially, are now being taken out of commercial

sales to be processed internally at Russian firms for production of value-added HDG and color-coated steel sheet and coil, intended primarily for the domestic market. Consequently, the South African market should not expect any surge of HR steel imports from any of the Russian steel producers, should the current anti-dumping duty be withdrawn.

Severstal, like other Russian steel producers, have made substantial capital investment in downstream steel production. Brunswick UBS reported that one Russian mill "...increasing the production of high added-value-added products, and further shifting towards the domestic market...having commissioned a 500,000 ton continuous galvanizing line from Italy's Danieli in 2002. In 2004, "this mill" plans to invest \$350m on a new polymer coating line with capacity of 200,000 tons..."<sup>13</sup> In a similar strategy, "Severstal's investment program largely focuses on its joint ventures set up to develop downstream operations...to invest \$180m in a galvanized steel line with annual capacity of 400,000 tons..."<sup>14</sup>

It is expected that Russian steel producers, will continue to invest capital in the production of high value-added products, requiring consumption of hot-rolled steel produced without increasing the output volumes of hot-rolled steel. These developments decrease the production and sale of hot-rolled steel in order to increase investment in the production of high value-added products. Consequently, the ability of the Russian steel companies to produce hot-rolled steel products for sale and export to the United States is significantly reduced.

Accordingly, a significant portion of Russian hot-rolled steel products, which were previously sold commercially, are now being taken out of commercial sales to be processed internally at Magnitogorsk Iron & Steel Co. (MMK) and Novolipetsk Iron & Steel Corporation (NLMK) for production of value added HDG and colour-coated steel sheet and coil, intended primarily for the domestic market. Therefore, the South African market should not expect any surge of hot-rolled

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<sup>13</sup> Id.

<sup>14</sup> Id.

steel imports from MMK or other Russian steel producers if the current anti-dumping duties are withdrawn.

**Extraordinary economic growth in China, Chinese demand for steel, and resulting global shortages will continue to limit export to South Africa**

With or without trade restrictions on hot-rolled steel, strong Chinese demand for steel will continue to limit any increase in exports to South Africa. As China's economy grows, it requires more and more steel. Chinese GDP growth measured 8.0% in 2002 and 9.1% in 2003—approximately 3 times the rate of growth in the United States.<sup>15</sup> By the second half of 2003 and early 2004, this rapid growth has caused worldwide price increases in many commodity products, including steel. (This is confirmed by worldwide steel price increases). The British-based Economist Intelligence Unit recently explained that, "**China's voracious economy is pushing up world prices in an expansion frenzy.**"<sup>16</sup> The Economist Intelligence Unit wrote at the beginning of 2004 that "from steel to soybeans, scrap metal to cotton, global commodity prices soared in the second half of 2003." Further, "Price increases for some commodities—in particular industrial materials—have been especially strong. Finally, "One of the strongest single components of the surge has been ***demand from China***, whose booming economy is consuming ***ever increasing amounts of raw materials***."<sup>17</sup>

The Financial Times describes the overheating in Chinese consumption by adding:

One of China's biggest economic headaches this year has been the runaway pace of fixed asset investment that has caused a **voracious demand for steel**,

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<sup>15</sup> Economist Intelligence Unit, "China's economy pushes up world prices in expansion frenzy," (Jan.22, 2004), available at Internet address [www.eiu.com](http://www.eiu.com).

<sup>16</sup> *Id.* (Emphasis added).

<sup>17</sup> Economist Intelligence Unit, "China's economy pushes up world prices in expansion frenzy," (Jan.22, 2004), available at [www.eiu.com](http://www.eiu.com). (Emphasis added).



aluminium, cement, and other building materials. That has prompted ambitious expansions in those sectors, in which investments grew 96.6 percent, 92.9 percent, and 121.9 percent respectively last year over 2002.<sup>18</sup>

The head of the world's second largest metals trader told reporters on March 5, 2004 that:

{ThyssenKrupp} is experiencing tight supplies for all metals it trades because of **rapid consumption growth in China**.<sup>19</sup>

The chairman of a U.K-based metals trading company emphasised the dominance China asserts over world metal prices by explaining:

**China is the most significant factor in the world's metal markets today.** Every major and minor metal is affected by what is happening in that country.<sup>20</sup>

Not only has this demand pressure in metals recently emerged from China, but economists believe it will continue into the coming years. The Economist Intelligence Unit expects strong metals prices in the future, and listed several reasons why China would be a deciding factor:

Consumer spending is now picking up as an emerging Chinese middle class **boosts demand** for commodity-hungry purchases such as cars.<sup>21</sup>

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<sup>18</sup> Financial Times, "China Acts to Cure Economic Bottlenecks," (Mar. 8, 2004). (Emphasis added).

<sup>19</sup> AFX News Limited. "ThyssenKrupp Executive Says Sustained Higher Metal Prices Likely," (Mar. 5, 2004), available at [www.afx.com](http://www.afx.com). (Emphasis added).

<sup>20</sup> Metal-Pages. "China Connection Boosts Wogen's Profits 500%," Dec. 18, 2003. (Emphasis added).

<sup>21</sup> Economist Intelligence Unit, "China's economy pushes up world prices in expansion frenzy," (Jan.22, 2004). [www.eiu.com](http://www.eiu.com). (Emphasis added).

China's property sector has continued to **grow at a tear** since the beginning of 2002. In particular, it is the biggest consumer of steel and other industrial metals.<sup>22</sup>

Chinese steel consumption will expand with the state financing of infrastructure development and construction work for the 2008 Beijing Olympics and for the 2010 Shanghai EXPO. Currently there is also a boom of housing construction in China. During the first half of 2003 investments into the sector were \$7.3 billion, compared to \$9.1 billion for all of 2002. According to forecasts by World Steel Dynamics<sup>23</sup>, global hot-rolled band deliveries in 2004 will rise by 7.5% or 35 million tons to 500 million tons. In China, such deliveries are expected to increase by 19 million tons (26%) to 91 million tons, while deliveries for the rest of the world will increase by 16 million tons (4%) to 409 million tons.<sup>24</sup>

At the very same time Chinese metal demand is surging, Chinese supply is falling. The head of ThyssenKrupp Metallurgie explained that the company is finding it increasingly difficult to source sufficient metal to supply its customers."<sup>25</sup> He explained that:

What has happened is a pretty **massive shortage** in the components for the production of Chinese magnesium metal, ferrous silicon, and coke, and we have been suffering from the ***cancellation of Chinese contracts***.<sup>26</sup>

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<sup>22</sup> Id. (Emphasis added).

<sup>23</sup> World Steel Dynamics, Global Steel Alert # 21 at 31, (February 2, 2004).

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id. (Emphasis added).

Chinese producers are on allocations for coke and silicon supplies because the demand from domestic steel makers, who also demand these products, has ***outgrown the capacity of existing production facilities***.<sup>27</sup>

For many years China has been the world's major exporter of coking coal, but intense development of its own integrated mills caused a short supply of coal for Chinese producers and reductions in its export volumes. This year, the Chinese government reviewed its coal licensing system to ensure a sufficient supply of coking coal for the domestic steel industry. This move caused a substantial reduction in the 2004 export allocation of coke, which is 9 million tons, compared with almost 15 million tons in 2003.<sup>28</sup> The result of this policy is a global shortage of coke, which has become the scarcest raw material in steel production. This shortage causes a reduction in utilisation rates at many integrated steel mills, which produce as much as they can with the materials they can find. Some Russian and Chinese plants have been forced to supply materials from Australia and other countries.<sup>29</sup> One Chinese steel mill has gone so far as to purchase a coke plant in Germany outright in an effort to secure scarce coke.<sup>30</sup>

IsCOR may argue that Chinese growth in demand for steel will eventually begin to level off and the current rate of increase in demand cannot be sustained. As described in the following section, a leveling off of steel *prices* is expected as Chinese monetary authorities have recently issued a flurry of administrative orders to slow down fixed asset investment and cool off overheated sectors such

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27 AFX News Limited. "ThyssenKrupp Executive Says Sustained Higher Metal Prices Likely," (Mar. 5, 2004), available at [www.afx.com](http://www.afx.com). (Emphasis added).

28 Economist Intelligence Unit, "EU issues ultimatum over Chinese coke exports" (May 24, 2004), available at [www.eiu.com](http://www.eiu.com).

29 Economist Intelligence Unit, "BHP Billiton to supply iron ore to steel mills," (Mar. 15, 2004), available at [www.eiu.com](http://www.eiu.com).

30 Economist Intelligence Unit, "Yanzhou buys German coke plant," (June 18, 2004), available at [www.eiu.com](http://www.eiu.com).

as steel, aluminium, cement and construction.<sup>31</sup> The Chinese government has also tightened monetary policy by raising banks' reserve requirements on two occasions.<sup>32</sup> In another move toward monetary tightening, banks have been permitted to charge higher lending rates of up to 1.7 times the fixed benchmark rates.<sup>33</sup> The target is preventing China's economy from overheating.<sup>34</sup>

However, even if Chinese growth does not maintain the current steep rate of increase, China's growing economy and structural demand for steel is likely to remain the dominant market force for the foreseeable future. *Consumption of steel in China in 2004 is projected to measure approximately one-third of all steel consumed on the planet.*<sup>35</sup> Strong Chinese demand and tight global supply will limit any exports to South Africa, even without any anti-dumping duties being levied on hot-rolled steel.

**New Chinese government regulations over investment in steel capacity will contribute to tight global supplies, and will further limit SA imports**

The Chinese government has recently implemented a series of measures, which aim to control capacity expansion in Chinese steel production.<sup>36</sup> While these measures are designed to regulate inflationary business cycles in the Chinese economy, the restrictions on new capacity will also contribute to tight global supplies, which will further reduce the likelihood of import surges into South Africa.

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31 Economist Intelligence Unit, "China's economy pushes up world prices in expansion frenzy," (Jan.22, 2004), available at [www.eiu.com](http://www.eiu.com).

