



Ottawa, Tuesday, August 1, 2000

Inquiry No.: NQ-2000-001

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

**CERTAIN REFRIGERATORS, DISHWASHERS AND DRYERS ORIGINATING IN
OR EXPORTED FROM THE UNITED STATES OF AMERICA AND PRODUCED BY,
OR ON BEHALF OF, WHITE CONSOLIDATED INDUSTRIES, INC. AND
WHIRLPOOL CORPORATION, THEIR RESPECTIVE AFFILIATES, SUCCESSORS
AND ASSIGNS**

FINDINGS

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry following the issuance by the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) of a preliminary determination dated April 3, 2000, and of a final determination dated June 30, 2000, respecting the dumping in Canada of certain top-mount electric refrigerators, electric household dishwashers and gas or electric laundry dryers originating in or exported from the United States of America and produced by, or on behalf of, White Consolidated Industries, Inc. and Whirlpool Corporation, their respective affiliates, successors and assigns.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that:

1. the dumping in Canada of the aforementioned refrigerators has caused material injury to the domestic industry, excluding those:
 - with a capacity of 18.5 cubic feet and above; or
 - destined for use in the Habitat for Humanity Program;
2. the dumping in Canada of the aforementioned dishwashers has caused material injury to the domestic industry (Member Close dissenting), excluding those:
 - with stainless steel interiors (tubs); or
 - destined for use in the Habitat for Humanity Program; and
3. the dumping in Canada of the aforementioned dryers has caused material injury to the domestic industry (Member Close dissenting), excluding those:
 - with controls at the front, removable tops and chassis designed to be stacked on top of washers; or
 - destined for use in the Habitat for Humanity Program.

The Canadian International Trade Tribunal also finds that the requirements of paragraph 42(1)(b) of the *Special Import Measures Act* with respect to massive dumping and of section 46 of the *Special Import Measures Act* with respect to an advice to the Commissioner regarding other allegedly dumped goods from the United States have not been met.

Patricia M. Close
Patricia M. Close
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Zdenek Kvarda
Zdenek Kvarda
Member

Michel P. Granger
Michel P. Granger
Secretary

The Statement of Reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: June 26 to 30, 2000
July 4 and 5, 2000
Date of Finding: August 1, 2000

Tribunal Members: Patricia M. Close, Presiding Member
Pierre Gosselin, Member
Zdenek Kvarda, Member

Director of Research: Peter Welsh

Researchers: Audrey Chapman
Randy Heggart

Director of Economics: Dennis Featherstone

Statisticians: Lise Lacombe
Joël J. Joyal

Counsel for the Tribunal: Gilles B. Legault
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Registrar Officer: Claudette D. Friesen

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Alejandra C. Flah
Orlando E. Silva
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for Camco Inc.

(Domestic Manufacturer)

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Geoffrey C. Kubrick
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Richard S. Gottlieb
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Jesse I. Goldman
Jeffery D. Jenkins
Peter Collins
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WCI Canada Inc.

Richard G. Dearden
Wendy Montgomery
for Maytag Corporation

Dalton J. Albrecht
Neil Campbell
Markus Koehnen
for Sears Canada Inc.

François-B. Côté, Q.C.
Duane E. Schippers
for Commissioner of Competition

(Exporters/Importers/Purchaser/Other)



Ottawa, Wednesday, August 16, 2000

Inquiry No.: NQ-2000-001

**CERTAIN REFRIGERATORS, DISHWASHERS AND DRYERS ORIGINATING IN
OR EXPORTED FROM THE UNITED STATES OF AMERICA AND PRODUCED BY,
OR ON BEHALF OF, WHITE CONSOLIDATED INDUSTRIES, INC. AND
WHIRLPOOL CORPORATION, THEIR RESPECTIVE AFFILIATES, SUCCESSORS
AND ASSIGNS**

Special Import Measures Act — Whether the dumping in Canada of the above-mentioned goods has caused material injury or retardation or is threatening to cause material injury to the domestic industry.

DECISION: The Canadian International Trade Tribunal hereby finds that:

1. the dumping in Canada of certain top-mount electric refrigerators has caused material injury to the domestic industry, excluding those:
 - with a capacity of 18.5 cubic feet and above; or
 - destined for use in the Habitat for Humanity Program;
2. the dumping in Canada of certain electric household dishwashers has caused material injury to the domestic industry (Member Close dissenting), excluding those:
 - with stainless steel interiors (tubs); or
 - destined for use in the Habitat for Humanity Program; and
3. the dumping in Canada of certain gas or electric laundry dryers has caused material injury to the domestic industry (Member Close dissenting), excluding those:
 - with controls at the front, removable tops and chassis designed to be stacked on top of washers; or
 - destined for use in the Habitat for Humanity Program.

The Canadian International Trade Tribunal also finds that the requirements of paragraph 42(1)(b) of the *Special Import Measures Act* with respect to massive dumping and of section 46 of the *Special Import Measures Act* with respect to an advice to the Commissioner regarding other allegedly dumped goods from the United States have not been met.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	June 26 to 30, 2000 July 4 and 5, 2000
Date of Finding:	August 1, 2000
Date of Reasons:	August 16, 2000
Tribunal Members:	Patricia M. Close, Presiding Member Pierre Gosselin, Member Zdenek Kvarda, Member

Director of Research: Peter Welsh

Researchers: Audrey Chapman
Randy Heggart

Director of Economics: Dennis Featherstone

Statisticians: Lise Lacombe
Joël J. Joyal

Counsel for the Tribunal: Gilles B. Legault
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Participants: Riyaz Dattu
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Larry Andrade
for White Consolidated Industries, Inc.
WCI Canada Inc.

Richard G. Dearden
Wendy Montgomery
for Maytag Corporation

Dalton J. Albrecht
Neil Campbell
Markus Koehnen
for Sears Canada Inc.

François-B. Côté, Q.C.
Duane E. Schippers
for Commissioner of Competition

(Exporters/Importers/Purchaser/Other)

Witnesses:

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Richard H. Rye
Acting Vice-President of Finance
Camco Inc.

Jim Liddy
Retired
Maytag Canada

W.D. (Bud) Hamilton
General Marketing Manager
Maytag Canada

Stephen C. Kennedy
General Manager
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Sean Kruuv
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Ted Dosch
Controller, Vice-President of Finance
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Douglas I. Bonawitz
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John Oulahen
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Alain Desmarais
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Brault et Martineau

Michael C. Gnat
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Ottawa, Wednesday, August 16, 2000

Inquiry No.: NQ-2000-001

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WHIRLPOOL CORPORATION, THEIR RESPECTIVE AFFILIATES, SUCCESSORS
AND ASSIGNS**

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member
PIERRE GOSSELIN, Member
ZDENEK KVARDA, Member

STATEMENT OF REASONS

BACKGROUND

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry following the issuance by the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) of a preliminary determination dated April 3, 2000, and of a final determination dated June 30, 2000, respecting the dumping in Canada of certain top-mount electric refrigerators, electric household dishwashers and gas or electric laundry dryers originating in or exported from the United States of America and produced by, or on behalf of, White Consolidated Industries, Inc. (WCI) and Whirlpool Corporation (Whirlpool), their respective affiliates, successors and assigns.

On April 4, 2000, the Tribunal issued a notice of commencement of inquiry.² As part of the inquiry, the Tribunal sent questionnaires to the Canadian manufacturer, importers, purchasers and foreign producers of certain top-mount electric refrigerators, electric household dishwashers and gas or electric laundry dryers. Respondents provided production, financial, import and market information, as well as other information, for the period from 1997 to the first quarter of 2000. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports covering those years.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, all exhibits filed by the parties throughout the inquiry and their replies to the requests for information, the transcript of all proceedings and excerpts of transcripts of a judicial review, by the Federal Court of Canada – Trial Division, of the Commissioner's preliminary determination of dumping.³ All public exhibits were made available to the parties. Protected exhibits were made available only to independent counsel who had filed a declaration and confidentiality undertaking with the Tribunal in respect of the use, disclosure, reproduction, protection and storage of confidential information on the record of the proceedings,

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1. R.S.C. 1985, c. S-15 [hereinafter SIMA].
 2. C. Gaz. 2000.I.1173.
 3. Court File No. T-664-00.

as well as the disposal of such confidential information at the end of the proceedings or in the event of a change of counsel.

Public and in camera hearings were held in Ottawa, Ontario, from June 26 to 30, 2000, and on July 4 and 5, 2000. The sole domestic producer, Camco Inc. (Camco) of Mississauga, Ontario, and Whirlpool, Inglis Limited (Inglis), WCI and WCI Canada Inc. (WCI Canada) were represented by counsel at the hearing. In addition, Maytag Corporation (Maytag), Maytag Canada, Sears Canada Inc. (Sears) and the Commissioner of Competition were represented.

