CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

POLYPHASE INDUCTION MOTORS ORIGINATING IN OR EXPORTED FROM BRAZIL, FRANCE, JAPAN, SWEDEN, TAIWAN, THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA

Finding of the Canadian International Trade Tribunal
in Inquiry No. CIT-5-88
under Section 42 of the *Special Import Measures Act*

Place of Hearing:	Ottawa, Ontario
Pre-Hearing Conference:	March 10, 1989
Public Hearing:	April 3 to 7 April 10 to 15 April 17, 18, 20 and 21, 1989

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April 28, 1989

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*The Canadian Import Tribunal ceased to exist on December 31, 1988, and was replaced by the Canadian International Trade Tribunal.

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Inquiry No.: CIT-5-88

Friday, the 28th day of April 1989

PANEL: ROBERT J. BERTRAND, Q.C., PRESIDING MEMBER
RAYNALD GUAY, MEMBER
ARTHUR B. TRUDEAU, MEMBER

INQUIRY UNDER SECTION 42 OF
THE *SPECIAL IMPORT MEASURES ACT RESPECTING:*

POLYPHASE INDUCTION MOTORS ORIGINATING IN OR EXPORTED FROM BRAZIL, FRANCE, JAPAN, SWEDEN, TAIWAN, THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA

F I N D I N G S

The Canadian International Trade Tribunal, pursuant to paragraph 57(2)(a) of the *Canadian International Trade Tribunal Act*, has conducted an inquiry under the provisions of subsection 42(1) of the *Special Import Measures Act* consequent upon the issue by the Deputy Minister of National Revenue for Customs and Excise of a preliminary determination of dumping dated December 29, 1988, and of a final determination of dumping dated March 29, 1989, respecting polyphase induction motors of an output exceeding 200 HP or 150 kW, including motors and motor kits in a knocked-down or incomplete condition, originating in or exported from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America, and consequent upon the issue of a preliminary determination of subsidizing dated December 29, 1988, and of a final determination of subsidizing dated March 29, 1989, respecting the above-mentioned goods originating in or exported from Brazil.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Tribunal hereby finds that the dumping in Canada of the aforementioned goods from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America, and the subsidizing of the same goods originating in or exported from Brazil have not caused, are not causing and are not likely to cause material injury to the production in Canada of like goods.

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In accordance with subsection 43(1.1) of the *Special Import Measures Act* with respect to the aforementioned goods of the United States, the Tribunal finds that, pursuant to subsection 43(1) of the *Special Import Measures Act*, the dumping in Canada of the goods originating in or exported from the United States of America has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods, as found in the preceding paragraph.

Presiding Member: Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.

Member: Raynald Guay
Raynald Guay

Member: Arthur B. Trudeau
Arthur B. Trudeau

Witnessed: Robert J. Martin
Robert J. Martin
Secretary

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Statement of reasons to accompany the findings issued on April 28, 1989.

Ottawa, May 12, 1989

Robert J. Martin,
Secretary

INQUIRY UNDER SECTION 42 OF
THE *SPECIAL IMPORT MEASURES ACT* RESPECTING:

POLYPHASE INDUCTION MOTORS ORIGINATING IN OR EXPORTED FROM BRAZIL, FRANCE, JAPAN, SWEDEN, TAIWAN, THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA

PANEL: ROBERT J. BERTRAND, Q.C., PRESIDING MEMBER
RAYNALD GUAY, MEMBER
ARTHUR B. TRUDEAU, MEMBER

STATEMENT OF REASONS

The Canadian International Trade Tribunal, pursuant to paragraph 57(2)(a) of the *Canadian International Trade Tribunal Act*, has conducted an inquiry under the provisions of subsection 42(1) of the *Special Import Measures Act* (the Act), subsequent to the preliminary determination of dumping made by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) respecting the importation into Canada of polyphase induction motors of an output exceeding 200 HP or 150 kW, including motors and motor kits in a knocked-down or incomplete condition, originating in or exported from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America, and subsequent to the preliminary determination of subsidizing respecting the above-mentioned goods originating in or exported from Brazil.

The Secretary of the Canadian Import Tribunal was given notice of the preliminary determinations in a letter from the Director General, Assessment Programs Division, National Revenue for Customs and Excise, dated December 29, 1988, and received the same day. The notice was published in Part I of the Canada Gazette of January 7, 1989.

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On December 31, 1988, sections 16 to 37 and 41 to 62 of the *Canadian International Trade Tribunal Act* (Bill C-110) came into effect. As a result, the Canadian International Trade Tribunal (the Tribunal) was established and the Canadian Import Tribunal ceased to exist on that day. Transitional provisions of the *Canadian International Trade Tribunal Act* provide, however, that members of the former Tribunal continue to have jurisdiction with respect to any matter pending before it. Such powers are contained in section 57 of the *Canadian International Trade Tribunal Act*. It is, therefore, in accordance with such transitional provisions that the inquiry was continued.

The Deputy Minister's investigation was initiated as a result of a complaint filed by Westinghouse Canada Inc. (WECAN). At that time, WECAN had the support of the two other Canadian producers, Reliance Electric Limited (Reliance) and General Electric Canada Inc. (GE Canada). The investigation period covered sales and shipments of the subject goods made from July 1, 1987, to June 30, 1988, regarding the dumping investigation and from January 1, 1987, to August 31, 1988, regarding the subsidizing investigation.

Upon receipt of the Notice of Preliminary Determinations of Dumping and Subsidizing, the Secretary sent a Notice of Commencement of Inquiry to the Deputy Minister, the governments of the countries of export, the Canadian manufacturers, the importers and exporters of the subject goods, and others on the Tribunal's mailing list. The notice was published in Part I of the Canada Gazette of January 14, 1989.

At the request of counsel, the Tribunal held a pre-hearing conference on March 10, 1989, to deal with a number of preliminary issues raised through correspondence with the Secretary and between counsel.

On March 29, 1989, the Tribunal received the Notice of Final Determinations of Dumping and Subsidizing dated the same day. The notice was made available to participants at the commencement of the hearing and was published in Part I of the Canada Gazette of April 8, 1989.

Public and *in camera* hearings were held in Ottawa, Ontario, starting on April 3, 1989.

THE PARTICIPANTS

The complainants before the Tribunal, WECAN and Reliance, were represented by counsel at the hearing and submitted evidence in support of their claims of material injury caused by the dumping and subsidizing of the subject goods. GE Canada, another producer of the goods under inquiry, chose not to support the complainants nor allege injury to domestic production due to dumping or subsidizing. It responsed, however, to requests from other parties to provide information and appear at the hearing. GE Canada was represented by counsel at the hearing and gave evidence regarding its position on injury and responded to questions by the Tribunal and counsel respecting its production and activities in the marketplace.