32 Financial Times, "Bank reforms to cool loan growth in China," (March 25, 2004). Also see Economist Intelligence Unit, "China: Signs of Cooling?" (June 14, 2004), available at [www.eiu.com](http://www.eiu.com).

33 Economist Intelligence Unit, "Beijing rules out 'sudden braking' in economy," (May 11, 2004), available at [www.eiu.com](http://www.eiu.com)

34 Economist Intelligence Unit, "China to act on Soaring economy," (May 11, 2004), available at [www.eiu.com](http://www.eiu.com).

35 Economist Intelligence Unit, "Baoshan Steel to boost capacity," (April 7, 2004), available at [www.eiu.com](http://www.eiu.com). (Emphasis added).

36 Business China and Economist Intelligence Unit, "China Business: Steel plant built without government approval," (May 10, 2004), available at [www.eiu.com](http://www.eiu.com).

Rapid economic growth was originally the goal of the Chinese government, and the country's economic boom caused high demand for steel and an increase in prices. The Chinese government viewed the steel industry as one of the country's key sectors, and welcomed its development.<sup>37</sup> The surge in Chinese steel demand caused a massive influx of investments in the country's steel industry.<sup>38</sup>

In March 2004, the Chinese government implemented a wide range of economic, legal and administrative measures to cool down the economy and discourage investments in steel, aluminium, and cement industries.<sup>39</sup> The government now requires all new projects to receive approval from the central government, rather than from the local government as before. Approval for a new mill investment will now be required from a number of government agencies, with the State Development & Reform Commission (SDRC) coordinating the process.<sup>40</sup> The previous moves of the government to reduce investments via "soft" measures were described by John Johnson, an industry analyst at CRU International, as "a controlled slowdown" to avoid any more painful measures by the government that would have to be taken if investments continued at recent growth rates."<sup>41</sup>

China's State Environmental Protection Administration also introduced a strong licensing system to keep track of steel, cement and aluminium producers' emissions.<sup>42</sup> This move was aimed both at discouraging steel investments and at closing outdated and ineffective steel capacities. One of the largest banks in China, ICBC, has announced that it will be reducing its loan allocations to "over-

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37 Li Zhisui, Ph.D., *The Private Life of Chairman Mao*, at 224, Random House, 1994. Also see Harrison E. Salsbury, *The New Emperors: China in the Era of Mao and Deng*, at 149, Avon 1992.

38 Financial Times, "Government steps up fight against over-investment," (May 11, 2004).

39 *Id.*

40 *Steel WEEK* Vol 9 No 47 at 2, (Feb. 13, 2004).

41 *Id.*

42 *Steel Business Briefing*, (March 3, 2004).

heated" industries such as steel. This is likely to make it more difficult for steel firms to raise money for future investments.<sup>43</sup>

The Chinese government restrictions on capacity investment are described in many industry newsletters and journals:

The **Chinese government is determined to target over-capacity**, lack of raw materials, poor plant layouts and structural imbalances in areas such as product range, according to Jia Yinsong, deputy director of the Bureau of Economic Operations of the State Development & Reform Commission.<sup>44</sup>

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The government's aim is "chiefly to use economic and legal measures... to encourage an increase in the supply capacity of value-added flat and tube products that are in short supply, to **restrict the production of over-supplied products** such as long products, those of inferior quality and that cause serious pollution", Jia told the joint MB/Minmetals Far East Steel Conference in Beijing on May 18.<sup>45</sup>

One of the measures that the central government has adopted has been to order banks to limit credit for new projects. Another has been to send out government investigators to examine whether new projects have been given the correct permissions. In a recent well-publicised case the managers of Jiangsu Tieben Iron and Steel Company - a new, six-blast furnace integrated plant in Jiangsu province - were arrested for not having planning permission for the land on which the plant was built.<sup>46</sup>

Fears of China's future "steel overcapacity" are unfounded because the

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<sup>43</sup> Steel Business Briefing, (March 3, 2004).

<sup>44</sup> Metal Bulletin Daily at 5, (May 19, 2004). (Emphasis added).

<sup>45</sup> Id.

government has a wide authority to close a great number of outdated and inefficient steel producers that do not meet environmental or other requirements.

A recent article illustrates:

**China may halt new steel projects:** Chinese authorities have threatened to halt new steel projects in a bid to avert a possible overheating of the economy, the official Xinhua news agency has reported. All projects will now be subject to further examination by local authorities and stopped if felt they are “haphazard” and involve excessive use of energy, water, raw materials and add to pollution, the agency said, quoting a government circular. Beijing is worried over-investment is leading to shortages of coal, power, oil and transport. The new measures also cover the aluminium, cement and construction sectors, plus additions to urban railway networks.<sup>47</sup>

Moreover, there are indications that the Chinese authorities have started to implement these plans:

Regional governments in China have started to shut steel mills as they reorganise the “disordered” sector, according to Chinese news agencies. Tangshan, east of Beijing, is reported to have taken the lead by planning to merge 56 small steelmakers into 10 bigger concerns. **The city government is said to have shut down up to 7mt of rolling capacity so far.** Shanghai city authority has decided to close 18 small iron, steel and ferrous alloy makers by 2006. And the neighboring provinces of Henan and Shaanxi in east-central China are reported to have ordered a halt to some steel mill projects in construction and at the planning stage. The local authorities’ actions fit in with central government moves to avoid an overheating of the country’s booming economy<sup>48</sup>

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<sup>46</sup> Metal Bulletin Daily at 1, (May 18, 2004). (Emphasis added).

<sup>47</sup> SteelWEEK Vol 10 No 8

Finally, as mentioned, the Chinese government is willing to arrest **steel producers who do not comply with the state steel capacity restrictions**:

Executives at steelmaker Jiangsu Tieben, in Changzou, were **arrested** in late April for building a new steel plant without government approval. This measure is the latest attempt by the government to demonstrate its commitment to reining in overinvestment in certain industries, including steel.<sup>49</sup>

The evidence shows that China will remain a net **importer** of the subject steel. Yin Ruiyu, Director of the Chinese Academy of Engineering and honorary president of the Chinese Central Iron and Steel Research Institute recently announced China's plans to remain an importer. A recent article in Steel Business Briefing titled, **Chinese Market Should Remain a Net Importer**, explained that:

China should maintain her status as a net importer to avoid oversupply [in the domestic market], and an inadequate operating rate,' a leading industry professional recently told a steel conference in Shanghai. This view - from such a senior official - implies that many of the numerous capacity expansions currently scheduled will not be completed, and more may be cancelled, Steel Business Briefing was told.<sup>50</sup>

China's government was one of the first to cancel its steel safeguards measures against steel imports and is currently set to review an anti-dumping duty order with respect to cold-rolled steel products (including those from Russia). The conclusion is that China has taken steps to halt increases in its domestic steel capacity to keep inflation in check, and is willing to increase dependence on foreign imports to cool inflationary demand inside the country. This Chinese policy decision is important to this investigation because it means lower global

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48 Steel WEEK Vol 10 No 14

49 Business China and Economist Intelligence Unit, "China Business: Steel plant built without government approval," (May 10, 2004), available at [www.eiu.com](http://www.eiu.com).

50 Steel Business Briefing, (June 15, 2004).



capacity growth in steel, a continued large and growing market in China for Russian exports, which in turn will limit exports of Russian steel to South Africa.

**Demand for steel in the expanded EU has recovered, and is expected to further increase.**

Steel consumption in Europe significantly increased in 2004 as shortages of raw materials prevented several EU mills from producing as much as they could potentially sell.<sup>51</sup> Shortages were especially apparent for steel producers dependent on purchases of coke, scrap, slab, or hot-rolled substrate.<sup>52</sup>

The EU market for steel is expected to grow steadily to at least 2008.<sup>53</sup> Strong demand and supply problems are currently contributing to high prices in the EU market. Another factor supporting the high prices in Europe over the last two years has been the consolidation of the sheet market. As several Eastern European governments sought to meet entry conditions for EU accession, these countries privatised their steel mills, making them available for foreign investors.<sup>54</sup> As a result, the LNM Group and U.S. Steel now own half of the hot-rolling capacity in Eastern Europe.<sup>55</sup> Currently, 77% of Europe's hot-rolling capacity is owned by the top six producers – Arcelor (32%), Corus (14%), ThyssenKrupp (13%), Riva (7%), U.S. Steel (6%), and LNM Group (5%).<sup>56</sup> This consolidated market is expected to keep prices in Europe high through 2008, especially considering the likelihood of further acquisitions and mergers in the global steel market.<sup>57</sup>

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<sup>51</sup> CRU International, Steel Sheet Quarterly: Chapter 2: Europe, April 2004, at WE-1.

<sup>52</sup> Id.

<sup>53</sup> Id.

<sup>54</sup> Id.

<sup>55</sup> Id. at WE-4.

<sup>56</sup> Id.

<sup>57</sup> Id.

A strong market for steel in Europe further undermines any claim by Iscor of overcapacity in global steel, and again shows that a surge in hot rolled imports is unlikely in the event of the withdrawal of the anti-dumping duties.

**Countries around the world are lifting import restrictions on steel products, so South Africa can do the same without fearing a surge in hot-rolled imports**

Once the United States lifted its steel safeguard provisions in late 2003,<sup>58</sup> countries around the world have followed suit.<sup>59</sup> Despite the warnings of U.S. steel producers, the U.S. steel market and the global market as a whole are now characterised by extremely high prices and production that cannot meet demand. Events have shown that the lifting of import restrictions does not mean a surge in steel imports.

Safeguard measures on steel imposed in the United States in March 2002<sup>60</sup> had a serious negative impact on the global steel trade. They caused concern outside the United States that steel trade flows destined for the North American market might be diverted to other markets. Those concerns provoked a series of similar measures imposed by the EU, China and a number of other countries.<sup>61</sup> The steel safeguards in the United States were rejected by the WTO and were strongly opposed by major steel-producing economies like the EU, Japan, and Korea, which threatened to impose retaliatory sanctions against U.S. steel

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<sup>58</sup> Economist Intelligence Unit, "President Bush lifts tariffs on steel," (Dec. 5, 2003), available at [www.eiu.com](http://www.eiu.com).