The Tribunal also heard testimony from a witness from General Electric Appliances (GEA), who had been subpoenaed by one of the parties, and from four witnesses who appeared at the Tribunal's request. They represented The Brick Warehouse Corporation, Appliance Canada, Brault et Martineau and Midnorthern Appliance Inc.

On May 11, 2000, the Tribunal indicated to the parties that it was conducting its inquiry with respect to three separate products. Also, a number of other matters were raised prior to and during the hearing. The Tribunal made a number of rulings on these matters that form part of the record. These included requests for information addressed to the parties, notices of matters arising and requests for the limited disclosure of confidential information in Camco's injury allegations. The Tribunal is satisfied that parties complied with its direction in these matters.

During these proceedings, Camco introduced an allegation that massive importation of the subject goods has occurred in anticipation of the application of provisional duties. Camco requested the Tribunal to make a finding of massive importation against WCI and Whirlpool. Also, Inglis introduced a request, pursuant to section 46 of SIMA, that the Tribunal find that there was a reasonable indication that other U.S. producers not named by the Commissioner were dumping similar goods and were causing injury.

On April 26, 2000, WCI and WCI Canada requested an opportunity to make representations on the public interest question pursuant to subsection 45(2) of SIMA. By letter dated May 9, 2000, the Tribunal advised counsel and parties of record that, in the event of an injury finding, it would receive representations on the question of whether it should conduct a public interest investigation. When the Tribunal issued its finding on August 1, 2000, it informed parties and interested persons of the procedure and deadlines for making such representations.

RESULTS OF THE COMMISSIONER'S INVESTIGATION

The Commissioner's investigation covered all imports of the subject goods during the period from October 1, 1998, to September 30, 1999. The margins of dumping and the percentage of goods found to be dumped are set out in the following table.

Table 1
Summary of Margins of Dumping by Exporters

Exporter	Quantity of Goods Dumped (%)	Weighted Average Margin of Dumping (%)
Refrigerators		
WCI	63.6	5.5
Whirlpool	99.9	16.3
Dishwashers		
WCI	83.0	13.7
Whirlpool	90.3	13.0
Amana	-	35.8
Dryers		
WCI	99.8	13.3
Whirlpool	96.2	15.9

Source: Canada Customs and Revenue Agency, *Final Determination of Dumping and Statement of Reasons*, 30 June 2000, Tribunal Exhibit NQ-2000-001-4, Administrative Record, Vol. 1 at 80.2.

PRODUCT

Product Definition and Description

The products subject to the Tribunal's inquiry are defined as:

top-mount electric refrigerators, in sizes greater than 14.5 cubic feet (410.59 litres) and less than 22 cubic feet (622.97 litres), electric household dishwashers, built-in or portable, greater than 18 inches (45.72 centimetres) in width, and gas or electric laundry dryers, originating in or exported from the United States of America and produced by, or on behalf of, WCI and Whirlpool, their respective affiliates, successors and assigns.

The products manufactured by Camco, WCI and Whirlpool are sold under brand names and private labels. The products manufactured by Camco are sold under the brand names GE, Hotpoint, Moffat, McClary and Concept II, as well as under private labels, including Kenmore and Beaumark.

WCI, through its wholly owned subsidiary, WCI Canada, sells the subject goods in Canada under the brand names Frigidaire, Frigidaire Gallery, White-Westinghouse, Kelvinator, Tappan, Gibson and General, as well as under private labels, including Kenmore.

Whirlpool, through its wholly owned Canadian subsidiary, Inglis, sells the subject goods in Canada under the brand names Whirlpool, Inglis, Kitchen Aid, Roper, Admiral and Estate, as well as under private labels, including Kenmore.

Production Process

Each of the three types of appliances is manufactured in combination fabrication and assembly plants. Raw materials include cold-rolled steel sheet and coil, aluminum, tubes, plastics, paints and chemicals. Various components, such as condensers, compressors, pumps and motors incorporated in the finished goods, are fabricated by outside suppliers. The manufacturing process consists of several subprocesses. Fabrication techniques, such as metal stamping and forming, plastic vacuum moulding and forming, injection moulding, wire harness assembly, painting, finishing, final assembly and inspection, are used in the production of certain goods.

Energy Efficiency Requirements

All appliances are subject to government regulations with respect to product safety and energy consumption. Changes in regulations regarding energy consumption for refrigerators are to be introduced in Canada in 2002.

Camco's 16- and 18-cubic-foot refrigerators presently meet the current energy consumption regulation (February 1995) at the listed rating of 635 and 656 kWh per year respectively. The Department of Natural Resources (NRCan) is in the process of writing new standards for 16- and 18-cubic-foot refrigerators. It is expected that these new standards will match the U.S. Department of Energy's 2001 requirements. These new standards will be implemented in the United States on July 1, 2001. A March 1999 bulletin from NRCan proposed that these new standards for 16- and 18-cubic-foot refrigerators be implemented in Canada one year after implementation in the United States, that is, on July 1, 2002. Camco has announced⁴ its plans to stop manufacturing 16- and 18-cubic-foot top-mount refrigerators rather than invest to meet the upcoming changes in energy standards. Camco has reached a supply agreement with Amana to replace the refrigerators in this size range beginning in July 2002.

DOMESTIC INDUSTRY

Camco is the only Canadian manufacturer of certain refrigerators,⁵ dishwashers and dryers. It also manufactures ranges in Canada (as do the named importers). Camco's headquarters is located in Mississauga and its manufacturing facilities are located in Hamilton, Ontario, and Montréal, Quebec. Camco employs approximately 1,500 people in Canada who are associated with the production and sale of certain refrigerators, dishwashers and dryers.

Camco is a public company, whose shares are listed on the Montréal and Toronto stock exchanges. General Electric Canada Inc. (GE Canada) owns 51 percent of Camco stock. GSW Inc. owns 20 percent of the stock, while the remaining 29 percent is publicly held. General Electric Company of Louisville, Kentucky, owns 100 percent of GE Canada stock.

Refrigerators are manufactured at Camco's facilities in Hamilton. In addition to 16- and 18-cubic-foot top-mount refrigerators produced at its Hamilton plant, Camco manufactures 12- and

4. Camco press release dated November 10, 1999, Manufacturer's Exhibit D-1, Tab 12, Administrative Record, Vol. 13.2.

5. W.C. Wood Co. Canada, the only other Canadian manufacturer of electric refrigerators, produces single-door refrigerators without top-mount freezers and 11.8-cubic-foot (334.14-litre) top-mount refrigerators (non-subject goods).

22.1-cubic-foot (625.80-litre) top-mount refrigerators and an 18-cubic-foot bottom-mount refrigerator. Camco imports top-mount refrigerators from GEA in the United States to supplement its product line in Canada. These include top-mount refrigerators in the following sizes: 18.2 cubic feet (515.37 litres), 19 cubic feet (538.02 litres), 20.6 cubic feet (583.33 litres) and 21.6 cubic feet (611.64 litres). Camco also imports 14.4-cubic foot (407.76-litre) models from Mexico. Camco plans to continue to source some larger top-mount refrigerators from GEA and Amana that satisfy higher price points and provide additional features (i.e. ice and water dispensers).

Built-in and portable dishwashers are manufactured at Camco's facilities in Montréal. Camco imports a minimal quantity of dishwashers from GEA and exports both built-in and portable dishwashers to GEA in the United States. Exports to the United States of the built-in dishwashers are on an as required basis. There are no contracts or minimum quantities. Camco acts as a surge plant for built-in dishwashers for GEA.⁶

Camco produces 3.4-, 6.0- and 7.0-cubic-foot electric and gas dryers at Camco's facilities in Montréal. In March 1999, a new supply agreement was reached to supply GEA with certain models of dryers through to December 31, 2003. Under this agreement, GEA will purchase a guaranteed minimum quantity of 2.7 million dryers, with an anticipated sales value of \$600 million, during the term of the agreement.

IMPORTERS AND EXPORTERS

There are several producer-exporters of refrigerators, dishwashers and dryers in the United States. The Canada Customs and Revenue Agency (CCRA) investigated imports of the subject goods manufactured by WCI and Whirlpool.

Whirlpool

Whirlpool is a public corporation headquartered in Benton Harbor, Michigan. Today, the company manufactures in 13 countries and markets products under 11 major brand names in more than 170 countries. Whirlpool manufactures and markets refrigerators, dishwashers, dryers, clothes washers, freezers, ranges, compactors, room air conditioners and microwaves, together with portable appliances such as stand mixers, hand mixers and blenders.