Counsel for, and representatives of, numerous importers, exporters, consulting engineer firms and OEMs all actively participated, during the hearing, in the cross-examination of the complainants' witnesses as well as others and in the presentation of argument. In addition,

they submitted evidence to refute the allegations of the complainants, called witnesses who testified that any injury experienced by the domestic producers was caused by factors other than the importation of the dumped and subsidized goods and requested a number of product exclusions.

THE PRODUCT

The goods subject to this inquiry are defined by the Deputy Minister as polyphase induction motors of an output exceeding 200 HP or 150 kW, including motors and motor kits in a knocked-down or incomplete condition.

For greater clarity, the Deputy Minister specified that a motor exported in a knocked-down or incomplete condition consists of most of its major parts and assemblies necessary to assemble the motor, whether imported in one or more shipments, and that the major parts thereof specifically include stators - wound or unwound, rotors - wound or barred, end brackets and frames wholly or partially machined, conduit boxes, ventilation/cooling systems, and assemblies thereof. During this inquiry, some controversy arose concerning the Deputy Minister's definition regarding parts. This question is covered elsewhere in these reasons.

The subject motors are used for heating, ventilating and air conditioning of commercial buildings and in the production processes associated with resource based industries such as pulp and paper, mining, oil and gas, and thermal nuclear electrical generation. The pulp and paper industry is one of the largest users of these motors. Large induction motors of an output over 200 HP are principally custom built according to a customer's detailed specifications, which vary from industry to industry. For instance, motors used in the pulp and paper industry frequently require specific insulation to provide for extra protection against moisture; pipeline motors usually require special enclosures for outdoor service in a hazardous area; and centrifugal compression drive motors require special balancing and vibration detection equipment. Furthermore, many of the motors are built with special accessories such as space heaters and temperature detectors to monitor motor operating conditions.

Polyphase induction motors are so named because they are operated on alternating, three phase, electric current. There are two types of alternating current motors: the synchronous type, which involves pole windings on the rotor; and the induction type, which is more common because of its relative simplicity, ruggedness and lower cost of manufacturing. Furthermore, the subject motors are identified in terms of their rotor windings as either squirrel cage or wound rotor motors. Motors are also generally described by their type of enclosure such as ODP (open drip proof), WP (weather protected) or TEFC (totally enclosed fan cooled).

Large induction motors contain certain basic components such as stators, rotors, end brackets and frames. They are identified by output (horsepower or kilowatts), speed (revolutions per minute), voltage, cycle, frame size, method of ventilation, enclosure and class of insulation. The stator core is that part of the motor in which the rotor will rotate; it consists of many laminations of electrical steel that are built up to make the core. These laminations are usually welded the length of the core or stacked on a frame and held in place by a key. The rotor core is made up of similar laminations as used in the stator core. The major components of a rotor core are: rotor bars, resistance end rings and a shaft. The bars and rings can be aluminum,

copper or copper/bronze alloys while the shaft is usually hot-rolled steel. The frame is a major component and supports the stator core; it can be of a casting or steel fabrication.

Vertical motors as well as horizontal motors are manufactured. Vertical motors are especially designed with a bearing arrangement that can handle the thrust that the load will put on the motor.

The manufacture of the subject motors involves the conversion of lamination steel to produce stator and rotor laminations, which are stacked to form stators and rotors, the two major components. Frames, brackets and shafts, which are other major components, are welded and machined on boring mills, lathes, etc. The coils are wound or looped, spread from rolls of copper wire, insulated and inserted into the assembled rotor and stator laminations, which are then subjected to a dip or vacuum/epoxy insulation process. Finally, the motors are assembled and tested.

The various manufacturers' processes are similar with a variation in the degree of automation. Motors in the lower power ranges (up to about 500 HP) can benefit from automation and repeat orders while larger motors are almost exclusively custom made to individual order specifications. While the basic construction is similar, the final motor will differ, particularly in physical dimensions, from one manufacturer to another. The replacement of one manufacturer's motor by another may sometimes be accomplished by using an adapter base plate.

While the Deputy Minister has included motors and motor kits in a knocked-down or incomplete condition, motors exceeding 200 HP are not generally sold as such in the marketplace. Further, there is very little demand in the way of replacement parts from manufacturers as these motors are large, expensive and manufactured in a way which lends to economical disassembly for purposes of work such as reconditioning, bearing replacement or rewinding. These are operations generally performed at electric motor service centres.

THE DOMESTIC INDUSTRY

The Canadian industry comprises WECAN, Reliance and GE Canada. WECAN and GE Canada are the two major producers of the subject goods in Canada followed by Reliance.

WECAN is a wholly owned subsidiary of Westinghouse Electric Corporation of the United States. WECAN manufactures and distributes a wide range of industrial/commercial electrical and mechanical products and has been in business in Canada since 1896. The company is structured into five major divisions of which the Transformer, Nuclear Products and Motors Division is one. Within the division, the Motor Department produces the subject goods in its Hamilton, Ontario, production facility. Sales of the subject motors, while being a fairly significant proportion of the Motor Department's sales, are a very small portion of total corporate sales. Motors are sold into the domestic market through a wholly owned subsidiary, Wesco Sales and Service Co. (WESCO) which has sales offices located throughout Canada. These offices provide technical and commercial services. WESCO operates as a motor distributor, servicing users, OEMs, consultants, and subdistributors.

With a few exceptions such as explosion proof motors over 750 HP and reactor-coolant pump motors which the firm chooses not to produce, WECAN generally designs and manufactures a wide range of polyphase induction motors larger than 200 HP (150 kW) and up to 15,000 HP (11,185 kW), covering a variety of frame sizes, speeds, voltages, enclosures, mounting positions and other characteristics in accordance with the specifications required.

The Canadian market for the subject goods can be broken down into five sectors: pulp and paper, oil and gas, utility power generation, the mining industry, and large institutional applications. While WECAN directs its marketing effort into all sectors, a large proportion of its sales volume is to the pulp and paper sector.

Reliance, established in 1950, is a wholly owned subsidiary of Reliance Electric Company of Cleveland, Ohio, in the United States. Reliance is made up of four operating divisions, one of which is the Electrical Division.

The head office for Reliance - Electrical Division is located in Stratford, Ontario. The division is divided into three operating groups: Engineered Drive Systems; Service, Parts and Standard Products; and Rotating Products. The subject goods are produced by the Rotating Products group.

Reliance is capable of producing the subject goods over 200 HP up to 15,000 HP, but chooses to focus on highly engineered, custom manufactured induction motors, which are generally medium and high voltage motors over 500 HP.