<sup>59</sup> CNN, "Japan, EU drop tariff threats," (Dec. 4, 2003), available at [www.cnn.com](http://www.cnn.com). Also see China Daily, "U.S. lift of steel tariffs welcome," (Dec. 5, 2004).

<sup>60</sup> Office of the U.S. Trade Representative (USTR), "Section 201 Steel Remedies List," (March 5, 2002). Available at [www.ustr.gov](http://www.ustr.gov).

<sup>61</sup> Economist Intelligence Unit, "Backlash against anti-dumping measures," (July 23, 2003), available at [www.eiu.com](http://www.eiu.com). Also see Economist Intelligence Unit, "China adds threat to U.S. trade tensions," (Nov. 21, 2003), available at [www.eiu.com](http://www.eiu.com).

exports.<sup>62</sup> The temporary protection granted to U.S. producers was effectively used by the U.S. steel industry to undergo consolidation and restructuring, which provided considerable improvements in the U.S. steel sector.<sup>63</sup>

The U.S. steel safeguard measures were terminated on December 4, 2003, and many countries soon followed with similar actions.<sup>64</sup> The EU steel safeguards imposed on September 29, 2002 as a reaction to the relief provided by the U.S. administration to the domestic steel industry were aimed at preventing a possible diversion of steel trade flows into the EU.<sup>65</sup> The EU safeguards were lifted almost the day after the termination of U.S. safeguards.<sup>66</sup> Chinese safeguards were also cancelled almost immediately.<sup>67</sup>

The disruption of the world steel market caused by the U.S. steel safeguards was followed by the recovery of the global steel trade and by a considerable surge in steel prices. (In 2004 alone Iscor increased its selling prices for the products concerned by more than 40%.) This rebound occurred only after the termination of the safeguard measures in the United States and the similar responses of other major steel-consuming economies.<sup>68</sup> The current global shortage of steel,<sup>69</sup> record-high prices, and raw materials surcharges<sup>70</sup> have forced steel consumers all over the world to appeal to their governments for the termination of steel trade remedies, including anti-dumping and import duties. (Please refer to

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62 Washington Post, "U.S. Loses Appeal On Steel Tariffs," (Nov. 11, 2003).

63 Tom Thompson and Erich Hobelmann, "High Steel," Industry Insight, (April 26, 2004), available at Internet address: <http://www.TheDeal.com>.

64 CNN, "Japan, EU drop tariff threats," (Dec. 4, 2003), available at [www.cnn.com](http://www.cnn.com). Also see China Daily, "U.S. lift of steel tariffs welcome," (Dec. 5, 2004).

65 Economist Intelligence Unit, "Backlash against anti-dumping measures," (July 23, 2003), available at [www.eiu.com](http://www.eiu.com).

66 CNN, "Japan, EU drop tariff threats," (Dec. 4, 2003), available at [www.cnn.com](http://www.cnn.com). Also see China Daily, "U.S. lift of steel tariffs welcome," (Dec. 5, 2004).

67 China Daily, "U.S. lift of steel tariffs welcome," (Dec. 5, 2004).

68 Metal Bulletin , (March 15, 2004).

69 Metal Bulletin Research at 1, (February 2004).

70 Metal Bulletin Research at 4-5, (February 2004).

the Canadian decision hereunder).

EU steel consumers, for example, urged the EU to abolish steel quotas. Decisions to lift import restrictions and ease imports to avoid a surge in steel prices in their domestic markets were taken by Iran (import tariff cut from 15 to 10%), Saudi Arabia (import tariff cut from 20 to 5%), Turkey (import tariff cut from 11 to 5% since March 12, 2004), Taiwan, India, Indonesia (20% import tariff abolished), Thailand (from March 18, 2004, anti-dumping duty order with respect to hot-rolled steel from several countries, including Russia, is suspended for 6 months). These moves further promote more liberal trade in the global steel market and eliminate the threat of injury to South African steel producers by Russian products.

**A serious and persistent shortage of raw materials such as coke and scrap threatens the global supply of steel, and will result in continued high steel prices**

Even though South African steel prices are at historic highs, Iscor have been unable to adequately respond with increases in output. The reason is a serious shortage of raw materials needed for steel production. Indeed, steel markets around the globe have been typified by shortages, and two factors most cited for the steel shortages are: (1) declining exports; and (2) slow supply responses from Iscor.<sup>71</sup> While prices are so high, steel producers have a powerful incentive to increase production. The problem is that insufficient supplies of raw materials such as coke and scrap prevent such production increases.

Many factors have contributed to the international raw material shortages. In the United States, the closure of the Pinnacle mine, a major supplier of US coking coal, added to the shortages. The Pinnacle mine was closed in 2003 as a consequence of ventilation problems and was unable to produce coking coal.<sup>72</sup>

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<sup>71</sup> CRU International Limited, Steel Sheet Quarterly Industry and Market Outlook at NAM-1, (April 2004).

<sup>72</sup> U.S. Department of Energy, U.S. Coal Supply and Demand: 2003 Review, available at <http://www.eia.doe.gov>.

According to the owners of the mine:

As reported earlier, our guidance for the year does not include any production from the Pinnacle mine. At this point we do not know what the level of production will be from the mine for the remainder of the year, and do not have sufficient information to give updated guidance. Pinnacle still has **substantial work to do to bring the mine back to full operating capacity**, and we will continue to monitor the situation.<sup>73</sup>

Separately, the EU views restricted exports of Chinese coke as damaging to European industry. This has played a significant role in skyrocketing steel costs. The EU has issued an ultimatum to China to abolish its policy of limiting coke exports through a licensing system or face a legal challenge through the WTO.<sup>74</sup> China, the world's biggest coke producer, exported less than 10% of its production last year, to ensure sufficient amounts were kept on hand to meet booming domestic demand.<sup>75</sup> To cap exports, China increased the price of its export licenses by 100 times their previous price, preserving the country's coke supply while drawing the ire of foreign producers.<sup>76</sup>

Rising costs of scrap have also contributed to the rise in steel prices. The rising scrap prices have caused almost all U.S. steel producers to charge additional surcharges to steel mills to cover costs. For example, it is reported that Nucor paid as much as \$125 per ton as a surcharge to cover extra scrap input costs.<sup>77</sup> In March of 2004, Brunswick UBS reported "the iron ore price was up 20 percent in January, scrap prices are above their ten-year highs of \$200/ton and coking coal prices have increased by 22 percent year-to-date. Freight rates for bulk

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<sup>73</sup> Natural Resource Partners L.P., Updates Status of Pinnacle Mine, available at <http://nrplp.com>. (Emphasis added).

<sup>74</sup> Economist Intelligence Unit, "EU issues ultimatum over coke exports," (May 24, 2004), available at [www.eiu.com](http://www.eiu.com).

<sup>75</sup> Id.

<sup>76</sup> Id.

<sup>77</sup> CRU International Limited, Steel Sheet Quarterly Industry and Market Outlook, (April 2004) at NAM-1.

transportation are also at record highs.”<sup>78</sup>

In May of 2004, the Steel Business Briefing reported continued instability in raw material supplies, stating that “the market has been plunged into a crisis and coal shortages have ‘disrupted steel industry operations around the world,’ as contract prices for metallurgical coal have seen unprecedented increases.”<sup>79</sup> For steel producers globally, this worldwide shortage of raw materials has resulted in limited steel production, such that suppliers cannot continue to meet the demand for steel.

These, and other raw material supply problems, provide more evidence that high steel prices will continue, irrespective of South African import restrictions on Russia. Indeed, these market shortages highlight the shift in financial burden away from steel producers, and instead onto those firms who depend on steel as an input.

**Price Effect: Global steel prices have doubled in the past year, and the withdrawal of the anti-dumping duties will not significantly affect the global market condition of high prices**

Two factors indicate that the withdrawal of the anti-dumping duties will not have a significant impact on domestic prices. First, global steel prices have reached such high levels that economists cite steel as a primary factor in renewed concerns over general price inflation.<sup>80</sup> Second, the record shows that the withdrawal of U.S. steel safeguards did not result in lower U.S. steel prices. In fact, U.S. prices more than doubled immediately following the end of safeguard.<sup>81</sup> The inference can thus also be drawn to the South African situation

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78 Brunswick UBS, Russian Steel Upgrade- Cheap, profitable and geared to growth, (March 22, 2004).

79 Steel Business Briefing, Global coal market is forecast to maintain tight, (May 27, 2004).

80 Bill Atkinson, “Economists Believe Rising Cost of Inflation Is Due to Energy, Steel Prices,” The Baltimore Sun, (May 25, 2004).

81 CRU International, Steel Sheet Quarterly: Chapter 1: North America, (April 2004), at NAM-4.

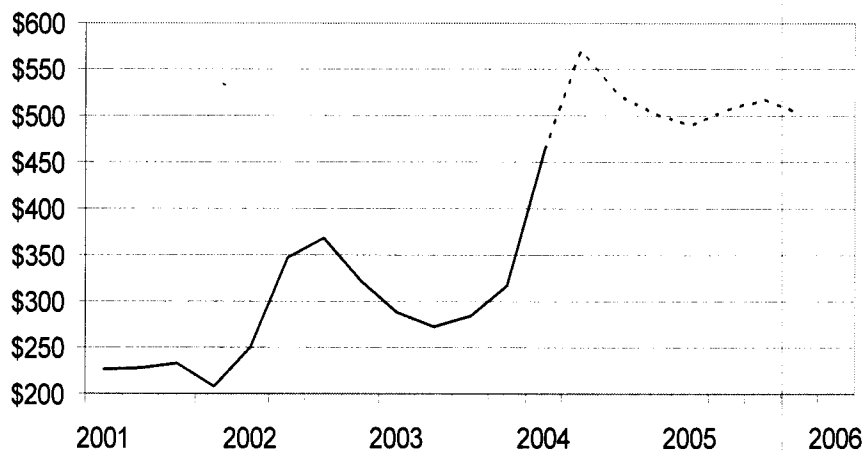
where the withdrawal of the anti-dumping duties will similarly not result in lower prices, but will follow global trends and continue to increase as was the case since the beginning of 2004.