Whirlpool commenced producing refrigerators in 1955. The subject refrigerators are produced in Evansville, Indiana. Whirlpool began producing dishwashers in 1949. Dishwashers are produced in Findlay, Ohio. The company commenced producing dryers in 1959. Dryers are produced in Marion, Ohio.

Inglis

Inglis, of Mississauga, is a wholly owned subsidiary of Whirlpool and is the importer and distributor in Canada of products made by Whirlpool. In 1969, Whirlpool purchased 17 percent of Inglis shares, a Canadian company founded in 1859 by Mr. John Inglis in Guelph, Ontario. Whirlpool acquired the remaining 83 percent during 1984-90.

Inglis imports refrigerators, dishwashers, dryers, washers, cooktops, built-in ovens, freezers, microwaves, compactors, air conditioners and portable appliances for resale from Whirlpool. Inglis

6. *Transcript of Public Hearing*, Vol. 1, 5 July 2000, at 18.

manufactures ranges at its plant in Montmagny, Quebec. Inglis began importing refrigerators from Whirlpool in 1985, dishwashers, in 1990 and dryers, in 1995.

In the past, Inglis produced certain refrigerators, dishwashers and dryers in Canada. Production of 16- to 18-cubic-foot refrigerators in Canada was phased out in 1991. Inglis never manufactured 20- and 22-cubic-foot refrigerators in Canada. Dishwasher production moved to Findlay in 1990. In 1995, production of dryers was transferred from Cambridge, Ontario, to a plant in Marion. Whirlpool consolidated the manufacture and design of these products into larger plants in the United States. According to Inglis, this move increased efficiencies and leveraged investment already being made at these plants in the United States, thereby allowing Inglis to introduce, along with other improvements and innovations, more energy-efficient refrigerators, dishwashers with steel tubs and dryers with advanced electronic controls.

WCI

WCI, a U.S. corporation, is a wholly owned subsidiary of White Consolidated Holdings, Inc. The latter is a wholly owned subsidiary of AB Electrolux of Sweden, a public company.

WCI is involved in the manufacture, sale and distribution of major appliances, home comfort products, appliance components, outdoor power equipment and commercial laundry equipment and markets its products to wholesalers, manufacturers, builders, dealers and private-label customers located throughout the world. WCI has eight major operating divisions, namely, Husquavarna, Forest & Garden, Tecfor, Dometic, The Eureka Company, Beam, the ELX Group and Frigidaire Home Products.

The subject goods are sold through the Frigidaire Home Products division of WCI. All of the products sold by WCI Canada, except certain cooking products (e.g. ranges, built-in ovens and cooktops), are manufactured in the United States. Those cooking products not manufactured in the United States are produced at a facility in L'Assomption, Quebec, by WCI Canada. The subject refrigerators are produced at facilities in Greenville, Michigan, and in Anderson, South Carolina. Dishwashers are produced at a facility in Kingston, North Carolina. The subject dryers are produced at a facility in Webster City, Iowa. WCI's exports to Canada of refrigerators began in 1993, dishwashers, in 1990 and dryers, in 1991.

WCI Canada

WCI Canada, of Mississauga, is a wholly owned subsidiary of WCI. WCI Canada is the importer and distributor in Canada of products made by WCI.

Prior to 1990, certain refrigerators, dishwashers and dryers were produced in Canada. The company implemented a North American manufacturing strategy and consolidated certain product manufacturing which resulted in the transfer of production to the United States of dishwashers in 1990, dryers, in 1991 and refrigerators, in 1993.

Other Suppliers in the United States

Other suppliers of refrigerators, dishwashers and dryers to the Canadian market include Amana, Maytag, Bosch Appliances North America and GEA in the United States.

Other Suppliers

Products from Asko (Sweden), Bosch (Germany) and Miele (Germany), to name a few, are also sold in the Canadian market.

MARKETING AND DISTRIBUTION

Distribution

The channels of distribution for the subject goods consist of two main market segments, retail and builder/developer. It is estimated⁷ that the retail segment accounts for about 80 percent of the total market for refrigerators, about 85 percent of the total market for dishwashers and about 90 percent of the total market for dryers. The builder/developer segment includes authorized builder-distributors (ABDs) and direct-to-builder accounts.

Retail Segment

The retail segment consists of national dealers, regional/independent dealers and major department stores that sell brand-name and private label refrigerators, dishwashers and dryers, as well as other appliances and various household goods directly to end users.

Major national dealers include Sears, The Brick, Leon's, Future Shop, Costco and Enbridge Consumers Gas, while major regional/independent dealers include companies such as BMT Group (which includes Brault et Martineau and Tanguay), Corbeil, Bad Boy and Lounsbury's. Smaller independent retailers frequently belong to buying groups such as VIP and Cantrex. The private label segment of the market involves products that are specifically manufactured for major department stores and sold under the retailers' brand names, such as Kenmore (Sears) and Beaumark (The Bay). Sears is by far the leading retailer of appliances in Canada, including the subject goods.

ABDs and Direct-to-builder Accounts

The builder/developer segment consists of builders of single- and multi-family homes, manufactured housing (pre-fabricated), property managers and several small builder segments. Camco, Inglis and WCI Canada sell directly to these customers, as well as through ABDs such as Coast Wholesale Appliances Ltd., Vancouver, British Columbia, Midnorthern Appliance Inc., Toronto, Ontario, and Appliance Canada, Concord, Ontario.

Marketing

The industry uses a number of methods of market promotion for certain refrigerators, dishwashers and dryers. Market promotion is achieved through national brand advertising (television and print), co-operative advertising, point-of-purchase materials (i.e. price tags, logo kits, showroom signs, banners), in-store displays, cross promotion with other industries, event sponsorship, field training and store servicing, consumer promotions and trade promotional activities.

7. Tribunal Exhibit NQ-2000-001-7.1, Administrative Record, Vol. 3 at 85-125.

Certain discounts, allowances, promotions and incentives are a direct cost to the supplier. Many of the promotions and incentives are offered only to the retail segment. ABDs and builders are generally offered allowances for payment terms and quantity discounts.

POSITION OF PARTIES

Domestic Industry

Camco submitted that it has suffered material injury with respect to its production and sales of certain refrigerators, dishwashers and dryers in the form of price erosion, lost sales and market share, margin erosion and loss of profitability.

Camco stated that it should have benefited from the market expansion resulting from the strong demand conditions in the Canadian market for certain refrigerators, dishwashers and dryers over the past several years. Between 1997 and the first quarter of 2000, Camco argued that it lost significant volumes of sales and that its market share plummeted, while Inglis, through Whirlpool's dumped imports, maintained its participation in accord with the market growth and WCI increased rapidly its participation in the market. Camco argued that its market share losses and the impact on profitability on certain refrigerators, dishwashers and dryers are entirely due to the existence of dumped subject goods from WCI and Whirlpool.

Camco submitted that exports are an interesting benchmark by which to measure its performance in the Canadian market. It argued that it is difficult to reconcile the fact that, in a booming U.S. market, it has been successful in its sales of certain refrigerators, dishwashers and dryers, while, in a strong Canadian market, it has lost sales volume and market shares. Camco maintained that the successes that it has had in the export market spring from domestic initiatives, such as the launch in Canada of its bottom-mount refrigerators where there is no competition from imports, the investment in the production of dryers which was initially undertaken for the domestic market and dishwasher production that was, and is, for the Canadian market.

Camco submitted that there is no evidence to support the argument that other factors, such as its failure to execute market strategies in the domestic market, a focus on independent retailers instead of big retailers, Camco's relationship with The Bay, Camco's sales to builders on a direct basis and complaints made against Camco's product quality and product innovation, were causes of the material injury suffered by the domestic industry.

Camco argued that the only explanation for its severe and precipitous market share losses during a period of strong demand for appliances in Canada is the dumping of the subject goods in the Canadian market by WCI and Whirlpool. Camco argued that its unwillingness to reduce prices and to meet the competition from the dumped subject goods in the Canadian market, to the point where it was making unprofitable sales, was the principal cause of its loss of staggering market share. Camco stated that WCI's and Whirlpool's approaches to the market contrasted from its own, as they were consistently dropping prices to gain market share. The effect of those approaches was that both Inglis and WCI Canada either maintained or increased their market share at Camco's expense. Camco submitted that pricing is very important in the industry and that underpricing by WCI Canada and Inglis in this price-sensitive market resulted in price erosion and price suppression. While the Canadian demand for appliances expanded during the Tribunal's inquiry period, Camco argued that, because the subject goods were imported and sold at prices consistently and substantially lower than its own prices, it could not increase its share during this market growth and, in fact, lost market share to the subject goods from 1997 onward.

Regarding the failed attempts by Inglis and WCI Canada to increase prices, Camco argued that there is a direct correlation between these attempts and the significant devaluation of the Canadian dollar relative to the U.S. dollar. Camco submitted that no price increase really went into effect, as announced price increases were followed by increased allowances that offset the price increases.