Reliance's sales of the subject goods are a small percentage of its total corporate sales. The company concentrates its efforts in the utility power generation, oil and gas, and pulp and paper sectors of the market. Reliance's products are marketed across Canada through its own sales and marketing offices.

GE Canada (formerly known as Canadian General Electric Company Limited) is a publicly owned company. Its shares are 92 per cent owned by General Electric Company of Fairfield, Connecticut, United States, through General Electric Canadian Holdings Limited, while the remaining 8 per cent are publicly traded on the Toronto Stock Exchange.

GE Canada is organized into three operating groups: technology, consumer, and resources and power generation. The Motors and Drives Department, which produces the subject goods, is a part of the resources and power generation group.

Production facilities of GE Canada's polyphase induction motors as well as other types of electric motors are located in Peterborough, Ontario. Within the Motors and Drives Department of the company, sales of the subject goods are relatively small in percentage terms compared to total sales of products manufactured. GE Canada can produce any horsepower rating over 200 HP. Sales of subject goods are made to all segments of the Canadian marketplace by GE Canada's direct sales force.

THE COMPLAINT

Although WECAN filed the original complaint with National Revenue, WECAN and Reliance were the complainants in the proceedings before the Tribunal. GE Canada did not support the complainants in their claims of material injury.

In submissions to the Tribunal, WECAN alleged that the dumping and subsidizing of induction motors over 200 HP had caused, was causing and was likely to cause material injury to the production in Canada of like goods. The material injury was claimed to have been incurred in the form of loss of sales, loss of profit margin and loss of person-hours. It was further claimed that this injury occurred in the context of an increasing trend to source from imports and of continuing surplus worldwide capacity to produce the subject goods, and that, without a positive finding, the future viability of WECAN's production of the subject motors in Canada was seriously at risk.

It was submitted that a large number of contracts were either lost to dumped and subsidized imports or, because of the presence of low bids made from imports, price suppressive thus forcing WECAN to drastically lower its price levels in order to retain the business. This, allegedly, resulted in many millions of dollars of lost business to WECAN and caused a significant erosion of its margins as it struggled to maintain a suitable level of market share. This margin erosion ultimately resulted in a decline in profits realized on sales of the subject goods.

With respect to the future, it was argued that there exists a global overcapacity for the subject goods; that the strategy of foreign motor manufacturers is to develop worldwide trade in order to attain the volumes necessary for survival; that Canada is an attractive target given its relatively large market and financial stability; that many exporters have demonstrated the ability to easily shift country of production; and that, in light of the substantial investments incurred to improve WECAN's productivity, the anticipated return to profitability that justified this investment had not occurred. In addition, it was claimed that any benefits obtained from the partial market share recovery in 1988 had been negated by the suppressed prices experienced in the marketplace, and that the continued dumping/subsidizing would eventually lead to the demise of production in Canada of the subject motors in the absence of a positive finding.

Reliance fully supported WECAN's position and argued that it suffered material injury as a result of the dumping and subsidizing of the subject motors. Such injury took the form of severe price suppression in the marketplace and extensive erosion of its gross margins which resulted in a reduction in profitability.

During the proceedings, WECAN and Reliance agreed to the following product exclusions in the event of a positive finding: motors over 8,000 HP; hermetically sealed motors that operate within a Freon atmosphere when incorporated into Trane Canada centrifugal type units; totally submersible pumps manufactured by Reda Pump Limited not exceeding 7 3/8" in diameter, and designed to be totally submerged into the fluid they are pumping for cooling purposes; and flame proof motors of an output exceeding 750 HP for use in underground mine service.

THE RESPONSE

In response to the allegations made by the complainants, counsel representing the importers, exporters, consulting engineering firms and OEMs argued that any injury suffered by the complainants was caused by factors other than the dumping and subsidizing of the goods and that WECAN, by itself, did not constitute a major proportion of the industry. It was argued that WECAN's principal difficulty had been caused by the parent's decision to enter into a joint venture with Teco Electric & Machinery Co., Ltd. of Taiwan, which impacted substantially on its ability to export motors to the U.S. market. It was alleged that WECAN was forced to maintain plant loading by increasing sales in Canada and that its attempts to buy market share in Canada were the cause of reduced prices and suppressed margins. Further, it was submitted that the company's bidding was often unnecessarily low because bids were based on flawed market intelligence and that WECAN lost the confidence of the marketplace, particularly in terms of service and delivery over past years. It was stressed that there was no causal link between the dumping and subsidizing of the subject goods and the conventional criteria of injury usually examined by the Tribunal such as market share, profits, employment and import penetration. Finally, it was alleged that WECAN had been shortsighted in its production and marketing strategies, and had not adapted to the evolving nature of the market for the subject goods.

Most counsel also urged the Tribunal to examine separately the impact from individual foreign suppliers and/or countries on the domestic industry and argued the points that follow in support of a no injury finding.

Counsel for Toshiba International Corporation (British Columbia), Toshiba Do Brasil S.A. (Brazil), and Toshiba Corporation (Japan) argued that the allegations of price suppression made by WECAN were based on perception and not substantiated by facts; that Reliance claimed the same business losses as WECAN's; that WECAN's profit and margin calculations were questionable; and that Toshiba's success in the marketplace was not based on price, but on customer satisfaction, timely delivery, quality product and long presence in the marketplace.

Counsel for Teco Electric & Machinery Co., Ltd. (Taiwan) and Madison Industrial Equipment Ltd. (British Columbia) argued that Taiwan was a low-cost country and that any price competition in the marketplace was not due to the dumping; that the complainants' difficulties were due to poor delivery, intra-industry competition and poor customer relations; and that parts should be excluded in order to further develop the manufacturing of the subject goods in Canada.

Counsel for the Jeumont-Schneider Canada Inc. (Quebec) and Jeumont-Schneider S.A. (France) argued that the alleged sales lost to their clients were not founded; that local content was a major reason for obtaining such sales; and that the margins of dumping as found by the Deputy Minister were unreasonable.

Counsel for CGEE Alsthom (France), Alsthom International Inc. (Quebec) and B.G. Checo International Ltd. (Quebec) argued that any alleged sales lost to Alsthom were unrelated to price, and that they had a competitive advantage over WECAN in the utilities sector of the market because of Alsthom's strong presence in world markets in other products supplied to the power generating industry.

Counsel for Leroy-Somer Canada Ltd. (Quebec) and Constructions électriques de Beaucourt (France) argued that the margins of dumping found against his clients were very low; that no case had been made for injury against the company; and that his clients did not actively pursue the market for motors greater than 200 HP.