**Despite the recent global recession, steel prices are the highest they have ever been**

Prices for hot-rolled steel have increased so rapidly and to such high levels in the past year, that steel-consuming industries around the globe struggle to maintain operations. Soaring steel prices have severely hurt the ranks of the steel consuming industry. Please also refer to the submission of the SA Capital Equipment Export Council. The increase in material costs has been felt most acutely by the smaller suppliers that are most vulnerable to price fluctuations, but the high prices are also an issue for larger users who are vulnerable to disruptions in their supply chains.

CRU International estimates that in the one year between second quarter 2003 and second quarter 2004, **U.S. (and thus international/South African prices) prices for hot-rolled sheet will have increased by 109.8 percent.** See Figure 1.

**Figure 1**  
**Transaction price for Hot-rolled steel sheet, 2000-2006 (forecast)**  
**(Dollars per s.ton, nominal, period averages)**



Source: CRU International Limited.

There is a growing consensus among economists that the cost of inflation for businesses is accelerating beyond expectations because of **rising prices for energy, steel and other commodities**. Further, hot-rolled steel prices are "expected to remain at historically high levels throughout 2004 and 2005."<sup>82</sup>

The anti-dumping duties on hot-rolled steel has afforded Iscor the opportunity to restructure and thus it has gained a level of profitability and high prices, which no longer depends on barriers to Russian imports.

### **Iscor is Profitable and Earning Shareholders Great Dividends**

A significant number of events have reshaped the domestic steel industry since the initial investigation five years ago. The restructuring of Iscor has, in fact, resulted in enormous changes within the last two years. As mentioned above,

<sup>82</sup> CRU International, Steel Sheet Quarterly: Chapter 1: North America, (April 2004), at NAM-4.



events that have reshaped the industry include: (1) a worldwide shortage of scrap, coke, and other steel inputs; (2) the emergence of China as a consumer of over one-third of global steel production; and (3) the dramatic recovery in steel prices. These factors, among others, have resulted in a return to profitability and enormous increases in steel company share valuations.

The end result has been extremely high domestic steel prices and dramatic share price increases for shareholders.

### **Steel-consuming Industries Suffer with High Steel Prices**

While Iscor has dramatically improved its financial position since the original investigation (not that it was suffering material injury then), steel-consuming industries have suffered the opposite fate. Steel consumers, “from screw-makers to dishwasher manufacturers to bridge builders, see their profit determined by the price of the metal.” The increase in steel costs has been felt most acutely by the smaller suppliers that are most vulnerable to price fluctuations.

### **Conclusion**

The anti-dumping duties levied on Russian hot-roll steel products should be withdrawn. The above analysis shows no support for continuing these trade barriers. First, there is no evidence that the withdrawal of the duties will result in significant import surges, let alone any imports at all. Second, no evidence suggests that the withdrawal of the duties will significantly dampen the record price levels currently found in the steel market. And finally, while the current profitability of Iscor would not be affected by the withdrawal of the anti-dumping duties, continuing these restrictions (and thereby limiting the choice of smaller consumers) severely jeopardise the financial health and even survival of these steel-consuming firms in South Africa. For these reasons, amongst others, the anti-dumping duties levies on Russian hot-rolled steel should be terminated upon the end of the five-year period.

## 2.4 International case study

It is interesting to note that in a recent decision, the Canadian International Trade Tribunal decided to withdraw the anti-dumping duties applicable to, amongst others, Russian hot rolled product.

We would like to quote directly from this finding by the Canadian authorities as it is self explanatory.

### *"POSITIONS OF PARTIES*

#### *Domestic Industry*

*47. The domestic industry requested the continuation of the Tribunal's finding and submitted that, while demand for hot-rolled sheet is currently strong, in Canada and in the world, it will not remain at current levels. In the industry's view, as demand softens, particularly in the People's Republic of China (China), other markets will be unable to fully absorb the excess supply, and Canada will once again become the target of choice for exporters. Moreover, even with current strong demand in Asia, there remains huge hot-rolled steel overcapacity in the world in general and in the subject countries in particular. It submitted*

*that the recent price increases and surcharges in North America are aimed at recovering costs and do not reflect significantly improving demand or significantly improving margins and profitability over the longer term.*

*48. With respect to the demand in Asia, reference was made to the World Steel Dynamics<sup>12</sup> report that forecast that the underlying annual growth rate of Chinese demand for hot-rolled steel band, which was about 22 percent, might slow down to about 6 percent, beginning about mid-2004. In the domestic industry's view, the circumstances in China constituted a "bubble" in the Chinese market that is certain to burst. With respect to export prices, the report forecasts that world steel sheet export prices would peak by May 2004 and move*

*downward substantially for much of the remainder of this year. It was the domestic producers' position that the impact of a price reduction of \$60 to \$100 a tonne would be significant. They argued that only a small volume of imports, which would be the equivalent of a boatload or about 20,000 tonnes, was required to destabilize pricing in the Canadian market and that the role of traders in seeking to find a ready market for dumped product was also a major concern.*

*49. In the domestic producers' view, renewed dumping will undercut cost recovery efforts, destroy whatever order and price stability that exist and wreak immediate harm on the Canadian industry. The domestic industry will be materially injured through price erosion and suppression. Renewed dumping will frustrate the domestic industry's efforts to recover costs and remain profitable in what is a chronically volatile market. In addition, the domestic industry submitted that dumped goods, whether priced at the domestic level or below it, will take sales from domestic producers, thereby lowering revenues, margins and net income. With respect to Stelco, the industry pointed out that hot-rolled sheet is critical to Stelco's restructuring under the CCAA and to its future financial viability.*

*50. The domestic producers argued that, since 1998, they have been hammered by two waves of low-priced imports that have prevented them from fully participating in the upswing of the business cycle. They emphasized that, despite current high prices for the subject goods and their stronger current financial situation, the dramatic increase in the costs of raw materials and other inputs has made the industry more vulnerable than ever. Ispat requested that the finding be continued to cover imports from the Russian Federation and the Slovak Republic, but was ambivalent with respect to imports from Romania.*

#### *Exporters*

*51. The Russian exporters submitted that they are operating at what is effectively full capacity and that a larger volume of production is being allocated to their domestic market. In addition, they argued that growth for the Russian Federation*

is projected at 6 percent in 2004 and 5.4 percent in 2005; that none of the producers intends to increase hot-rolled sheet capacity in the near to medium term; and that producers are 12. Manufacturer's Exhibit D-11C at 99, Administrative Record, Vol. 11.01. Canadian International Trade Tribunal - 9 - RR-2003-002 experiencing raw material shortages. Reference was made to the decision in Corrosion-resistant Steel Sheet<sup>13</sup> after which, despite the finding of no injury by the Tribunal, no corrosion-resistant steel sheet has entered the Canadian market from the Russian Federation.

52. Regarding the likely performance of the domestic industry, the Russian exporters argued that Canadian growth will continue; that three of the domestic producers have excellent results for the first quarter of 2004; that demand exceeds supply, which requires suppliers to put their customers on allocation; and that scrap prices are falling.

53. As to the demand in China, the Russian exporters submitted that the evidence on the record shows that, given the massive infrastructure projects that are currently underway, no bursting of the "bubble" can be expected until 2008 or 2009, at the earliest. Several factors, among them the shortage of raw materials and government limitations on access to capital, will act as a severe constraint on capacity utilization or the current rate of continuing expansion of Chinese steel plants.

54. USSK argued, among other things, that following the acquisition of the Slovak facilities by U.S. Steel in 2000, it made a conscious decision to maximize its sales to end users, focus on contract business and essentially eliminate the use of traders. Reference was made to the very high level of USSK's capacity utilization and to the fact that it has been mandated by the European Union to reduce its production. It submitted that, given the accession of the Slovak Republic to the European Union on May 1, 2004, production caps for the European Union and, in particular, USSK, are now in effect. USSK now plans to move away from commodity products and focus on sales to markets within the

enlarged European Union and other nearby markets. Accordingly, USSK submitted, there is no likelihood of recurrence of injury from USSK and the Slovak Republic.

64. Subsection 37.2(2) of the Special Import Measures Regulations 14 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 is allowed to expire. The Tribunal reviewed all these factors and considered several to be relevant to the circumstances of this expiry review. In particular, it examined changes in international and domestic market conditions, the likely performance of the foreign industry, the likely performance of the domestic industry, the likely volumes of dumped imports, the likely prices of dumped imports and the likely impact of dumped imports on the domestic industry, 14. S.O.R./84-927 [Regulations].