Turning to the question of threat of material injury, Camco submitted that there is a strong likelihood that both suppliers will continue to drop their prices in order to gain or maintain market share in Canada. Camco referred to the significant increases in market penetration by WCI Canada over the last several years and argued that these increases were achieved on the basis of price. Camco argued that, while other parties attempted to increase their prices to reflect the devaluation of the Canadian dollar in 1998, WCI Canada refused and continued to price aggressively into the Canadian market. Camco also made reference to Whirlpool's behaviour in the period leading up to the CCRA's preliminary determination and its deliberate choice to export large quantities of the subject goods to Canada during the first quarter of 2000 in order to protect its market share. Camco submitted that, based on these patterns of behaviour by Whirlpool and WCI in the Canadian market, there is clear evidence of their propensity and willingness to dump in order to achieve larger volumes and market share levels in Canada. Camco also submitted that, while there is a slowdown in demand for appliances in the U.S. market, both Whirlpool and WCI continue to run their production facilities at high rates of capacity utilization, in order to maximize production through-put and spread out their fixed costs. Camco argued that this could lead to more aggressive price competition in the Canadian market and that this is a very significant threat of injury to the domestic production of refrigerators, dishwashers and dryers.

In conclusion, Camco submitted that prices will continue to decline if the dumped subject goods are allowed to continue to be imported into Canada, which will result in greater losses for the domestic industry, and requested a finding of injury or of threat of injury.

Regarding the requested exclusions, Camco opposed the granting of any exclusion with respect to the three products, on the basis that the goods for which exclusions were requested compete with and are substitutable for domestically produced goods. Camco further submitted that, even if the subject goods do not compete with the domestically produced goods, no exclusion should be granted on the basis that, given the past behaviour of Whirlpool and WCI, these exclusions would simply be used as a licence to dump and would injure Canadian production. In particular, with respect to the stainless steel tub dishwasher exclusion, Camco argued that the functionality of a plastic tub dishwasher is the same, that there is no improvement in the cleaning performance and that both dishwashers are very similar products with regard to their physical attributes, and that they compete against one another. With respect to the exclusions for the dryers that match front-load washers and for the top-mount refrigerators with capacities greater than 18 cubic feet, Camco argued that these goods compete on the basis of price with the subject goods and are easily substitutable with domestically produced goods.

On the issue of massive importation and the potential application of retroactive anti-dumping duties, Camco submitted that there was clear evidence that the volume of importation of dumped goods was massive in February 2000. Camco argued that it suffered injury because of this considerable importation. Camco referred to its market share for each of the goods, which was at its lowest in the first quarter of 2000, its contribution margin losses on each of the goods in the first quarter of 2000 in comparison to its contribution margin losses in 1998, its severe losses of revenue at a number of major accounts and its continuing losses due to the overhang of a large amount of inventory.

Exporters/Importers

Maytag and Maytag Canada

At the outset, Maytag submitted that the Tribunal should not advise the Commissioner under section 46 of SIMA, to investigate it, since the goods that it produced are not being dumped in Canada and have not caused or are not threatening to cause injury to Camco.

Maytag Canada submitted that the Canadian marketplace has seriously been disrupted by the dumped price activities of Whirlpool and WCI and that, therefore, it supports Camco's request that the Tribunal make an injury finding to stop the injurious sales of the subject goods by Whirlpool and WCI in Canada.

Maytag Canada argued that its strategy is focussed upon premium-priced brands that deliver competitively superior performance and that it did not attempt to gain market share by underpricing its competitors. To the contrary, Maytag Canada claimed that, during the period of inquiry, it suffered market share losses because of underpricing by Whirlpool and WCI. Maytag pointed out that, while Maytag is the number one brand preference of Canadian consumers of the subject goods, its market share does not reflect this reality because its market prices are consistently higher than those of its competitors. Maytag Canada submitted that its attempt to increase prices in May 1999 was rescinded because of the reduced pricing offers made by WCI Canada and Inglis to different accounts and pointed out that, with this rescission, its market share did not increase, but returned to its previous level.

Finally, Maytag and Maytag Canada stated that they have no corporate or commercial relationships with Camco, which is one of their competitors in the Canadian marketplace with respect to certain refrigerators, dishwashers and dryers. Maytag added that it was not named in Camco's complaint because its marketing and pricing practices have not been injurious to the domestic industry.

Whirlpool and Inglis

At the outset, Whirlpool and Inglis dismissed claims of injury from U.S. imports with respect to lost sales, lost market share, price erosion and reduced gross margins. They argued that, if the domestic overall financial performance for certain refrigerators, dishwashers and dryers has suffered injury, it was self-inflicted and must be attributed to factors other than dumping. Whirlpool and Inglis noted Camco's financial performance and market share losses for non-subject goods and claimed that Camco is doing just as bad, or worse, in these areas of the marketplace where dumping from Whirlpool is not present.

With respect to factors other than dumping, Whirlpool and Inglis pointed to Camco's lack of investment and product innovation in recent years and argued that, in this era of falling prices, it is essential that major investments be made to effect cost reductions and be more competitive in the marketplace. They claimed that, contrary to Camco, most manufacturers have rationalized their production to help achieve cost reductions and that their own success in the marketplace is derived from their investments directed to cost reductions and the quality and technological superiority of their products and not from allegedly dumped prices. Whirlpool and Inglis also pointed to Camco's emphasis on exportation, mainly of dryers, and argued that this focus was made at the expense of Canadian production for Canadian consumption. They submitted that the matter of export production should be included in the measurement of injury and that the production of the whole company, where it is directed towards exports, must be measured. Finally, Whirlpool and Inglis argued that, in the appliance market, non-price factors are critical and stressed the importance of non-price

factors, such as brand recognition, integrity, product quality and innovation and trade partner relations. They claimed that Camco contributed to its own injury by making certain decisions in relation to the use of co-op advertising, which is heavily oriented towards price, by refusing to offer product feature exclusivity at trade partners' requests and by choosing to focus on independent retailers.

Whirlpool and Inglis also submitted that the lost profitability of Camco's domestic production resulted from cost allocation methods selected by Camco and not from dumped imports. They claimed that the effect of those methods was to consistently load overhead cost onto domestic production for domestic consumption that showed smaller contribution margins and less profitability than the domestic production for export. They argued that, by using a fairer allocation of manufacturing overhead costs, Camco's financial situation is not being injured in either the domestic market or the export market for certain refrigerators, dishwashers and dryers.

In the event that the Tribunal found that the domestic industry suffered material injury, Whirlpool and Inglis argued that Whirlpool has not caused injury. They submitted that they have a history of being a price leader in the marketplace and that they have, from time to time, including in 1999 and again in 2000, made price increases. They further submitted that they have not gained market share at the expense of Camco and that the market shares for the Inglis brand for 1997, 1998 and 1999 have declined.

On the issue of injury allegations, Whirlpool and Inglis argued that the Tribunal should either disregard this evidence or give it no weight, based on different compelling reasons or because it was demonstrably disproved by Inglis's evidence or by the evidence in the Tribunal's record.

Turning to the question of threat of injury, Whirlpool and Inglis stated that Whirlpool does not have excess capacity, since it operates at full capacity, and that inventory levels are moving back to normal after the increase that took place in January and February 2000, which was the result of a one-time influx of products to meet existing commitments.

Dealing with the issue of massive importation, Whirlpool and Inglis submitted that the large number of products that were imported during the first quarter of 2000 was attributable to a significant growth in the market and to the need to fill orders from purchasers that had commitments, as well as to regular imports to cover major customers. In taking these factors together, they argued that there is a valid justification for the imports that were made during that short period of time.

On the issue of whether the Tribunal should advise the Commissioner, pursuant to section 46 of SIMA, of the presence of Maytag Canada and other unnamed importers in the Canadian market in relation to the dumping of the subject goods which closely resemble the uses and characteristics of the domestically produced goods, Whirlpool and Inglis argued that they are competing in the Canadian market and requested that the Tribunal refer the matter to the CCRA. They submitted, with respect to Maytag Canada in particular, that it is appearing in various major retail outlets and, with Maytag's excess capacity in the U.S. market, has the ability to be a very significant player in the Canadian market. They claimed that Maytag Canada's market share has increased dramatically in the first quarter of 2000 due to more competitive pricing, and even dumped pricing, and argued that Maytag should have been named in these proceedings.

With respect to exclusions, Whirlpool and Inglis requested exclusions with respect to Kitchen Aid brand products, dryers sold to the builder trade, private label dryers sold to retailers, dishwashers with stainless steel tubs, top-mount refrigerators with capacities greater than 18 cubic feet and Inglis imports of products destined for use in the Habitat for Humanity program and for Inglis's employees.