Counsel for V.J. Pamensky Canada Inc. (Ontario), Crossman Machinery Co. Limited (British Columbia), WEG Motores S.A. (Brazil) and the Government of Brazil argued that all WEG motors were low-voltage commodity-type motors where few claims of injury had been made; that imports from Brazil were subject to the volatility of the Brazilian economy and technical dumping could not be avoided; that WEG motors' success in the marketplace was due to service and inventory availability; that WEG motors were being sold at good margin levels; that Brazil was a low-cost supplier and, therefore, low market prices were not due to dumping; and that most of the subsidy programs would not apply on future shipments.

Counsel for the Asea Brown Boveri companies argued that the class of goods as defined by the Deputy Minister should include all motors over 200 HP and that ABB was an inconsequential participant in this market; that ABB's strategy had been to withdraw from the market where price competition resulted in unacceptable profit levels in 1986; that ABB had only recently re-entered the market on a selective basis; and that the only lost contract allegation directed at ABB was taken for reasons other than price.

Counsel for Babcock & Wilcox Canada, a large user of motors which contracts for major components on large capital projects, argued that the Motor Department had outperformed WECAN as a whole over the last four years; that the basis of the calculations regarding WECAN's average negotiated margins was totally unclear; and that any injury claimed by WECAN was self-inflicted.

Counsel for Siemens Electric Limited (Quebec) and for Siemens Energy & Automation, Inc. (Georgia) argued that neither WECAN nor Reliance, on its own, accounted for a major proportion of the industry, and that injury had to be found in respect of the two firms jointly; that only a small portion of the complainants' case of lost sales and price suppression involved the United States; that the allegations made against Siemens were sales made to U.S. customers at U.S. market prices; and that a likelihood of injury had to be clearly foreseen and imminent. They also argued that a separate finding and reasons were necessary respecting imports from the United States in order to conform with section 43(1.1) of the Act.

In support of an exclusion for wound rotor induction motors (WRIM), counsel for Transwest Machinery & Dynequip Engineering Ltd. argued that WRIMs constitute a separate market segment; that such motors were used for separate applications and were normally sold in conjunction with controls as part of a "drive system;" that WRIMs constituted an insignificant part of the market; and that no material injury had been demonstrated against Yaskawa motors from Japan. Should a general exclusion for WRIMs not be granted, counsel requested an exclusion for WRIMs as one component of wound rotor drive systems used for specialized conveyor applications.

Requests for Exclusions

In addition to the product exclusions agreed to by the complainants, other exclusions from a finding of material injury were requested by counsel for the importers and exporters. These exclusions included:

(i) special high-torque motors produced by Toshiba International Corporation;
(ii) motors and motor kits in a knocked-down or incomplete condition and major parts thereof.

Public Interest Consideration

A request was made, pursuant to subsection 45(1) of the Act, to exclude from any injury finding those motors specifically ordered in 1981 from Mitsui & Company (Canada) Limited by the City of Edmonton for its Genesee Power Generating Station, which, because of delays caused by economic circumstances, prevented completion of planned deliveries until 1989 or later.

PRELIMINARY ISSUES

Before proceeding with the analysis of the evidence adduced, the Tribunal must address several issues that were raised during the inquiry. Some of these issues were the subject of rulings made during the proceedings while others arise out of argument submitted by counsel.

Issue of Standing

Of the three manufacturers of subject motors in Canada, WECAN, Reliance and GE Canada, the first two appeared before the Tribunal as complainants in this inquiry. The third manufacturer, GE Canada, did not claim any material injury suffered as a result of imports of motors over 200 HP from the subject countries.

In any question relating to standing, subsection 42(3) of the Act directs the Tribunal to take fully into consideration, in a dumping case, paragraph 1 of Article 4 of the Anti-Dumping Code and, in a subsidy case, paragraph 7 of Article 6 of the Code on Subsidies and Countervailing Duties. Such articles interpret the term "domestic industry" as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products in question constitutes a major proportion of the total domestic production of those products.

Over the period under review, WECAN and Reliance, together, accounted for more than half of total domestic shipments, a share which clearly represents a major proportion of the total domestic production of the subject motors. Even if WECAN were to be considered by itself, its share of total domestic shipments would still be within the threshold of what the Tribunal considers as constituting a major proportion of the domestic industry. Therefore, the Tribunal finds that WECAN and Reliance constitute the domestic industry for the purpose of this inquiry.

Issue of Motor "Parts"

Early in the inquiry and at the pre-hearing conference, representations were made by counsel for Teco Electric & Machinery Co., Ltd. and Madison Industrial Equipment Ltd. requesting the Tribunal to seek clarification from the Deputy Minister on the meaning of the words "major parts" as specified in the description of the goods contained in the preliminary determinations of dumping and subsidizing.[1] These determinations, issued on December 29, 1988, described the goods subject to the inquiry in the following terms:

> ... polyphase induction motors of an output exceeding 200 horsepower or 146 kilowatts, including motors and motor kits in a knocked-down or incomplete condition, originating in or exported from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America ....
>
> For greater clarity, a motor exported in a knocked-down or incomplete condition consists of most of the major parts and assemblies necessary to assemble the motor, whether imported in one or more shipments. The major parts thereof specifically include stators - wound or unwound, rotors - wound or barred, end brackets and frames wholly or partially machined, conduit boxes, ventilation/cooling systems, and assemblies thereof. [emphasis added]

At the opening of the hearing, the Tribunal ruled that the goods were properly defined and that it needed no additional explanation on what constitutes a major part to carry out its duties under the Act. It also noted that what parts or sub-assemblies will ultimately be subject to anti-dumping or countervailing duties in the event of a finding of material injury is for the Deputy Minister to determine on the basis of all the facts at the time of importation. The classification and the determination of the Deputy Minister at that time could be subject to administrative review, objection, redetermination and subsequently appealed to the Tribunal. In such an event, the Tribunal would have all the facts and expert evidence to decide in concrete terms, not in the abstract, whether specific parts not expressly mentioned in the final determinations fall within the class of goods as defined by the Deputy Minister.

The inquiry conducted by the Tribunal revealed that, except for one importer, no imports of parts for subject motors were reported by respondents to the Tribunal's questionnaires or by parties appearing at the hearing. While recognizing the interest potential importers of motor parts might have in such a question, as demonstrated by one importer of parts for smaller motors not subject to this inquiry, the Tribunal found the product definition, which includes a listing of parts specifically included, to be sufficiently clear to allow it to proceed with the inquiry without referring the issue to the Deputy Minister.

1. The final determinations of dumping and subsidizing did not change the definition of the goods except for correcting the kilowatt equivalence to 150 kW rather than 146 kW.

The Tribunal also notes that counsel for the complainants claimed no past or present injury from the importation of major parts, but requested a finding of likelihood of material injury on major parts to prevent the circumvention of a positive finding covering complete motors only.