65. 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.<sup>15</sup>

#### *Canadian International Trade Tribunal - 12 - RR-2003-002*

##### *Changes in International Market Conditions*

70. In late 2003 and, particularly, in early 2004, there were significant changes in world market conditions. There was a strong recovery in North American economic growth, and the economy in Europe also recovered. At the same time, countries outside North America and Europe enjoyed continued high levels of economic growth driven primarily by investment demand. China and India are two countries that have achieved growth rates that significantly exceed the world average. Very rapid increases in economic growth in China have had the greatest influence on demand for steel and input commodities. The International

*Monetary Fund (IMF) World Economic Outlook published in April 2004 reported that China's average annual growth rate for real gross domestic product for the 10-year period from 1996 to 2005 was estimated to be 8.2 percent, compared with the world average of 3.8 percent. In 2003, China's economy grew by 9.1 percent, compared with the world growth rate of 3.9 percent.<sup>17</sup> China currently accounts for 6.0 percent of world trade, is ranked as the fourth largest trader and is the sixth largest economy. According to the IMF, China's rapidly rising imports have supported the strong performance of neighbouring economies and contributed to the recent strength in world commodity prices.<sup>18</sup> The IMF forecasts that China's economic weight and its integration into the world economy are likely to continue to increase rapidly, assuming certain necessary structural reforms are implemented.*

*71. Turning to the case at hand, China has become the world's largest importer of steel, currently consuming 30 percent of the world's supply. China's voracious and growing demand for steel has recently caused an extremely tight supply worldwide, not only of steel, but also of the inputs required for its production. During the latter part of the period of inquiry, the global supply of iron ore, steel scrap, coke and coking coal became increasingly constrained, and the prices of these raw materials rose sharply. Energy costs were on the rise as well. In Canada, natural gas, electricity and bunker C oil all became more expensive.*

*72. These steel market conditions began to develop in late 2003. They continued in the first quarter of 2004, despite a drop in steel demand in China in that period, compared to the first quarter of 2003.<sup>22</sup> A brief interruption in the orderly movement of imports into China occurred early in 2004, as Chinese ports became overburdened during the Chinese New Year.<sup>23</sup> It appears that this problem was cleared away by March 2004,<sup>24</sup> when China's monthly consumption of hot-rolled sheet rose to 3.6 million tonnes, a level that was higher than that of any month in 2003.<sup>25</sup> Around the world, prices for hot-rolled sheet and inputs increased rapidly through the first quarter and into the second quarter of 2004. With respect to the international and domestic market conditions starting*

*in late 2003, witnesses with more than 30 years' experience in the steel industry spoke of the unprecedented tightness of supply and the rapidity of price increases.*

*73. During this period, the world shortage of inputs reduced the ability of mills to serve customers. Evidence indicates that mills in North America are running at the fullest capacity possible, given the constraints on inputs. In Canada, producers have had to put customers on allocation. Allocation continued into the second quarter of 2004 and is expected to continue into the second half of the year. For several years, the Canadian market has received the majority of its imported hot-rolled sheet from the United States. But U.S. steel, like domestic steel, was also in short supply and difficult to obtain in early 2004.*

*74. Under these conditions, U.S. and Canadian hot-rolled sheet prices rose at unprecedented rates and to very high levels. A witness testified that, in early 2004, North American prices for hot-rolled sheet were the highest globally. By May, however, Chinese hot-rolled sheet prices may well have been the highest in the world. In Canada, the price increases to consumers took two forms: from late 2003, increasingly frequent rises in the base price to take advantage of the opportunity presented by rising world prices and, from January 2004 onward, surcharges on these adjusted base prices calculated, and applied monthly to recoup the increases in the costs of inputs.*

*75. Much was made of the existence of a Chinese "bubble," the inevitability of it bursting and the timing of that event. The Tribunal's view is that the overall economy in China is likely to continue to grow, albeit not at the rates seen in 2003. As a result, the fears of the bubble bursting are perhaps excessive. The Tribunal notes, in this regard, that recent economic forecasts for China are for continued strong economic growth through 2005 and beyond, which will be fuelled, in part, by major infrastructure projects required for the 2008 Olympic Games in Beijing and Expo 2010 in Shanghai. These large-scale projects for international events will draw heavily on the steel supply, and it is likely that the*

*Chinese Government will ensure that nothing stands in the way of their successful preparation. In particular, the demand for hot-rolled sheet in China, fuelled by this sustained economic growth, is also projected to continue to increase, although at lower rates than in 2003, when apparent consumption increased by 38 percent.*

*76. It is the Tribunal's view that, rather than the steel "bubble" bursting, it is more likely that Chinese production will gradually replace portions of import volumes over a period of years. There was extensive evidence that Chinese domestic steel-making capacity will continue to grow in order to feed China's continuing growth in demand for steel. Throughout this period, it is likely that there will be corrections to the market from time to time. However, the impact of these corrections is more likely to result in volume declines of steel imports that are slow and steady rather than dramatic.*

*77. There were differing views at the hearing and in the trade literature on the likely timing of any significant decrease in Chinese imports of hot-rolled sheet. The views differed according to projections of continuing demand in China, on which the Tribunal has expressed its views above, and also differed on the timing of increased Chinese production coming on-stream. The report of World Steel Dynamics Inc. projects a decrease in Chinese imports in 2004 of 2.67 million tonnes. However, in the Tribunal's view, the demand for imported hot-rolled sheet is not likely to decrease that severely. The Tribunal bases its view on the fact that, while there is a significant volume of new capacity planned and actually being constructed, there remain uncertainties as to when it will effectively come on-stream. The uncertainties result not only from the usual time needed to ramp up new mills but also from the fact that new production of hot-rolled sheet is likely to be constrained in the near to medium term by the continuing shortage of inputs, notwithstanding major projects undertaken to increase the supply of raw materials. The Tribunal notes the continuing shortage of coke in China, which has already switched from being a net exporter of coke to being a net importer. There are other factors that may affect the timing of the start-up of new capacity,*



*such as the potential effect of any Chinese economic policies designed to ensure orderly economic growth. In addition, production of hot-rolled sheet from new capacity may not directly replace imports. The evidence shows that, in addition to new capacity for hot-rolled sheet, there are new projects in China to increase the production of cold-rolled and coated sheet, which use hot-rolled sheet as a substrate.*

#### *Likely Performance of Foreign Industry*

*78. Each of the subject countries has recently enjoyed relatively high rates of economic growth. While this growth has not been at the rates recorded by developing countries, such as China and India, it has been at rates well above those for mature economies, such as those of the European Union, North America and Japan. Forecasts are for continuing strong growth in the remainder of 2004 and in 2005. The steel industry in the subject countries is operating at high rates of capacity utilization, and the evidence suggests that it will continue to do so, taking advantage of rising domestic demand. The Tribunal, nevertheless, notes that the industry in all three countries continues to rely heavily on exports, though at reduced levels, and benefits from current high world prices.*

*79. The Russian economy grew by 7.3 percent in 2003 and is forecast to increase by 5.9 percent in 2004 and 5.0 percent in 2005.<sup>42</sup> The hot-rolled sheet industry was operating at over 90 percent capacity utilization in 2003. Domestic demand for hot-rolled sheet grew from 2001 to 2003. According to testimony, domestic demand is expected to increase from 51 percent of production in 2003 to 60 percent over the next two to three years, even taking into account possible increases in production. Domestic market prices are high. The evidence also shows that the Russian producers have increased their capacity to process hot-rolled sheet into higher-value-added steel products. This is likely to limit or reduce the volume of hot-rolled sheet available for sale in the merchant market. This, combined with the fact that high world prices for petroleum products are driving large investments in oil and gas projects in Russia with consequential large requirements for tubular products, has meant that, in recent months,*

downstream industries, such as tube producers, have had difficulties filling their requirements for hot-rolled coil. Consequently, they are considering investments to supply themselves. The Tribunal also notes that additions to hot-rolled sheet capacity are not expected to occur in the immediate future and that investment in new capacity that is currently under way is not expected to come on-stream until 2007-2008.

82. The producers in the Russian Federation and the Slovak Republic submitted that the volume of steel available for export from the subject countries is significantly reduced from the levels available when the finding was made in 1999. The Tribunal notes that rising domestic demand, high domestic market prices, the increasing proportion of hot-rolled sheet production being further processed in the Russian Federation and the Slovak Republic, and the production and sales caps established by the treaty concerning the Slovak Republic's accession to the European Union (Treaty of Accession) support this submission. The evidence also indicates that the subject countries are focussing their exports on markets outside North America, where demand is particularly strong and prices are attractive. For example, the tremendous growth in demand for steel in China, as previously discussed, has provided great export potential for the subject countries, a potential that the Tribunal does not anticipate will decrease drastically in the foreseeable future. In this regard, the evidence shows that China is a significant market for Russian hot-rolled sheet. The Slovak Republic's accession to the European Union, despite the cap on production and sales permitted under the Treaty of Accession, allows for annual growth in the volume of exports to the European Union. Markets in the Middle East and India are also large, growing and relatively accessible.

92. The volume of hot-rolled sheet available for export from the subject countries is unlikely to exceed current levels over the next two to three years, particularly as additions to hot-rolled sheet capacity in the Russian Federation are not expected to occur in the near to medium term and investment in new capacity currently underway is not expected to come on-stream until 2007-2008. The

*subject countries, particularly the Russian Federation, do, however, export significant volumes to China. Therefore, this conclusion is based upon the Tribunal's view that there will be no sudden reduction in the Chinese market for hot-rolled steel, but rather a gradual slowing down of import demand. Such a reduction in import demand will likely be matched by the increased domestic demand in the subject countries for hot-rolled sheet or demand from other developing country export markets. In the case of the Slovak Republic, its accession to the European Union provides, despite the cap on production and sales permitted under the Treaty of Accession, annual growth in the volume of exports to the European Union. Markets in the Middle East and India are also large, growing and relatively accessible to the subject countries.*

*110. In conclusion, the Tribunal considers that it is highly unlikely that producers in the subject countries will sell significant volumes of hot-rolled sheet into Canada in 2004 and 2005 or that any such volumes imported will be at such low prices that they will be likely to cause injury to the domestic industry in the near to medium term. Even under the most unlikely scenario that the Tribunal considered, involving a significant diversion of the subject goods from the Chinese market, the effect of the imports on the domestic industry market would likely be limited to a decline in domestic industry prices that the Tribunal would not consider to be materially injurious with respect to either a price effect alone or to the ability of the Canadian industry to recoup its past investments and provide for future ones."*

From the information submitted above it is clear that the Canadian Authority had to consider the same arguments that we raised in point 3 above. Therefore, the fact remains that based on the current market situation in the international steel market as well as prevailing international steel prices there is not even a remote possibility that exports from Russia will enter the South African market in significant volumes (if any imports at all) and at prices which will cause Iscor to suffer material injury if the current anti-dumping duties are withdrawn.