WCI and WCI Canada

WCI and WCI Canada argued that Camco's financial data do not establish proof of injury in terms of price erosion, reduced margins and decreasing market share which have been caused or are threatened to be caused by dumping. To the contrary, WCI and WCI Canada argued that the data strongly confirm the existence of less than competent management and ineffective decision-making, leading to self-inflicted injury.

WCI and WCI Canada submitted that the alleged injury suffered by Camco is a result of factors other than dumping, such as inefficient production costs relative to its competitors, which have led to squeezed margins, delays in adopting export sales mandates, leading to losses and shortages of cash to modernise facilities, as well as a management philosophy of utilizing contribution margin analysis for many decisions, despite its conceptual and practical weaknesses, which can lead to self-inflicted financial injury. WCI and WCI Canada also argued that a full costing method should have been employed by Camco, in addition to contribution margin costing, to make management decisions relating to pricing, marketing and production which, if properly applied, would have resulted in a far healthier performance for Camco, devoid of any injury. WCI and WCI Canada further submitted that the outdated cost system used by Camco failed to consider the effects of fixed overheads on profitability of products or return on investments. It also failed to separate adequately variable and fixed costs. This led to an artificial computation of product contribution margins that were then inappropriately used in price-setting decisions, resulting in lost market share when decisions were taken not to pursue business. WCI and WCI Canada therefore argued that Camco's financial results, as reported to the Tribunal, should not be used as an indicator of material injury.

WCI and WCI Canada submitted that Camco is experiencing declining profitability and increasing losses across many of its product lines, particularly non-subject appliances, such as ranges and washers. WCI and WCI Canada argued that, given its emphasis on contribution margin techniques, Camco is being inconsistent in its product pricing, has chosen not to compete because of the methods that it was using to make those decisions and, as a result, has suffered injury of its own making.

WCI and WCI Canada further argued that the injury suffered by Camco can also be attributed to a number of non-dumping factors, such as consumer price resistance, poor quality goods and failure to match the needs of the marketplace with respect to innovation. WCI and WCI Canada also claimed that rationalization and its derived cost efficiencies are an important factor in competing in the marketplace and that Camco's failure to rationalize production and reduce costs has affected its ability to compete and have been injurious to its overall profitability.

In further dealing with the issue of injury, WCI and WCI Canada submitted that, to the extent that retailers and builders are buying a line-up of products, it becomes difficult, if not impossible, to relate the loss of a sale or price erosion to the dumped as opposed to undumped goods and to the subject goods as opposed to non-subject goods. Proof of this is the fact that Camco has experienced market share losses of non-subject appliances.

WCI and WCI Canada submitted that there is no causal connection between the dumping found in respect of the subject goods and the alleged injury suffered by Camco. WCI and WCI Canada stated that, if there is actual or potential injury, it is either self-inflicted or due to Camco's inability to meet the needs of the market. Regarding the issue of price, WCI and WCI Canada argued that, while price plays a role in the overall purchase decision, it is not the determining factor. WCI and WCI Canada claimed that consumers are

willing to pay for quality and reliability. WCI and WCI Canada argued that price points are set by consumers or retailers and that they are responsible for the price aggressiveness in the market.

WCI and WCI Canada also pointed to Camco's export performance, which, in their view, must be a factor in weighing whether there is material injury to the domestic producer, and argued that Camco's overall performance has not been injured by the presence of imports in the Canadian market.

On the issue of massive importation, WCI and WCI Canada claimed that they did nothing more than supply sufficient subject goods to meet their existing commitments and, therefore, that there is no evidence of injury caused by WCI and WCI Canada to Camco.

Turning to the requests for exclusion, WCI and WCI Canada argued that an exclusion in respect of refrigerators with a capacity greater than 17.7 cubic feet should be granted, since Camco does not produce such items in Canada and in light of the considerable presence of undumped large refrigerators from other exporters. WCI and WCI Canada also requested exclusions for dryers that are complementary to front-load washers, since these products are unique in the market.

Other Parties

Sears

At the outset, Sears submitted that it is not disputing the injury, but the fact that, if there has been injury, it is attributable to dumping. Sears argued that the injury must be attributed to factors other than dumping. In particular, Sears argued that, while the injury has not been caused by Sears's purchases of the subject goods from the importers, it must be attributed to the nature of its relationship with Camco and to the reasons for its not purchasing domestically produced goods from Camco.

Turning to the other factors that did cause the injury, Sears referred to quality factors, performance, innovation, styling exclusivity of features, technology and reliability and noted that, while price is a factor, it is not the most important one. In fact, Sears stated that the price has always been comparable in terms of competing bids from Camco and Whirlpool. Sears argued that there have been reliability/quality issues, including incident rates and return rates, with respect to refrigerators and dishwashers produced by Camco. Sears noted factors, such as Camco's inadequate innovation and performance-enhancing features for refrigerators and dishwashers, Camco's failure to keep up with trends and style, the considerable resistance from Sears' commission sales employees to sell Camco-built products, Camco's lack of participation with Sears in the development of its business and its lack of attention on serving Sears's changing needs and certain customer relations problems, resulted in injury to Camco. Sears noted, in this regard, Camco's close relationship with The Bay, a major department store competitor, and Camco's role as exclusive supplier of The Bay's private label brand. Sears finally argued that one major issue relates to Camco's lack of credibility regarding its capacity to supply a major part of the Kenmore line on a North American basis.

Sears submitted that, because of all these factors, Camco experienced a decline in sales relative to Sears and other major suppliers that, in turn, resulted in an overall market share decline. Sears claimed that price reduction has been a result of more demanding retailers that encouraged manufacturers to reduce prices and increase marketing support in order to expand volume and offer consumers greater value and that it has not been caused by the dumping of the subject goods. Sears further argued that any injury suffered by Camco must also be attributed to Camco's lack of timely response to the North American rationalization of production and product mandates that other producers adopted in the early 1990s.

Turning specifically to refrigerators, Sears submitted that there had been no investments in certain top-mount refrigerators by Camco, as production will be discontinued in the near future, and that there is a serious quality issue with respect to Camco's refrigerators. With respect to dishwashers, Sears mentioned Camco's fair performance and its inability to supply the stainless steel dishwasher, which is becoming a very important part of the line. Finally, in dealing with dryers, Sears argued that, while Camco produces a good dryer, it does not produce a matching washer that offers the same quality.

On the question of exclusions, Sears requested exclusions for refrigerators with a capacity greater than 17.7 cubic feet and for all Kenmore private label products that are produced according to its own design features and specifications that are not made by the Canadian producer of private labels, other than refrigerators with a capacity lower than 18 cubic feet. Sears also requested exclusions for dishwashers with stainless steel tubs, dryers that match front-load washers, dryers for stackable washer/dryer combinations and the exclusive new dryer models utilizing electronic control panels that are not available other than in the Kenmore brand. Sears maintained that these products are not produced by Camco in Canada and that, for that reason, they should be excluded if a finding of injury is to be made.

The Commissioner of Competition

The Commissioner of Competition echoed the views expressed by WCI Canada, Inglis and Sears that, if there was injury to Camco, it was due to non-price factors. He stated that the fact that Camco is perceived by retailers as having a competitive disadvantage in most of those non-price factors provides a reasonable explanation for the injury suffered by Camco. The Commissioner of Competition further argued that Camco did not suffer material injury with respect to the subject dryers and dishwashers, since Camco's production in each of those categories has been increasing, while average prices remained relatively flat over the period of inquiry.

On the issue of price, the Commissioner of Competition submitted that lower prices for the subject goods in Canada may partially be due to income differentials between Canada and the United States, which are unrelated to dumping.

Turning to the requests for exclusions, the Commissioner of Competition argued that the Tribunal should exclude, from the scope of the subject goods, top-mount refrigerators with a capacity greater than 17.7 cubic feet, referred to as 18-cubic-foot refrigerators, and dishwashers with a stainless steel tub, since Camco does not produce those goods.

ANALYSIS

Pursuant to section 42 of SIMA, the Tribunal is required to "make an inquiry . . . as to whether the dumping . . . of [certain refrigerators, dishwashers and dryers] . . . has caused injury or retardation or is threatening to cause injury". Injury is defined in subsection 2(1) as "material injury to a domestic industry".

Like Goods

The Tribunal must determine which domestically produced goods are like goods to the refrigerators, dishwashers and dryers from the named exporters.

Subsection 2(1) of SIMA defines “like goods”, in relation to any other goods, as follows:

- (a) goods that are identical in all respects to the other goods, or
- (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

The subject goods are defined by the Commissioner as “top-mount electric refrigerators, in sizes greater than 14.5 cubic feet (410.59 litres) and less than 22 cubic feet (622.97 litres), electric household dishwashers, built-in or portable, greater than 18 inches (45.72 centimetres) in width, and gas or electric laundry dryers”.