Issue of a "Capped" Market

The goods subject to this inquiry encompass polyphase induction motors of an output exceeding 200 HP or 150 kW. At the pre-hearing conference, in response to counsel representing parties opposite arguing against the open-ended nature of the product definition in the upper power ranges, counsel representing the domestic industry suggested that the scope of the inquiry be limited to induction motors not exceeding 8,000 HP. This capping, in the eyes of counsel, was justified by the specificity of polyphase induction motors of an output exceeding 8,000 HP. In the last four years, the motors imported over this rating were exclusively for use in the nuclear industry where a number of stringent safety criteria are required. The market segment encompassed by these large motors is relatively small in terms of units compared to the market for the subject goods as a whole.

The Tribunal is of the view that its inquiry must focus on the domestic production of goods that are like those found to have been dumped or subsidized by the Deputy Minister. It is the Deputy Minister's responsibility to define the class of goods, and the Tribunal must accept this definition. It is only in its final considerations, in the light of all the evidence, that the Tribunal may deem it appropriate to exclude certain goods from its finding to truly reflect the marketplace conditions, notably, the range of products effectively produced or marketable by domestic producers.

The Tribunal's inquiry, therefore, covered the goods as described by the Deputy Minister, i.e. motors exceeding 200 HP. However, as will become apparent in the following sections, the Tribunal paid particular attention to the range of products manufactured by WECAN and Reliance; this is where, of course, the main of WECAN and Reliance's case rests, as well as being the range of products entering the Canadian marketplace at dumped or subsidized prices and, allegedly, causing material injury.

Issue of Cumulation

In cases involving more than one exporting country, or when a number of exporters operate from one country, the issue often arises as to whether the Tribunal, in its consideration of material injury, should consider the effect of the imports "en masse," in a cumulative manner, or segregate the impact imports, from each separate source, had on the domestic industry. Cumulation is also at issue when complaints against both dumping and subsidizing reach the Tribunal; in such instances, it has been, and continues to be, the Tribunal's practice, in accordance with its interpretation of the statute, to consider such dumping and subsidization determinations as requiring a single inquiry and to analyse the cumulative impact of both on domestic production.

In the present inquiry, a number of counsel argued that the Tribunal should not cumulate imports and that the question of whether imports from each named country were a cause of material injury should be determined separately.

The Tribunal rejects this contention. The Tribunal conducted an inquiry as to whether the dumping of subject motors originating in or exported from seven countries caused material injury to the production in Canada of like goods. This inquiry, first and foremost, focussed on the dumping of a class of goods whatever their origin. It does not mean, however, that the Tribunal will always find, in the case of a positive finding, against all named countries. There could well be specific reasons why imports from specific sources might be excluded. However, it is only after the cumulative effect of the dumped goods from all subject countries has been analysed that exclusions, if any, can be envisaged.

Issue of a Separate Finding for Goods of the United States

Because the meaning of section 43(1.1) of the Act was the subject of much discussion in the course of the hearing, the Tribunal thought it useful to set out its interpretation of that section.

Section 43(1.1) of the Act reads:

> Where an inquiry referred to in section 42 involves goods of the United States as well as goods of other countries, the Tribunal shall make a separate order or finding under subsection (1) with respect to the goods of the United States.

It has been argued by at least one party at the hearing that the section obligating the Tribunal to make a separate finding for goods of the United States must be a separately arrived at conclusion incorporating the relevant facts, law and reasoning necessary to reach that conclusion and that the two findings must be separate in substance. If the non-cumulation argument is accepted, it would mean that U.S. imports must be shown *per se* to have caused material injury to the production in Canada of like goods. In essence, this would mean that while the practice of cumulation would continue to apply to the determination of injury from dumped or subsidized imports from other countries, it would not apply to those from the United States. The Tribunal does not believe that this could have been the effect of adding section 43(1.1) to the Act.

One of the principles of interpretation of statutes is based on the assumption that the legislator is rational: the law is deemed to be a reflection of coherent and logical thought. This rationality first manifests itself within a particular enactment: the statute is to be read as a whole, and each of its components should fit logically into its scheme. This coherence should extend to other legislation, particularly in the same subject area.

Section 43(1.1) must be interpreted as part of its context, the Act. As a component of the Act, section 43(1.1) must be inserted in the scheme of the inquiry mentioned in section 42 of that Act.

Once a determination of dumping is made, section 42 of the Act requires that the Tribunal inquire as to whether the dumping or subsidizing has caused, is causing or is likely to cause material injury, or has caused or is causing retardation. Material injury means material injury to the production in Canada of like goods.

In assessing whether material injury has occurred in dumping and subsidy cases, the Canadian Import Tribunal and the Anti-dumping Tribunal, both predecessors of the Canadian International Trade Tribunal, have had a long-standing and uncontested tradition of analysing globally the impact of imports from all sources referred to in the Deputy Minister's preliminary determination. The Canadian International Trade Tribunal has continued this practice.

This practice is consistent with the international trade agreements which are implemented by Canada through the Act. The Anti-Dumping Code and the Code on Subsidies and Countervailing Duties implicitly recognize the potential for an aggregate analysis of the effects of dumped or subsidized imports from more than one country on a domestic industry; the Codes do not require country-by-country findings on injury and causation for each country under investigation, and simply refer to a causal relation between dumped or subsidized imports and injury, without specifying that such imports be from a single country.

The principle of cumulation is a well known principle, generally recognized and applied in the administration of anti-dumping and countervailing legislations by the nations actively applying the Codes in international trade. Indeed, one of these countries has specifically incorporated this principle in its trade legislation.

When Parliament adopted the legislation to give effect to the Free Trade Agreement, which amended the *Special Import Measures Act*, it is presumed to have acted in the knowledge of the domestic application of the principle of cumulation and of its widespread acceptance by Canada's major trading partners. At Article 1902, the Canada-U.S. Free Trade Agreement specifically states that "Each Party reserves the right to apply its anti-dumping law and countervailing duty law to goods imported from the territory of the other party." While the Canada-U.S. Free Trade Agreement changed the trade laws in both countries, it was only to set up new review mechanisms. Section 43(1.1) of the Act was part of the changes Canada introduced to give effect to these new review mechanisms.

It is not the view of the Tribunal that the Canada-U.S. Free Trade Agreement changed the analytical methodology and standards for injury determination in either country. If the Tribunal were to agree to the request that a separate inquiry is required when goods of the United States are involved, it would mean that the origin of the goods dictate the level of protection available to domestic producers against unfairly traded goods. One could envisage an inquiry where two exporting countries are found to have caused material injury to a domestic industry when their imports are cumulated, but where the injury caused by imports from each country, considered individually, might not have been material. Were such cases to involve the United States, the Tribunal would arrive at a negative finding because it conducted two inquiries; on the other hand, were countries other than the United States to be involved, a positive finding would be issued. This makes no practical sense because it would be tantamount to excluding U.S. goods from the effect of our trade laws unless their imports, by themselves, were a cause of material injury, or the goods originated exclusively from the United States, in which case country cumulation is not an issue. It would also *de facto* exclude foreign goods when they are not, by themselves, a cause of material injury, and are imported in conjunction with goods of U.S. origin.