## **2.5 Conclusion on Global overview**

It is clear from the information that there is no reason to believe that the withdrawal of the current anti-dumping duties will lead to an influx of imports into South Africa. In the Metal Bulletin Research of 9 June 2004, international steel prices are still predicted to increase on the back of strong international demand, especially from China. To quote from the document: "Longer-term the overwhelming view in the industry is that the underlying vigour of the Chinese economy remains strong and demand for steel products will continue to outstrip production. With China hosting the 2008 Olympics, ongoing construction and infrastructure projects will need to be undertaken, which will require sizable quantities of steel."

In the same bulletin it is indicated that Russian steel pipe output will increase by a massive 112% this year alone. Pipe output is predicted to increase by another 60% till 2008.

It is thus clear that in the foreseeable future there will be tremendous pressure on Severstal's capacity to supply local Russian demand for the product as well as export demand, mainly from China. The current buoyant steel prices will also not abate in the medium or even longer term. We submit that Iscor cannot plead a threat of material injury in these circumstances. We therefore urge the Commission to withdraw the current anti-dumping duties on hot rolled products.

## **3. SACU Overview**

Iscor Limited in its 2003 Annual Report states that *"The year to June 2003 has been the most successful in our history"*.

In analyzing the impact of the removal of the anti-dumping duties on the domestic industry it is important to assess the current economic state of the domestic steel industry and in particular its vulnerability should the unfair trade measures be

revoked. This vulnerability can only be assessed if the following three questions are answered.

1. What is the likely volume of alleged dumped imports;
2. What is the likely price of the alleged dumped imports; and
3. What will the impact of these imports be on the domestic industry.

Before these questions can be answered, it is important to present the Commission with a brief overview of what happened since the imposition of the current anti-dumping duties.

It appears that since the imposition of the anti-dumping duties on hot-rolled steel imports against Russia and the Ukraine all other imports into the SACU also decreased significantly. According to Iscor's own data, imports from Russia decreased from 22.2 thousand tons in 1997 to 10 thousand tons in 1998. Since the imposition of the anti-dumping duties no imports from Russia took place<sup>83</sup>. Total imports also decreased from 82.5 thousand tons in 1997 to an expected 13.8 thousand tons in 1998. Owing to the significant developments in the international steel market (high demand coupled with high prices) since the end of 2003, the relatively small quantity of steel imports into South Africa is expected to half in 2004. According to international analysts, as indicated in our global overview above, this trend is set to continue for the foreseeable future.

Over the same period domestic demand for the product concerned increased steadily. According to Iscor's own figures, local demand increased by 21% from 2001 to 2003 and will continue to climb in 2004. Coupled with the decrease in imports it is clear that Iscor enjoyed the benefits of a protected market. This is evidenced by the comments of Mr. Louis van Niekerk, Iscor's Chief Executive. He stated recently that in the past few years Iscor was able to reduce cost by more than 40% which enabled Iscor to fall within the top 25% of the cheapest steel producers in the world. The

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<sup>83</sup> Although Iscor alleged in the application that in the year 2000 imports from Russia totaled 50 000 tons the agent acting for the Russian exporters is not aware of these alleged imports.

unbundling of Iscor's mining activities contributed greatly to the lower costs. According to Mr. van Niekerk, the availability of cheap ore from Iscor's arrangement with Kumba as well as cheap coal, gives Iscor a significant edge over its competitors<sup>84</sup>.

The benefit of the overprotected SACU market is clearly evident if you take into consideration that Iscor was able to increase the selling price of its hot rolled products by more than 80 index points from June 1999 to June 2003. This is notwithstanding the fact that this period does not cover the significant change in international market conditions that only started to take effect at the end of 2003. By Iscor's own admission it had an extraordinary good 2003. According to the applicant, it is doubtful whether these results will be achieved ever again. However, taking cognisance of the rapid change in international demand, coupled with a significant increase in the international steel price, together with the applicant's stated policy of following these international prices, it is clear that Iscor will be able to surpass these results for at least the foreseeable future irrespective of whether the current anti-dumping duties are withdrawn or not.

It is thus clear that since the imposition of the anti-dumping duties, the applicant enjoyed a dominant position in the local market and in the absence of imports obviously was enjoying a high market share. Although it would appear that the applicant is enjoying this dominant position since the imposition of the anti-dumping duties, it is clear from the Commission's final report that was issued in the initial investigation that this unique situation was also prevailing prior to the imposition of the duties. It is therefore hardly surprising that the current anti-dumping duties were imposed based only on a threat of injury and not on material injury.

Over and above the anti-dumping protection that the applicant enjoyed, the weakening of the Rand since the imposition of the duties, further entrenched its position. Although the Rand strengthened since the beginning of 2003 this by no means detracted from the applicant's competitive position. According to a

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<sup>84</sup> Rapport 4 July 2004.

presentation Iscor did titled *"2004 Iscor South Africa in the global steel market"*, Iscor's domestic prices compare very favourably with those of most regions in the world. Indeed, Iscor's pricing policy is designed to ensure that they remain competitive, largely by resorting to import parity pricing.

The evidence presented above demonstrates clearly that the hot-rolled steel market is a global market, very much influenced by what is happening outside the borders of South Africa. An examination of trends in domestic prices (details are attached) indicates that since January 2004 the applicant's prices increased by no less than 23.5%. Furthermore, during this same period (January to June 2004) Iscor changed its supply strategy dramatically. In 2003 Iscor was exporting roughly 40% of their production of the products concerned. During 2004, this figure dropped to 23%. This is clearly owing to the decrease in imports caused by the buoyant international steel market.

In submitting relevant information on what possible injury will be inflicted upon the applicant if the anti-dumping duties were to be withdrawn, one has to look at the short- to medium-term movements in the global steel market. It is clear from the information submitted by Iscor that it is currently trading at full or near full capacity. It is also clear from the information given above that global trends in the steel market, even in the absence of the dumping duties, will determine the applicant's future performance. Furthermore, it is significant when one considers the potential of serious injury to the applicant to bear in mind Iscor's own statement in its glowing audited results for the period ended December 2003, namely that it enjoys a 'naturally protected domestic market'. (Own underlining.)

We can conclude by answering the central questions confronted by the Commission.

1. What is the likely volume of alleged dumped imports.

Severstal has indicated that the volume of hot rolled steel available for export is greatly diminished. This is mainly due to investment in downstream

products. Also, Severstal does not plan to add any capacity in 2004 or 2005 in hot-rolled production. Therefore the volume of hot-rolled steel available for export will remain unchanged for the next two to three years. Based on this information it can be safely assumed that the volume of exports from severstal to South Africa will be negligible, if any at all.

2. What is the likely price of the alleged dumped imports.

Even though domestic prices are high, the movement in international prices since the end of 2003 meant that international prices are just as high and in some cases even higher. In this regard, it should be taken into consideration that in order for imports to be attractive it normally needs to be at least 15% cheaper than local prices. Coupled with this is the sudden sharp increase in shipping cost. These factors led to extremely high prices for imports which is likely to remain for the foreseeable future. Since Russian steel prices normally track international price levels it is unlikely that the price of potential Russian product will have any impact on Iscor's dominant position.

3. What will the impact of these imports be on the domestic industry.

Taking cognizance of the preceding analysis regarding the volume and price of the alleged dumped imports as well as the recent and forecasted performance of the applicant, it is unlikely that the withdrawal of the anti-dumping duties will cause any material injury to the domestic industry.

The dominant position of the applicant on the domestic market also impacts on the performance of the downstream manufacturers. This sector is predominantly divided into two areas of production, i.e. structural steel and fabricated metal products. Structural steel is mainly used in construction and infrastructure whilst fabricated metal products is used in the manufacture of components for various industries from motor vehicles to refrigerators.



Domestic demand for the end-products drives the growth in these sectors. This growth is also dependent on government investment spending and investment in new mines.

Iscor's dominant position in the SACU market, both as a manufacturer of hot-rolled steel, as well as a distributor has a price escalating effect on the downstream manufacturer which can have a serious impact on their competitiveness. This dominance has a negative effect on the entire value chain as its "freedom of choice" is severely restricted forcing it to source only from one source and then at the price dictated by him.

The small to medium manufacturer is further disadvantaged as he cannot source directly from Iscor as a result of minimum volume requirements.

This lack in competitiveness has a significant negative impact on the growth of these industries.

#### **4. Material Injury Allegation by ISCOR**

Article 57.2 of the AD Regulations provides that in the sunset review the Commission must determine whether there is a *"likelihood of a continuation or recurrence of dumping and injury in the event that the anti-dumping duty is removed"*.

In the initial investigation the Board did not find that the SACU industry was suffering material injury, but merely that a threat of material injury existed. Therefore, there cannot be a *"likelihood of continuation or recurrence"* of material injury.

In view of the evidence presented above and taking into account that no provision is made in the AD Regulations to conduct a sunset review when an anti-dumping duty was originally imposed based on a threat of material injury,

we submit that the Commission has to withdraw the duties presently under review.

In addition, we wish to point out that in the initial investigation the threat of material injury was found to be based on 4 factors:

- The rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation.
- Sufficient freely disposable, or imminent substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of the other export markets to absorb any additional exports.
- Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports.
- Inventories of the product being investigated.

We wish to comment shortly on the above findings as follows:

The Board made findings in paragraph 5.3.2 and 5.3.3 of the mentioned Report that there was no price suppression or depression. However, in paragraph 5.7.2 (iii) of the Report the Board made a statement that the prices of Russia and the Ukraine *"had a depressing effect on the SACU prices"*. This determination was not based on facts but merely on allegation, conjecture and remote possibility. This is not in accordance with Article 3.7 of the Anti-dumping Agreement.

Severstal initially overstated its underutilised production capacity and submitted substantiating evidence to prove that the utilised capacity was 94% in 1998. The Board did not want to accept the information as it alleged that it could not verify it. Ironically, in determining the normal value for Russia it used unverified information with regard to Brazil.

With regard to the inventories the Board again indicated that it could not accept the information as it was not in a position to verify the information.

It is clear from the above comments that Severstal was severely disadvantaged by the fact that the Board did not verify the information that Severstal submitted.