The evidence shows that domestically produced refrigerators, defined in the same manner as the subject refrigerators, are generally similar in terms of physical characteristics, end uses and substitutability to the subject refrigerators. The same applies with respect to the domestically produced dishwashers and dryers vis-à-vis the subject dishwashers and dryers. As such, for the purpose of this inquiry, the Tribunal finds that refrigerators, dishwashers and dryers produced by the domestic industry constitute like goods to the subject refrigerators, dishwashers and dryers.

As noted, the Tribunal has already indicated that it would conduct an inquiry into three separate products and that it would treat the goods that are the subject of the preliminary determination, namely, refrigerators, dishwashers and dryers, separately.

Domestic Industry

In conducting an inquiry under section 42 of SIMA, the Tribunal must determine whether the dumping has caused or is threatening to cause “material injury to a domestic industry”. The term “domestic industry” is defined in subsection 2(1) as follows:

“domestic industry” means, other than for the purposes of section 31 and subject to subsection (1.1), the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

As Camco is the sole domestic producer of the like goods in Canada, the Tribunal finds that, for the purposes of this inquiry, Camco constitutes the “domestic industry” for each of the domestically produced refrigerators, dishwashers and dryers.

Cumulation

The Tribunal notes that Whirlpool claimed that it should be found as not having caused injury, but that, if there was an injury finding that included it, then it should be excluded.

While subsection 42(3) of SIMA addresses the question of cumulation with respect to countries, there is nothing in SIMA that requires the Tribunal to conduct, with respect to exporters of one country, exporter-specific analyses when determining whether the domestic industry is suffering material injury. In fact, it is settled law, since the decision of the Supreme Court of Canada in *Hitachi Limited v. The*

Anti-dumping Tribunal,⁸ that the Tribunal, like its predecessors, has the discretion to make a finding in respect of all dumped goods from several exporters, irrespective of whether there is evidence that some of these exporters have contributed to the injury to the domestic industry. Similarly, the Tribunal does not have to assess the specific impact of one named exporter as opposed to the impact of another named exporter, particularly if there is evidence of direct competition both between and among those exporters and the domestic industry. The Tribunal, therefore, conducted its analysis in respect to all dumped goods.

State of the Market and Industry

Subsection 37.1(1) of the *Special Import Measures Regulations*⁹ prescribes certain factors that the Tribunal may consider in determining whether a domestic industry has been materially injured by dumped imports or whether the dumping is threatening to cause injury. These factors include the volume of dumped goods and their effect on prices in the domestic market for like goods and the consequent impact of these imports on a number of economic factors. In this case, these economic factors include actual or potential declines in domestic sales, market share, domestic prices and financial performance. Subsection 37.1(3) of the SIMA Regulations also requires the Tribunal to consider other factors not related to the dumping, including the volumes and prices for imports of like goods that are not dumped, the export performance of domestic producers and any other factors that are relevant in the circumstances, to ensure that any injury caused by those other factors is not attributed to the dumped imports.

If the Tribunal finds that dumped imports of certain refrigerators, dishwashers and dryers have not caused material injury to the domestic industry, the Tribunal must turn its attention to whether imports of dumped refrigerators, dishwashers and dryers are threatening to cause material injury to the domestic industry. In considering this question, the Tribunal is guided by subsection 37.1(2) of the SIMA Regulations, which prescribes the following factors: (1) whether there has been a significant rate of increase of dumped goods imported into Canada; (2) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped goods, taking into account the availability of other export markets to absorb any increase; (3) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price for like goods; (4) the magnitude of the margin of dumping in respect of the dumped goods; and (5) any other relevant factors. Finally, the Tribunal notes that, in making a finding of threat of material injury to the domestic industry, subsection 2(1.5) of SIMA requires that the “circumstances in which the dumping . . . of [the subject] goods would cause injury [be] clearly foreseen and imminent”.

8. [1979] 1 S.C.R. 93.

9. S.O.R./84-927 [hereinafter SIMA Regulations].

Refrigerators

Table 2 provides the publicly available market and industry performance indicators for certain refrigerators.

Table 2					
Key Market and Industry Performance Indicators					
Certain Refrigerators					
	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>1999-Q1</u>	<u>2000-Q1</u>
Camco's Production (units)	-	-	-	-	-
Percent Increase (Decrease)		(3)	(17)		(17)
Total Apparent Imports (units)	306,805	332,820	387,694	67,594	118,037
Percent Increase (Decrease)					
Subject Goods		8	20		94
Non-subject Goods		10	7		23
Apparent Domestic Market (units)	448,102	459,366	489,782	84,017	106,884
Percent Increase (Decrease)					
Total Market		3	7		27
Camco		(6)	(15)		(20)
Subject Goods		7	17		44
Non-subject Goods		3	6		25
Average Domestic Prices (\$/unit)	603	589	569	570	567
Percent Increase (Decrease)					
Market Price		(2)	(4)		(1)
Camco's Price		(2)	0		1
Subject Goods		(3)	(5)		2
Non-subject Goods		(1)	(4)		(6)
Financial					
Percent Increase (Decrease)					
Gross Margin		(33)	(25)		64
Net Operating Income		(242)	(62)		21

Source: *Protected Pre-hearing Staff Report*, 23 May 2000, Tribunal Exhibit NQ-2000-001-31 (protected), Administrative Record, Vol. 2B at 14, 29, 39, 53 and 82.

Domestic production of certain refrigerators decreased steadily over the period of inquiry. Production decreased by 17 percent in 1999 over 1998 and by a further 17 percent in the first quarter of 2000 over the first quarter of 1999.

Total imports increased from 306,805 units in 1997 to 387,694 units in 1999. Much of this increase can be attributed to the combined imports of the subject refrigerators from WCI and Whirlpool. However, imports from non-subject companies, such as Maytag and Amana, also increased, although to a lesser extent in 1999 and the first quarter of 2000.

The total value of the Canadian market for certain refrigerators in 1999 was over \$278 million. The Canadian market for certain refrigerators grew from 448,102 units in 1997 to 489,782 units in 1999. The market grew by 3 percent between 1997 and 1998 and by 7 percent between 1998 and 1999. Camco's sales declined by 6 percent and 15 percent in the same periods. The sales of the subject refrigerators increased by 7 percent between 1997 and 1998 and by 17 percent between 1998 and 1999. A comparison of the first quarter of 1999 with the first quarter of 2000 shows a market growth of 27 percent. Using the same comparison, Camco's sales declined by 20 percent, while the sales of the subject refrigerators increased by 44 percent. The combined sales volume of imports from non-subject sources increased by 3 percent between 1997 and 1998 and by 6 percent between 1998 and 1999, with a further increase of 25 percent in the first quarter of 2000.

Camco's market share declined by 7 percentage points between 1997 and 1999. The market share attributed to the importers of the subject refrigerators grew by 8 percentage points during the same period. A comparison of the first quarter of 1999 with the first quarter of 2000 shows that Camco's market share declined by 7 percentage points, while WCI Canada and Inglis combined for a 7 percentage point increase in market share.¹⁰

The overall average market price for refrigerators declined by approximately 6 percent during the Tribunal's period of inquiry. A review of average prices shows a slight decrease in the average price for domestic refrigerators between 1997 and 1998 and no change in the average domestic price between 1998 and 1999. The average price for the subject imports declined by 5 percent between 1998 and 1999.

The Tribunal also reviewed the average prices for certain refrigerators by using the Tribunal's model groups.¹¹ The Tribunal's examination of average prices in each model group for the domestic producer and for each of the importers reveals, with the lowest-priced model group as the only exception, that the average prices for both WCI Canada and Inglis products are lower than Camco's price. In particular, there are examples where the average price for a WCI Canada refrigerator in a higher-featured model group is lower than the price for a Camco refrigerator in a lower-featured model group.

Camco's financial performance for certain refrigerators declined in each year of the inquiry period. Gross margins declined by 33 percent between 1997 and 1998 and by 25 percent between 1998 and 1999. Camco has been in a loss position in terms of its net operating income since 1998.¹² Net operating income declined by 242 percent between 1997 and 1998 and by a further 62 percent between 1998 and 1999.

10. *Protected Pre-hearing Staff Report*, 23 May 2000, Tribunal Exhibit NQ-2000-001-31 (protected), Administrative Record, Vol. 2B at 29.

11. To facilitate price comparisons, the Tribunal established model groups for refrigerators that were based on size and shelf type. Although the refrigerators that are the subject of this inquiry have many different features, those features tend to be bundled. Shelf type was the feature that stood out as the best indicator of the total feature content. *Protected Pre-hearing Staff Report*, revised 29 June 2000, Tribunal Exhibit NQ-2000-001-31A (protected), Administrative Record, Vol. 2B at 204-210.