Had section 43(1.1) of the Act intended to modify the substantive provisions found in the Act and described above, the provisions would have specifically so stated. Substantive legal modifications having an impact on the determination of injury in Canada could not have been operated by the mere addition of section 43(1.1) of the Act. Such an interpretation, which has radically changed the operation of anti-dumping and countervailing laws in this country, would mean that Parliament unwittingly changed the application of these trade laws in Canada.

It is the Tribunal's view that the section in question has merely added a procedural requirement for the Tribunal to issue a separate order or finding with respect to the goods of the United States. This is now required to further the purposes of the Canada-U.S. Free Trade Agreement and to allow the parties to initiate an appeal to a Binational Panel of a finding or decision of the Tribunal, for the portion of the Tribunal determination of injury affecting U.S. goods. Viewed in conjunction with the legislative scheme as a whole, past administrative practices of the Tribunal involving a resort to cumulation in a determination of material injury to the domestic industry could not have been affected by the mere addition of a provision requiring the Tribunal to issue a separate finding or decision for U.S. goods.

For all these reasons, the Tribunal has limited itself to the issuance of two separate findings on the basis of its analysis of the cumulative effect of the importation of dumped or subsidized goods from all sources without attempting a vertical severance of that analysis to isolate the effects of the dumping from the United States.

CONSIDERATION OF MATERIAL INJURY

Induction motors over 200 HP are largely destined to capital goods markets and their demand is a function of investments in such industries as pulp and paper, oil and gas, utilities, etc., which lag the market demand in these industries. Consequently, the business cycle for the subject motors lags behind the cycle in these key sectors. The Tribunal thus observed that a downturn in market demand for the subject motors did not coincide with the timing of the 1981-82 recession, but rather occurred in 1983 and 1984, and that WECAN's financial performance during the recession years appeared to be good.

The apparent market respecting shipments of the subject motors, following the low market levels of 1983-84, showed strong and steady increases between 1985 and 1988, the period of review for this inquiry. During this period, the size of the market increased by $19 million (70 per cent) while total sales from imports nearby doubled, and imports from the named countries grew at a more moderate rate (51 per cent). The largest annual increase took place in 1988 when the market grew by 31 per cent.

The domestic producers' share of the market peaked at 68 per cent of the market in 1986. This situation changed in 1987 as the domestic producers lost 10 points of share. However, a significant portion of this loss was to imports of motors over 8,000 HP destined for the nuclear industry that were sourced from West Germany, a country not subject to the Deputy Minister's preliminary or final determination of dumping. During 1988, the share held by the domestic producers increased by 2 points, largely resulting from the strong increase in sales reported by WECAN. That year, Canadian producers accounted for 60 per cent of a $45 million market, achieving gains chiefly at the expense of imports from the subject countries.

The combined share of the market held by the subject countries varied very little over the period (only 4 points). While such imports recovered 3 points of share in 1987, equalling the share held in 1985, their share of the market decreased by 4 points in 1988. The combined share of the market held by non-subject countries was negligible in 1985 and 1986, increased by 8 points in 1987 and remained at this level in 1988.

As regards individual market shares held by the subject countries, the share held by Japan, the largest import source over the period, peaked in 1985, declined sharply in 1986 (12 points), recovered almost fully in 1987, but again declined in 1988. The share held by the United States, the second most important source of product, increased by 7 points in 1986 over 1985, decreased by 4 points in 1987, but returned to 1986 levels in 1988. The share held by Brazil, the third largest source of imports, increased by 3 points in 1986 and remained fairly stable thereafter. The share held by Sweden decreased steadily over the period while imports from the other subject countries combined, i.e. the United Kingdom, France and Taiwan, increased to 5 per cent of the market in 1985 and remained fairly constant thereafter.

All named countries were involved in imports of motors in the 200 HP to 1,000 HP power range while only France, Japan and Sweden were involved in motors over 1,000 HP. In terms of sales value, 84 per cent of imports from the subject countries in 1988 were in the power range of over 200 HP to 1,000 HP while over 97 per cent were in the grouping of over 200 HP to 2,500 HP.

The complainants argued that an apparent market based on an upper limit of 8,000 HP would be a better base to assess the market penetration resulting from the dumping or subsidizing. The apparent market compiled on this basis showed a similar trend of strong growth as the uncapped market and, with the exception of West Germany, showed only slight variations in individual market shares occurring in 1987-88. The combined share held by WECAN and Reliance increased by 5 points in 1988 over 1987. The gains were achieved at the expense of the subject countries and, to a lesser extent, that of GE Canada.

Regardless of the apparent market table being used, the Tribunal sees no clear evidence of any loss of market share by the domestic producers to the dumped or subsidized imports, particularly WECAN and Reliance, nor a substantial degree of import penetration by any of the subject countries over the period of analysis. The domestic producers and the importers both benefited from the growth in market demand over the period. The Tribunal further notes that loss of market share was not a factor stressed in the complainants' case, and that any material injury suffered would take other forms.

Moreover, the complainants argued that the apparent market should be further defined by deleting the motors supplied for the Genesee project, on the basis that such motors were not alleged to have caused material injury. The Tribunal rejects such an approach and observes that, whether WECAN claimed injury or not in regard to a specific sale, the fact remains that such sale formed part of the market for the subject goods.

Induction motors over 200 HP are almost exclusively sold on a contract basis. Large contracts are initiated through the issuance of a request for quotation, which outlines the general requirements of a plant or mill with technical specifications and quantities provided. Following the receipt of bids, technical and commercial evaluations are undertaken. At this stage of the process, some bids might be discarded because of technical shortcomings or high

prices and a "short list" is usually established. The specifications and quantities of the motors are frequently changed during the course of negotiations in order to achieve better efficiency in the application, or as a result of the refinement of engineering design. The final tenders might thus differ significantly from the initial call for tenders, rendering price comparisons somewhat meaningless and making commercial intelligence frequently unreliable.