A further aspect that is very important is that the threat of material injury was based on the *"....difficult situation that was faced by the steel producers in both countries. This included the collapse of the steel markets and the severe financial problems that faced the steel industries in the two countries"*.

It is clear from the Report that the Board based its threat of material injury determination on the fact that Russia had sufficient freely disposable capacity and large inventory levels indicating the likelihood of a substantial increase of dumped exports to the SACU market based on the fact that imports from Russia increased during the investigation period. The Board also found that the imports entered at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports.

#### **5.6 COMMENTS FROM PETITIONER IN RESPONSE TO EXPORTER AND IMPORTERS COMMENTS SUBMITTED IN PARAGRAPH 5.5**

In response to the comments raised by the exporter and importers in paragraph 5.4 above, the Petitioner submitted the following:

##### **Respondent's Claim of Errors**

The Applicant submits that the Respondent made a number of errors in the central submission which disqualifies the Respondent from any relief and which warrants the retention of the anti-dumping duties, due to the imminent likelihood of recurring injury and dumping by the Respondent of the subject goods to SACU. In this regard, note can be taken of the following:

- The Respondent's interpretation of the provisions of Section 53 of the Anti-Dumping Regulations (ADR) clearly ignores the general rule applicable to the interpretation of statutes namely that effect be given to every word, which is used in the Statute. (See *LC Steyn "Uitleg van Wette"* p 18)
- The Respondent's allegation that Russia and specifically Severstal did not export subject product to SACU since the introduction of anti-dumping duties is wrong. The Applicant's application as supported by official import statistics clearly reflects imports of 50 568 tons of subject goods during 2000 to SACU.
- The assertion that the Applicant's submissions made in support of the threat of recurring injury based on the available excess capacities to export substantial quantities as history is incorrect and misleading. In fact, relevant recent evidence from a reputable world re-known publication such as World Steel Dynamics proves the increased capacities and expansion of the Russian and Ukrainian steel industry, in order to serve an ever-increasing export market.
- The argument that high demand for subject goods in the world steel markets makes it unlikely that Russia would export subject goods to SACU is not only speculative, but reflects total ignorance of the boom/bust trends or so called "death spirals" common to international trade in steel markets.
- The inaccurate analysis that China will consume all surplus steel to be produced is misleading. China is expected to become a net exporter of steel in the foreseeable future.
- The notion that trade barriers were lifted against imports of amongst others, subject goods by "countries around the world " is a greatly exaggerated statement as most of the major destinations for steel exports have retained trade measures against the Respondents and even expanded it .The recovery of European Union steel mills is in fact attributed to the imposed and retained trade

measures.

- The history of trade actions against respondent speaks for itself. Previous public statements by Severstal indicated the clear intention to resume exports to SACU, should the anti-dumping duties be repealed.
- The Respondent's endeavours to mislead the Commission with out of context and totally inaccurate statements should disqualify the Respondent from any aid.

### **Current Position in terms of the South African Regulations and Global Practices**

The Applicant submits that the argument by the Respondent that any decision to rescind a duty after a period of five years will contradict the provisions of Section 53 of the Anti-Dumping Regulations (ADR) is wrong.

The Respondent selects parts from the relevant regulations as well as from Article 11.3 of the Agreement on Implementation of Article VI (Anti-Dumping Agreement) of 1994 and makes assertions to them, each taken into isolation.

Not surprisingly, the selected pieces from the overall puzzle, appears to support the argument of the Respondent if considered in isolation. If account is taken of the full text of the relevant provisions, the overall picture is clear enough.

For the sake of comprehensiveness, the provisions of Article 11(3) of the ADA is quoted in full:

*"Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. **The duty may remain in force pending the***

***outcome of such review*** *“(Emphasis added)”*

It is clear enough that anti-dumping duties shall remain in place for 5 years from imposition. Further, if a sunset review has been initiated prior to the lapse of an anti-dumping duty, such anti-dumping duty remains in force until finalisation of the sunset review.

Section 53 of the ADR reads as follows:

**“53        *Duration of anti-dumping duties***

53.1        Anti-dumping duties shall remain in place for a period not exceeding 5 years from the imposition or the last review thereof.

53.2        If a sunset review has been initiated prior to the lapse of an anti-dumping duty, such anti-dumping duty shall remain in force until the sunset review has been finalised.”

Whereas the provisions cannot be read in isolation, it is clear that Section 53.1 read with Section 53.2 confirms the provisions of Article 11.3 without qualification.

A duty subject to a properly initiated sunset review, remains in place until conclusion of the review investigation and the Commission will not act ultra vires the provisions of the ADR or the ADA.

The Respondent further asserts that in view of the fact that the original anti-dumping duty was primarily based on the future threat of imports from Russia and Ukraine, the Commission should in consideration of the matter once again apply the recommended factors associated with a threat of material injury.

The endeavour to distinguish between the rules applicable to sunset reviews based on dumping and on a threat of dumping, does not find any support in the relevant statutory provision. Article 11.1 of the ADA sets out the general rule that any definitive anti-dumping duties (regardless of whether based on definitive anti-dumping or on an threat analysis) shall lapse five years from the date of imposition.

The applicable criteria to be applied is of a prospective nature, namely to determine the likelihood of the continuation of or recurrence of dumping and injury should the anti-dumping duties be revoked.

The Applicant is not persuaded that a different standard should apply to a definitive anti-dumping duty based on threat and the selling of dumped products. No basis in law has been established to make such a distinction.

**The allegation that Respondent's did not export any subject goods to SACU**

The allegation that no exports of subject goods occurred during the term of initial dumping duties is void of any truth. Official Customs and Excise records clearly indicate imports of 50 568 tons from Russia during 2002.

**The notion that evidence adduced by Applicant is due to the historic nature thereof to be rejected, is unfounded and without substance**

The unqualified and unsubstantiated allegation that the evidence adduced by application in support of the likelihood of recurring dumping is unjustified and without substance, is denied by the Applicant. The evidence adduced firstly presents relevant economic factors indicating that dumping will recur and that the threat of continued injury and dumping still prevails. This implies that these countries will remain large exporters.

The Applicant once again wishes to emphasize the importance to be attached to the past history of the Respondent in order to determine their likely behavior, if the duties are to be revoked. The record of the Applicant speaks for itself with a massive count of 53 anti-dumping cases filed against Russian steel producers in jurisdictions all over the world from 1995 to 2002. It speaks for itself that a substantial number of these orders are not due for sunset reviews in the foreseeable future, which implies that SACU will become a definite target for exports. The trade agreements referred to in the application, which controls exports from Russia bears further testimony of the fact that Russia is still

regarded as a threat by the United States and the European Union in so far as exports are concerned. No steps were taken as yet to terminate the agreements despite the picture of increasing world wide demand painted by the Respondent. The recovery of the steel industries in the USA and the European Union are to a large degree attributed to the imposition of trade measures, such as anti-dumping and safeguard measures and the entering into trade agreements that control the imports of amongst others, subject goods from the Russian Federation.

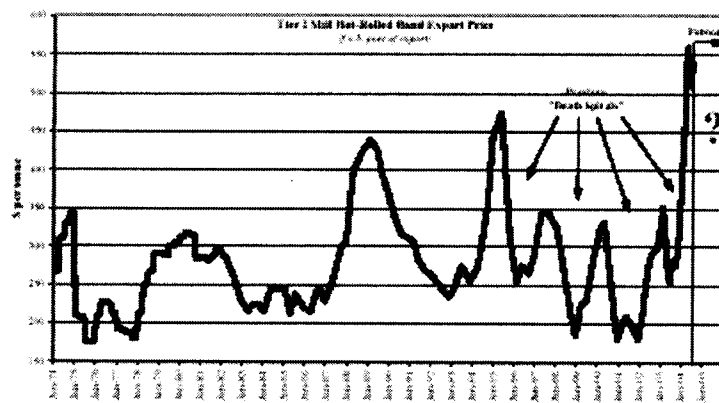
In response to this, ITS stated that it is noted that the Petitioner refers to "past history". It stated that it cannot emphasise enough the importance of the Canadian decision with regard to the changed world steel market situation, including the SACU market.

**The argument that high demand for subject goods will make it unlikely that Russia would export subject goods to SACU is speculative but also reflects a total ignorance of the business cycles prevalent to international steel trade.**

The volatility of the international steel trade and specifically the presence of so-called boom/bust cycles as well as the presence of so-called death spirals was also emphasized by the Applicant in the application. The Applicant submits that a snapshot of the current situation concerning international steel trade does not necessarily present a true picture of the supply and demand trends in so far as international steel trade is concerned. Whereas the analysis of whether duties are to be revoked or not is primarily based on a counter-factual analysis of hypothetical future events (see *Czako, Human and Miranda International Anti Dumping Law* 88), due account needs to be taken of this business cycles before the Commission comes to a final decision. It follows without exception that any boom cycle is followed by a death spiral which is well illustrated in the World Steel Dynamics publication To illustrate this at best, note can be taken of the following graph:



Exhibit 11 of 13  
**Never Ending "Death Spirals"**  
 (dollars per metric tonne)



In response, ITS stated that it is evident that hot rolled steel prices are expected to remain at historical high levels throughout 2004 and 2005 as stated by the CRU International, Steel Sheet Quarterly. It stated that it was even confirmed by the Petitioner thus, "We see steel prices remaining firm until at least the remainder of 2004...The domestic market will remain strong. Prices for the second half of this year should be better than the first half" in the reputable publication, Metal Bulletin of 18 August 2004.

**The inaccurate analysis that China will consume all surplus steel to be produced in the world is misleading.**

The Applicant does not deny the importance of China in so far as international trade is concerned. It is however necessary that the unqualified allegations in this regard made by the Respondent be placed in context. In a recent article in Sake-Rapport of 22 August 2004, Dawid van Rooyen, (author) cautioned that the current status of the steel industry will not endure forever.