12. *Protected Pre-hearing Staff Report*, 23 May 2000, Tribunal Exhibit NQ-2000-001-31 (protected), Administrative Record, Vol. 2B at 39.

Dishwashers

Table 3 provides the publicly available market and industry performance indicators for certain dishwashers.

Table 3					
Key Market and Industry Performance Indicators					
Certain Dishwashers					
	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>1999-Q1</u>	<u>2000-Q1</u>
Camco's Production (units)	-	-	-	-	-
Percent Increase (Decrease)		(46)	52		133
Percent Share of Camco's Sales Volume for:					
The Domestic Market	51	65	45	53	25
Export	49	35	55	47	75
Total Apparent Imports (units)	305,996	327,868	386,996	84,754	139,562
Percent Increase (Decrease)					
Subject Goods		4	22		80
Non-subject Goods		17	8		9
Apparent Domestic Market (units)	404,358	416,966	473,351	99,480	132,685
Percent Increase (Decrease)					
Total Market		3	14		33
Camco		(11)	(6)		(6)
Subject Goods		6	21		49
Non-subject Goods		14	10		10
Average Domestic Prices (\$/unit)	372	373	369	365	361
Percent Increase (Decrease)					
Market Price		0	(1)		(1)
Camco' Price		(1)	3		1
Subject Goods		0	0		(1)
Non-subject Goods		(4)	(6)		2
Financial					
Percent Increase (Decrease)					
Gross Margin		(21)	2		(1)
Net Operating Income		(49)	9		(46)
Source: <i>Protected Pre-hearing Staff Report</i> , revised 29 June 2000, Tribunal Exhibit NQ-2000-001-33B (protected), Administrative Record, Vol. 2C at 220, 223, 225 and 227; and <i>Protected Pre-hearing Staff Report</i> , 23 May 2000, Tribunal Exhibit NQ-2000-001-33 (protected), Administrative Record, Vol. 2C at 19 and 20.					

Total domestic production of dishwashers decreased from 1997 to 1998. However, production increased by 52 percent in 1999 over 1998 and by a further 133 percent in the first quarter of 2000 over the first quarter of 1999 as a result of increased export sales.

Total imports increased from 305,996 units in 1997 to 386,996 units in 1999. Much of this increase can be attributed to combined imports of the subject dishwashers from WCI and Whirlpool; however, imports of non-subject goods also increased, although to a lesser extent in 1999 and the first quarter of 2000.

The total value of the Canadian market for certain dishwashers in 1999 was close to \$175 million. The Canadian market for certain dishwashers grew from 404,358 units in 1997 to 473,351 units in 1999. The market grew by 3 percent between 1997 and 1998 and by 14 percent between 1998 and 1999. Camco's domestic sales of dishwashers declined by 11 percent and 6 percent in the same periods. The sales of the subject dishwashers increased by 6 percent between 1997 and 1998 and by 21 percent between 1998 and 1999. A comparison of the first quarter of 1999 with the first quarter of 2000 shows a market growth of 33 percent. Camco's domestic sales declined by 6 percent, while sales of the subject goods increased by 49 percent over this period. The combined sales volume of imports from non-subject sources increased by 14 percent between 1997 and 1998 and by 10 percent between 1998 and 1999, with a further increase of 10 percent in the first quarter of 2000.

Camco's market share declined by 7 percentage points between 1997 and 1999. The market share of the importers of the subject dishwashers grew by 5 percentage points during the same period. A comparison of the first quarter of 1999 with the first quarter of 2000 shows that Camco's market share declined by 4 percentage points, while the importers of the subject goods combined for an 8 percentage point increase in market share.¹³

The overall average market price declined slightly during the period of inquiry. A review of average prices for the subject dishwashers shows no change from 1997 through 1999. A slight decrease in the average price for certain domestic dishwashers occurred between 1997 and 1998, and a 3 percent increase in the average domestic price between 1998 and 1999.

The Tribunal also looked at the average prices for certain dishwashers by using the Tribunal's model groups.¹⁴ The Tribunal's examination of average prices revealed that, for the lowest value, less-featured grouping (representing those dishwashers which would most likely be sold to the builder segment of the market), the average prices of both WCI Canada and Inglis are considerably lower than Camco's price. However, for the other model groups with higher-featured models of dishwashers, Camco's average prices were the same or higher than Inglis's prices, but lower than WCI Canada's prices.

Camco's financial performance for domestic sales of certain dishwashers fluctuated over the inquiry period. Gross margins declined by 21 percent between 1997 and 1998, but increased by 2 percent between 1998 and 1999. Net operating income declined by 49 percent between 1997 and 1998 and increased by 9 percent between 1998 and 1999. Gross margins declined by 2 percent in the first quarter of 2000 when compared to the first quarter of 1999, while net operating income declined by 46 percent over the same period. Camco's financial performance with respect to export sales had a significantly different profile throughout the period of inquiry.¹⁵

13. *Protected Pre-hearing Staff Report*, revised 29 June 2000, Tribunal Exhibit NQ-2000-001-33B (protected), Administrative Record, Vol. 2C at 223.

14. To facilitate price comparisons, the Tribunal established model groups for dishwashers that were based, first, on the type of tub and, then, on the type and number of controls. The type of interior tub was used as an initial separator for price comparisons. Although the dishwashers that are the subject of this inquiry have many different features, those features tend to be bundled. Control type (i.e. electronic or not) and number of controls were the features that stood out as the best indicators of the total feature content. *Protected Pre-hearing Staff Report*, revised June 29 2000, Tribunal Exhibit NQ-2000-001-33A (protected), Administrative Record, Vol. 2C at 214-218.

15. *Protected Pre-hearing Staff Report*, 23 May 2000, Tribunal Exhibit NQ-2000-001-33 (protected), Administrative Record, Vol. 2C at 20.

Dryers

Table 4 provides the publicly available market and industry performance indicators for certain dryers.

Table 4					
Key Market and Industry Performance Indicators					
Certain Dryers					
	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>1999-Q1</u>	<u>2000-Q1</u>
Camco's Production (units)	-	-	-	-	-
Percent Increase (Decrease)		32	17		37
Percent Share of Camco's Sales Volume for:					
The Domestic Market	24	16	13	11	8
Export	76	84	87	89	92
Total Apparent Imports (units)	368,293	377,572	414,106	85,839	160,455
Percent Increase (Decrease)					
Subject Goods		6	12		107
Non-subject Goods		(8)	2		11
Apparent Domestic Market (units)	479,083	476,136	502,471	99,152	152,510
Percent Increase (Decrease)					
Total Market		(1)	6		54
Camco		(10)	(10)		(5)
Subject Goods		7	10		81
Non-subject Goods		(14)	7		10
Average Domestic Prices (\$/unit)	310	307	315	319	297
Percent Increase (Decrease)					
Market Price		(1)	2		(7)
Camco's Price		(4)	2		(3)
Subject Goods		2	3		(3)
Non-subject Goods		2	(0)		(3)
Financial					
Percent Increase (Decrease)					
Gross Margin		(17)	(15)		54
Net Operating Income		-<1000	(21)		57

Source: *Protected Pre-hearing Staff Report*, revised 29 June 2000, Tribunal Exhibit NQ-2000-001-35B (protected), Administrative Record, Vol. 2D at 235, 238, 240 and 242; *Protected Pre-hearing Staff Report*, 23 May 2000, Tribunal Exhibit NQ-2000-001-35 (protected), Administrative Record, Vol. 2D at 19 and 20.

Domestic production of dryers increased considerably each year over the period of inquiry because of an increase in sales from exports.

Total imports increased from 368,293 units in 1997 to 414,106 units in 1999. Much of this increase can be attributed to combined imports of the subject dryers from WCI and Whirlpool. Imports of non-subject goods declined between 1997 and 1998, but recovered slightly in the latter part of the period.

The total value of the Canadian market for certain dryers in 1999 was over \$158 million. The Canadian market for certain dryers grew from 479,083 units in 1997 to 502,471 units in 1999. The market declined by 1 percent between 1997 and 1998 and grew by 6 percent between 1998 and 1999. Camco's domestic sales of dryers declined by 10 percent each year over the same time periods. The sales of the subject dryers increased by 2 percent between 1997 and 1998 and by 10 percent between 1998 and 1999. The market grew by 54 percent between the first quarter of 1999 and the first quarter of 2000. During this same time period, Camco's domestic sales declined by 6 percent, and the sales of the subject goods increased by 81 percent. The combined sales volume of imports from non-subject sources decreased 14 percent between 1997 and 1998, but increased 7 percent between 1998 and 1999, with a further increase of 10 percent in the first quarter of 2000.