Because of the variety of customers found in the marketplace, the extent of bid evaluation varies significantly. The degree of sophistication and depth of analysis varies according to the size and the nature of the contract. It is not uncommon for consulting firms to be hired to handle large contracts in such sectors as pulp and paper and the utilities. Such consultants will undertake detailed technical and commercial evaluation of bids, establish in conjunction with the end user a short list, and invite successful bidders for subsequent technical and commercial discussions. Recommendations are passed on to the end user, which makes the ultimate decision. Final prices and quantities are normally determined at this time. At the other end of the spectrum, a very informal evaluation of verbal quotes might be made and a quick decision taken, for example, when purchasing motors for replacement purposes or where quick delivery is required. The importance of price varies according to a large number of circumstances dictated by time frame constraints, customer preference and particular application. The Tribunal noted that price competition was very strong in certain sectors, particularly in dealing with large OEMs, consultants and consulting engineering firms.

As stated before, for the purposes of this inquiry, WECAN and Reliance constituted the domestic industry, the former being by far the most significant player and the one which assumed central importance in this inquiry. WECAN's claims of material injury were based primarily on sales lost to dumped and subsidized imports and on price suppression caused by these imports which resulted in erosion of profit margins.

A considerable portion of the hearing was devoted to the discussion of the bidding and award of business relating to a large number of contracts where the complainants alleged lost business and price suppression. The majority of these claims were addressed against imports from Japan, the United States and Brazil. A number of claims were also made against the United Kingdom, France, Taiwan and Sweden. On the basis of the complainants' claims, the Tribunal sent a detailed request for information to a number of end users and consultants. Responses provided complete bid details relating to certain contracts, including bid evaluation sheets, reasons for awarding the contract to a given supplier and other pertinent documentation relating to the award of a contract. Responses covered approximately 25 major contracts awarded over the last three years and involved a varied range of customers, i.e. large consulting firms, OEMs, distributors and end users. A number of additional contracts were raised in the complainants' case to supplement their initial allegations. With regard to all these allegations, the written evidence obtained by the Tribunal was corroborated and supplemented by a number of witnesses present or invited to appear at the proceedings, including consultants, consulting engineering firms, importers and end users directly involved in the bid process, which provided thorough insight into the bid negotiations and relative importance of price and non-price factors in the purchasing decision. The Tribunal thus obtained complete information respecting these contracts which were further subject to extensive cross-examination during the hearing.

The Tribunal examined each of the allegations carefully in order to establish the relative price levels of the bids, the non-price factors present and the reasons for awarding the contract. In the complainants case, it was noted that evidence of price suppression and sales lost to low-

priced imports began in the latter part of 1983 and intensified in 1986 and thereafter. However, during the hearing, the complainants' conceded that any injury suffered was not material until 1987. The Tribunal thus paid particular attention in its analysis to the contracts awarded for delivery in 1987 and up to the present time.

WECAN claimed that it lost sales of some $12 million since 1987, an amount that represents roughly the average total annual import level from all the subject countries. Of the large number of allegations made, which appeared impressive at first glance, almost four-fifths were considered questionable or unfounded upon closer scrutiny of the circumstances leading to the purchasing decision by the end user. There were several non-price factors at play in awarding the contracts, including plant standardization, preference for a given brand, product design, delivery time frames, longstanding commercial relationships, national loyalty, local content and attitude demonstrated during contract negotiations. There were also a number of contracts, where adding the margin of dumping or subsidizing to the winning bid price would not have changed the purchasing decision in favour of WECAN or Reliance. In these instances, the price advantage appeared to have been related to low-cost imports. As regards the remaining valid claims, the Tribunal is of the view that such claims did not constitute, by themselves, sufficient grounds to conclude that material injury was, and is being, caused to WECAN.

The allegations made by Reliance consisted mostly of a duplication of the contracts also claimed to have been lost by WECAN and a few examples of margin erosion. As was the case with WECAN, most of these claims were without merit or could not be traced specifically to a precise dumped or subsidized source. The few claims that were found to be valid constituted an insignificant amount relative to Reliance's total annual sales since 1987.

The main argument advanced by the complainants respecting price suppression was that each contract where dumped or subsidized imports competed against Canadian producers was price suppressive and established a precedent for upcoming contracts. The Tribunal is of the view that there exists no direct evidence of price suppression in this case given the customized nature of the motors for each contract and the absence of any meaningful price lists. As regards this latter point, the use of price lists filed in the inquiry was of no assistance in determining pricing trends. WECAN's price lists were general guides to establish the parameters for a project and bore no relationship with actual bid prices. Thus, any price suppression suffered would be expressed in an indirect fashion, in this case, in terms of margin erosion. WECAN recognized this difficulty and filed, as the centrepiece of its case for price suppression, a chart plotting its monthly moving, average negotiation margins (i.e. bid price minus works delivered cost) for the years 1983 to 1988, and superimposing the margins at which some of the major contracts were obtained during the years 1987 and 1988.

The use of the beginning of 1983 as a reference point against which all subsequent bids are compared was strongly criticized by opposing counsel during the hearing and, in the Tribunal's view, is questionable given that material injury is alleged starting only in 1987. A change in the reference year would significantly modify the outcome of the analysis. More importantly, comparing quoted bids at an indeterminate stage of the bid process with final bid price for a few selected contracts, bearing in mind the usual variables in reaching the final product requirements and negotiations in price after the establishment of a short list, is difficult at best.

This leaves the Tribunal with a very imperfect tool indeed for assessing margin erosion as claimed by WECAN. While the Tribunal accepts that there was a drop in margins in 1988 over 1987, this was accompanied by a substantial rise in sales, increased costs and other factors which all impacted on the company's bottom line.

The Tribunal also examined closely the specific claims of price suppression and erosion caused by the dumped and subsidized imports. As was the case with allegations of lost sales, only a fraction of the examples was considered to be founded. In one such example covering a large contract awarded in 1988, it was found that a price reduction made by WECAN in arriving at final prices was due to the normal negotiation process entered into with the customer, and that the targeted price being sought by the customer was not related to dumping or subsidizing.

The Tribunal also has difficulty in accepting the claim of general price suppression caused by the dumped or subsidized imports. It notes that major players in the marketplace, such as Toshiba, were not always the lowest bidders on major contracts and that their bids were sometimes clearly uncompetitive.

The Tribunal is of the view that, while there was some indirect evidence of price suppression expressed as an erosion of profit margins, such price suppression did not contribute in a material way to any injury that might have been experienced by WECAN.

The argument was made that WECAN was prevented from achieving sufficient margins to permit an acceptable profit level over a business cycle. In this regard, the Tribunal paid particular attention to WECAN's desired operating profit margin (operating profit as a percentage of net sales), a figure which was revealed in the confidential session. The actual operating profit margin shows an increase in 1986 (over 1985), a year in which no material injury was claimed. This margin continued to rise in 1987, no doubt helped by the significant rise in export sales to the United States. WECAN evidently chose to maintain margins at the expense of domestic market share in 1987, while enjoying a substantial increase in export sales. Although total sales of subject motors increase in 1988, the operating profit margin declined. Nevertheless, it must be noted that the average profit margins for the years 1987 and 1988, adjusted for certain factors which will be further explained, were still within the acceptable profit margins noted in WECAN's own testimony.