*"Die toedrag van sake [with reference to the current boom in the Industry] gaan egter nie vir ewig voortduur nie want die Chinese staalbedryf is besig om selfs in 'n vinniger tempo as die land se vraag na staal te groei.*

*Dit kan beteken dat die land so gou as 2006 reeds 'n netto uitvoerder van staal kan word wat die vraag-en aanbodsituasie in die staalmark drasties kan verander en tot groot rasionalisasie in die*

*staalmark kan lei."*

In response, ITS stated that it wish to point out that this quotation is not substantiated. It stated that more importantly, the "remote possibility" is so remote that it may, if it ever does, only show itself in 2006.

**The statement by the Respondent that trade barriers were lifted against imports of amongst others, subject goods by "countries around the world" is a misleading and inaccurate statement.**

No evidence was adduced by the Respondent in support of this allegation, other than the Canadian case referred to. The Applicant submits that no precedents are to be founded in the Canadian case due to the differences between the Canadian and SACU industries. The fact that the Canadian steel industry is closely linked to that of its other NAFTA partner namely the USA and most of its steel imports are channeled through the USA effects the Canadian industry in that it enjoys additional protection due to the strict trade regime followed by the USA.

The evidence provided by the Applicant in its petition and referred to above in ad 5 bears clear testimony of the level of dumping engaged in by the Respondent in the past.

As pointed out in the Petition, the Respondent's JC Severstal previously announced its intention in a press release to export to SACU. To argue that it is unlikely that Russia will export to SACU even where the duties are revoked or only negligible tonnages is with respect naïve. It is also clear from the importers questionnaire that the only deterrent that prevents imports is the anti-dumping duties in place and termination thereof will inevitable lead to the re-introduction of the Respondent's steel into SACU.

#### **Misleading and inaccurate statements used by the Respondent**

The Applicant notices that other than the use of unsubstantiated and unfounded conclusions based on speculation and conjecture, the Respondent has included some

statements in the central document that is outright wrong and misleading.

On pp 45-46 the statement is made that the Applicant claimed in its 2003 Annual Report that it enjoys a "naturally protected domestic market". The words quoted do however not appear in the Annual Report at all and the only reference to the Applicant's competitive position is on pp 46 and 47 where it is respectively stated;

*"Our competitive cost structures and extensive product range afford us a dominant position in the South African flat steel market, whilst our comprehensive range of products and especially our range of thin and ultra- thin hot rolled coil , has proved highly popular in global steel markets."* and ;

*"The African market remains a key export region as it offers us a natural competitive advantage in terms of logistics."*

## **Conclusion**

The Applicant, in accordance to the provisions of Section 53 of the ADR proved the likelihood that anti-dumping will recur if the anti-dumping duties are to be revoked. The Applicant therefore requests that the Respondent's application be denied.

## **5.7 OTHER INFORMATION SUBMITTED BY INTERESTED PARTIES**

ITS submitted that since the initiation of this sunset review investigation, both parties to the petition, Highveld Steel and Iscor released their interim results in August 2004. It stated that these results are available on <http://www.ispatiscor.com> and <http://www.highveld.co.za>. It stated that it is clear from these results that both Highveld and Iscor performed exceptionally well. It stated that Iscor stated in its report that the substantial increase in international input costs that prevailed since the third quarter of 2003 played an important role in the increase in steel prices. It stated that Iscor stated that it expects that the growth trend in the international demand for steel at high prices will continue for the rest of 2004.

ITS stated that Highveld echoed Iscor's sentiments and emphasized in its interim report that the South African demand has improved substantially and was 40 per cent better than in the corresponding period in 2003. It stated that Highveld also confirmed that as a result of the stronger demand on the domestic market their export volumes were lower. ITS stated that Highveld stated that it also expects that the demand will remain at the same high levels at least for the rest of 2004.

ITS stated that in the publication "Metal Bulletin" of 18 August 2004, Iscor states that "High steel prices and surging demand drove profits higher in the first six months of this year and will be sustained for the rest of this year". ITS stated that this is reflected in the high profits of Iscor for the six months to June 2004. ITS further stated that the CEO of Iscor stated that the prices will remain high for the rest of 2004.

ITS stated that no mention is made in the report of the massive influx of the subject product into SACU with the resultant disastrous injury implications for the domestic steel industry.

ITS stated that from this it appears that the arguments in the petition were prepared during 2003 and it did not take into consideration the substantial changes that occurred in the international market in 2004.

ITS submitted the following information on the Canadian International Trade Tribunal (CITT):

It stated that the CITT published its Statement of Reasons and Order with regard to the expiry review of certain cold rolled steel sheet products on 10 September 2004. It stated that in the CITT order it "Rescinds its findings" in respect of the certain cold rolled steel sheet products originating in or exported from Belgium, the Russian Federation, the Slovak Republic and Turkey. It stated that in the statement the CITT noted that *"the Tribunal concurs with the view of most recent industry analysis that growth in the rest of the world is now sufficient to take up any slack caused by another correction in the Chinese market. Authoritative forecasts predict continued economic growth in the major*

*steel consuming countries in 2004 and 2005. This economic growth provides the basis for arguing that the global demand for steel will not slacken, but will continue at least until the end of 2005, as has been forecast by an executive of a major European steel company."*

*ITS further submitted that it stated that "An analysis of the demand and supply conditions for steel in China by a specialized industry publication indicates that there is a requirement for a significant volume of steel imports into China in the near term. Although the expansion of China's economy may be slowing slightly in 2004, the Tribunal notes that it will still be growing at prodigious rates in 2004 and 2005".*

*ITS submitted that the CITT concluded that "The strong economic growth and the high level of demand for steel products that have been experienced in global markets, including the Chinese market, are likely to continue at least until the end of 2005. Furthermore, the Chinese and other developing countries' demand for steel products is likely to remain significant in the medium term and, thus, there is not likely to be a flood of imports diverted towards other markets. China's injury finding covering imports of Russian cold-rolled steel could cause some diversion of cold-rolled imports. If this diversion of imports does occur, the imports are likely to flow towards the U.S. market, which is currently short of imports and is a higher-priced and larger market than the Canadian market. The Tribunal accepts that some of those diverted imports from Russia could eventually appear in the Canadian market. However, the Tribunal does not believe that the volume is likely to be significant. Also, the Tribunal does not foresee much interest on the part of producers in the other three subject countries in shipping cold-rolled sheet into the Canadian market. Import of cold-rolled sheet from Turkey and Belgium have waned recently, at a time when prices have been very high. In the case of the Slovak Republic, the ownership and focus of the producer have changed to serving markets closer to the plant, and the producer is unlikely to attempt to serve a market to any great extent already by its parent, U.S. Steel. The Tribunal therefore concludes that, if the findings are allowed to expire, the volume of dumped subject goods entering the Canadian market is not likely to be significant".*

ITS stated that it is also important to note that China's Ministry of Commerce announced that *"Pursuant to Article 49 of the Anti-Dumping Rules of the People's Republic of China, and based on the suggestions from MOC, State Tariff Commission decided to stop imposing anti-dumping duty against the cold rolled steel originating from Russia, Korea, Ukraine, Kazakstan and Taiwan from the day of September 10<sup>th</sup>, 2004"*.

ITS stated that the reason given by China for the determination is that because of *"the international market and the domestic supply-demand relations of cold rolled steel materially changed, the cold rolled steel in China mainland was periodically short of supplying"*.

ITS stated that it is thus clear that from the cold rolled steel case that the international market for steel changed substantially and that if the anti-dumping duties are revoked there will definitely not be a recurrence of material injury.

ITS stated that according to the new CEO, Davinder Chugh, Ispat Iscor *"aims to boost production by two million tonnes a year within the next three years..."*. It stated that it is thus clear that sales will increase inline with the output especially taking into account that domestic carbon steel prices increased by 21.7 per cent in the first 6 months of 2004. (Steelnews, September 2004) It stated that therefore, the *"forecasts"* and *"estimates"* of the Petitioner in the petition with regard to the alleged injury are totally outdated and useless. ITS stated that it appears that one of the problems experienced by Iscor is bottlenecks at it's plants as the CEO states that *"Capacity can be increased by one million tonnes through a relatively small investment in debottle-necking"* of the firm's plants.

ITS further stated that in an article in the Business Day of 10 September 2004 *"World's steel makers have a lot to ponder in time of plenty"* it is stated that *"Between 1970 and 2000, steel demand worldwide rose only 1% to 2% per year on average. In the past three years annual growth has been around 6%. Many in the industry think this trend will continue at least until the end of this decade"*.

## **5.8 CONCLUSION - MATERIAL INJURY**

The Commission considered all comments submitted by interested parties.

The Commission noted that there will be less than 1.5 per cent price undercutting from the Russian Federation and less than 2.5 per cent price undercutting from the Ukraine in the event of the expiry of the anti-dumping duties

The Commission took into account that the international steel prices are currently high and that there is a high demand for steel on the international market. It concluded that it is not likely for the exporters from the Russian Federation and the Ukraine to lower their prices when exporting to SACU in future.

The Commission, therefore, made a final determination that the expiry of the duty is not likely to lead to the continuation or recurrence of injury.

## **6. SUMMARY OF FINDINGS**

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### **6.1 Dumping**

The Commission found that the expiry of the duties on the subject product originating in or imported from the Russian Federation (excluding Severstal) and the Ukraine would likely lead to the continuation or recurrence of dumping,

### **6.2 Material injury**

The Commission found that the expiry of the duty would not likely lead to the continuation or recurrence of injury to the SACU industry.



## 7. RECOMMENDATION

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The Commission made a final determination that:

- the expiry of the duties is likely to lead to the continuation or recurrence of dumping from the Russian Federation (excluding Severstal) and the Ukraine; but
- the expiry of the duties is not likely to lead to the continuation or recurrence of material injury.

The Commission, therefore, decided to recommended to the Minister of Trade and Industry that the anti-dumping duties on hot-rolled plates and sheets of steel originating in or imported from the Russian Federation and the Ukraine, be terminated.