During the hearing, much discussion surrounded the creation of a joint venture between Westinghouse Electric Corporation (WECAN's parent firm) and Teco Electric & Machinery Co., Ltd. of Taiwan, which gave the Westinghouse Motor Co. responsibility for marketing in the United States, including the TEFC/explosion-proof market sector, and which resulted in WECAN losing its exclusivity for sales in that market sector. The impact on WECAN's export sales to that market in 1988 was dramatic as exports, which were significant, fell by more than half. The impact of this decline on company operations meant that domestic sales had to carry a proportionately greater amount of overhead and, hence, profits on domestic sales were adversely affected. In the Tribunal's view, WECAN chose to increase domestic market sales volume at the expense of margin in order to compensate for the significant void left by the decrease in exports. WECAN succeeded in large measure in increasing domestic sales in 1988 and its share of the market to a level equivalent to 1986, a year in which no material injury was claimed. Overall, the company total subject motor sales in 1988 were larger than in any of the previous seven years for which data are available, and the Tribunal is convinced that the

reduced profitability on domestic sales experienced in 1988 was primarily caused by WECAN's decision to go after domestic market share in order to protect plant loading.

In summary, while there was a decline in the operating profit margin in 1988 over the previous year, it is doubtful that any injury suffered can be attributed in any significant measure to the dumping and subsidizing of the goods. Rather, the Tribunal attributes this decline to the dramatic drop in export sales, which imposed a heavier overhead burden on domestic sales and forced WECAN to seek Canadian sales more aggressively and at lower margins, and to changes in sales arrangements with WECAN's selling arm, WESCO, matters which are of a confidential nature, but which had a negative impact on the bottom line. Furthermore, it must be noted that the average operating profit margins for the years 1987 and 1988, adjusted for such factors, were still within the acceptable profit margins noted in WECAN's own testimony.

In terms of operating profit, Reliance had a much different experience than WECAN in 1988. Its focus on export sales to the United States had a positive impact on its profitability on sales of subject goods sold for domestic consumption. As a result, the company improved its operating profit margin in 1988 over the previous year.

The evidence filed and the testimony of GE Canada at the hearing enabled the Tribunal to assess the financial performance of this other significant producer of motors. As noted previously, GE Canada did not claim any material injury arising from the dumping and subsidizing of the goods. The company achieved substantial gains in gross margins in 1988 over 1987, as a result of changes in sales mix, selectivity in quoting on contracts, increased investments in Peterborough, Ontario, and productivity improvements. GE Canada noted for the public record that its strategy is to approach the market for motors on a worldwide basis and use overall corporate facilities to its most economic advantage.

The Tribunal also looked at other criteria of material injury not stressed in the complainants' case, such as the impact on employment, orders booked and plant loading; in all instances, the criteria indicate strong performance and cannot be used to support a claim of material injury.

In view of the absence of any erosion in the complainants' market share, a lack of import penetration, evidence of lost sales and margin erosion attributable to the dumping and subsidizing, and in view of the lack of any material impact on the complainants' profitability resulting from the dumping and subsidizing, and the absence of any other indicators of injury, the Tribunal concludes that the dumping and the subsidizing of the subject goods have not caused and are not causing material injury to the production in Canada of like goods.

Counsel for the complainants argued that the induction motor business is cyclical, that the end of the peak of the cycle is near and that a downturn could be expected as early as 1990. During the hearing, there was general agreement among the participants that business was booming at the present time. The Tribunal is not persuaded from the evidence adduced that there exists, however, an imminent threat of a falling off in market demand. The testimony of some major participants as well as Statistics Canada data on planned capital expenditures indicate strong evidence of continued strength in such key sectors as pulp and paper, and oil and gas for the foreseeable future. The Tribunal further notes that WECAN's own planning data anticipate some growth in demand up to 1991. Both Canadian producers

appear in good financial position at this time, or at least in better position than over the recent past, current bookings are up and plant loading is high. Given the absence of any past or present material injury, continued strong demand and the absence of any factors leading to a change in market conditions over the foreseeable future, the Tribunal finds that the dumping and the subsidizing of the subject goods from the subject countries are not likely to cause material injury to the production in Canada of like goods.

CONCLUSION

The Tribunal concludes that the dumping in Canada of polyphase induction motors of an output exceeding 200 HP or 150 kW, including motors and motor kits in a knocked-down or incomplete condition, originating in or exported from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America, and the subsidizing of the same goods originating in or exported from Brazil have not caused, are not causing and are not likely to cause material injury to the production in Canada of like goods.

In light of these conclusions, the Tribunal need not address the issues of product exclusions and public interest, as requested by the various parties.

REQUEST FOR A REFERENCE TO THE DEPUTY MINISTER

At the conclusion of the hearing, counsel for the complainants requested the Tribunal, pursuant to section 46 of the Act, to direct the Deputy Minister to cause an investigation to be initiated respecting the dumping of the subject goods originating in or exported from Finland.

During the course of the hearing, evidence was obtained concerning imports of subject motors from Finland, and of orders booked from that source, but not yet shipped. WECAN was not aware of these elements when it filed its complaint to National Revenue as these transactions had not yet been reported by Statistics Canada. Counsel submitted that such imports, past as well as imminent, were or are to be effected at dumped prices and that there was a reasonable indication that this dumping had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

Counsel supported the allegations of dumping by estimating normal values and export prices by using a costing model developed by WECAN from its own data and adjusted to account for different manufacturing costs in Finland. This approach followed the methodology used by National Revenue in its preliminary and final determinations.

The Tribunal has reviewed the submissions and notes that many of the assumptions made in the calculations of the normal values and export prices were refuted by parties opposite, and that using slightly different data would result in little or no dumping. Furthermore, with regard to the injury allegations, the Tribunal notes that most of the contracts claimed to have been lost to imports from Finland, or which were causing a price suppressive effect, already formed part of the record for this inquiry as they were erroneously attributed to imports from Sweden. The Tribunal, in the course of its analysis of the evidence, has concluded that these contracts were not the cause of material injury to the domestic industry.

In these circumstances, the Tribunal is not convinced that there is any evidence that the subject motors from Finland are imported at dumped prices; and even if dumping were present, the evidence advanced by the industry fails to disclose a reasonable indication of material injury. Consequently, the Tribunal rejects the request for a reference to the Deputy Minister under section 46 of the Act.

Presiding Member: Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.

Member: Raynald Guay
Raynald Guay

Member: Arthur B. Trudeau
Arthur B. Trudeau

Witnessed: Robert J. Martin
Robert J. Martin
Secretary