Camco's market share declined by 6 percentage points between 1997 and 1999. The market share of the importers of the subject dryers grew by 8 percentage points during the same period. A comparison of the first quarter of 1999 with the first quarter of 2000 shows that Camco's market share declined by 6 percentage points, while the importers of the subject goods combined for a 12 percentage point increase in market share.¹⁶

The overall average market price increased slightly during the period of inquiry until the first quarter of 2000 when the average price declined by 7 percent. A review of average prices for the subject dryers in the Canadian market shows close to a 6 percent increase from 1997 through 1999. A 4 percent decrease in the average price for certain domestic dryers occurred between 1997 and 1998, followed by a 2 percent increase in the average domestic price between 1998 and 1999.

The Tribunal also considered the average prices for certain dryers by using the Tribunal's model groups.¹⁷ The Tribunal's examination of the average prices in the Canadian market revealed that, for electrically heated dryers, the average prices of Inglis are lower than those of Camco in all cases and that the average prices of WCI Canada are lower than those of Camco for the dryers in the less highly featured model groups. However, for gas-heated dryers,¹⁸ Camco's average price is considerably lower than that of both Inglis and WCI Canada.

16. *Protected Pre-hearing Staff Report*, revised 29 June 2000, Tribunal Exhibit NQ-2000-001-35B (protected), Administrative Record, Vol. 2D at 238.

17. To facilitate price comparisons, the Tribunal established model groups for dryers that were based, first, on whether the dryer was heated by gas or electricity, then, on the presence of a moisture sensor and, finally, on the number of cycles. Although the dryers that are the subject of this inquiry have many different features, those features tend to be bundled. For electrically heated dryers, the presence of a moisture sensor followed by the number of cycles were the features that stood out as the best indicators of the total feature content. *Protected Pre-hearing Staff Report*, revised 29 June 2000, Tribunal Exhibit NQ-2000-001-35A (protected), Administrative Record, Vol. 2D at 230-233.

18. Based on the Canadian Appliance Manufacturers Association data provided by Camco, gas dryers represented approximately 8 percent of total dryer sales in Canada during the inquiry period, Tribunal Exhibit NQ-2000-001-7.1, Administrative Record, Vol. 3 at 92.

Camco's financial performance from domestic sales for certain dryers declined each year between 1997 and 1999. Gross margins declined by 17 percent between 1997 and 1998 and by 15 percent between 1998 and 1999. Net operating income declined twelvefold between 1997 and 1998 and by a further 21 percent between 1998 and 1999. Gross margins increased by 54 percent in the first quarter of 2000 when compared to the first quarter of 1999, while net operating income increased by 57 percent over the same period. Notwithstanding an increase in the gross margins in the first quarter of 2000, the operating income continued to show a loss. Camco's financial performance with respect to export sales showed a significantly different profile throughout the period of inquiry.¹⁹

Injury and Causality

Having examined the state of the Canadian market and industry for certain refrigerators, dishwashers and dryers, the Tribunal now considers whether the dumping of subject goods has, in and of itself, caused material injury to the domestic industry. Although the Tribunal must make a separate finding with respect to each of the appliances under consideration in this inquiry, the similar trends in the Canadian market, volume and prices for dumped imports and other considerations permit a parallel analysis. The analysis highlights any distinctions among products for any particular issue.

During the Tribunal's period of inquiry, the Canadian market for each of the appliance groups was generally characterized as strong. The data on the record show that, between 1997 and 1999, the overall demand in Canada increased for certain refrigerators by 10 percent, for certain dishwashers by 17 percent and for certain dryers by 5 percent. While the overall Canadian market was growing, the share of the market accounted for by sales from domestic production by Camco was declining, as dumped imports of certain refrigerators, dishwashers and dryers were being sold in increasing volumes in a very competitive appliance market. In the 1998-99 period, imports of the subject refrigerators increased by 20 percent, imports of subject dishwashers increased by 22 percent, and imports of subject dryers increased by 12 percent.

Camco argued that the level of market share loss that it experienced for each product over the period of inquiry is gravely injurious, particularly in a market where the dynamics are so competitive. The importance of maintaining market share in this competitive market is supported by statements made by various witnesses, including the witness for Inglis.²⁰ The witness for Inglis agreed that a market share drop of considerably less than that suffered by Camco was a severe decline.²¹ In the Tribunal's view, this is particularly true for a company like Camco that is smaller relative to its major competitors and, therefore, any loss of market share can have a significant impact on its economics of production.

The Tribunal recognizes the important role that Sears plays in the Canadian market for appliances, in general, as well as for the refrigerators, dishwashers and dryers subject to this inquiry. It is estimated that Sears has an approximate 30 percent share of the retail market for certain refrigerators, dishwashers and dryers in Canada.²² The evidence shows that a significant share of the increase in the overall market for each product is attributable to Sears' growth²³ and was a direct result of the efforts that Sears made to increase its

19. *Protected Pre-hearing Staff Report*, 23 May 2000, Tribunal Exhibit NQ-2000-001-35 (protected), Administrative Record, Vol. 2D at 20.

20. *Transcript of Public Hearing*, Vol. 3, 28 June 2000, at 478, and Vol. 4, 29 June 2000, at 628.

21. *Transcript of In Camera Hearing*, Vol. 3, 29 June 2000, at 478.

22. *Transcript of Public Hearing*, Vol. 5, 30 June 2000, at 869.

23. Importer's Exhibit F-3 (protected), Attachment J, Administrative Record, Vol. 14.4.

sales of appliances.²⁴ The Tribunal notes that much of the increase at Sears was for the Kenmore brand; however, notable increases were also reported for the national brand name products supplied primarily by imports from the United States.

Sears, Whirlpool and Inglis argued that Camco's losses at Sears happened before the Tribunal's period of inquiry and that this loss was not caused by Whirlpool/Inglis pricing. Sears testified that Camco lost much of its business at Sears for many reasons, most of which had little to do with price.²⁵ Evidence on the record shows that Whirlpool's pricing of certain refrigerators, dishwashers and dryers to Sears was relatively stable over the period of inquiry. The Tribunal understands and accepts many of the reasons put forth by the witness for Sears as to why Camco has not been able to achieve much success at the Sears account in the past number of years. There are also factors, such as the purchasing relationship between Sears and Sears, Roebuck & Co. (U.S.), that make it difficult for Camco to sell to the Sears account and which are largely beyond its control.²⁶ However, the Tribunal observes that Sears has benefited from the availability of dumped imports and, as a result, given its dominant position, has had an impact on the overall level of prices and competition in the appliance market in Canada. The Tribunal recognizes the strength that Sears has in the market and notes that it competes with the other large retailers with dumped imported product and, as such, influences the price for certain refrigerators, dishwashers and dryers in Canada.

The Tribunal notes that, notwithstanding the large portion of the market held by Sears and its share of the market growth, it is not the only player in the market. In this regard, the Tribunal's analysis also focuses on these other players where Camco's presence is stronger and where it has been competitive. Specifically, this includes the retail, builder and ABD segments of the market. There are many retailers and ABDs that account for an important share of the business in the appliance industry. The Tribunal carefully reviewed volumes of sales and pricing data on the record regarding these accounts. It is at many of these accounts where price competition of dumped product from Whirlpool, and to a greater extent from WCI, took sales volumes away from Camco.

The Tribunal believes that much of the injury experienced by Camco occurred in the builder and ABD market segments.²⁷ WCI came back into the Canadian market in late 1997 and early 1998, following a re-organization with some new, updated and improved products. It introduced these new products with a new approach to marketing that involved building a better relationship with its customers.²⁸ The evidence shows that dumped product from WCI displaced Camco product at many important ABD accounts, as well as at retail accounts.^{29 30}

24. Tribunal Exhibit NQ-2000-001-19.36, Administrative Record, Vol. 5.2B at 91.

25. *Transcript of Public Hearing*, Vol. 5, 30 June 2000, at 849-72; Tribunal Exhibit NQ-2000-001-19.36, Administrative Record, Vol. 5.2B at 94.

26. *Transcript of Public Hearing*, Vol. 5, 30 June 2000, at 871, 918-19 and 951-52.

27. *Transcript of Public Hearing*, Vol. 2, 27 June 2000, at 325.

28. *Transcript of Public Hearing*, Vol. 4, 29 June 2000, at 729.

29. *Protected Pre-hearing Staff Report*, 23 May 2000, Tribunal Exhibits NQ-2000-001-31 (protected), NQ-2000-001-33 (protected) and NQ-2000-001-35 (protected), Administrative Record, Vol. 2B at 123-32, Vol. 2C at 119-28 and Vol. 2D at 125-33 respectively.

30. In its review of the injurious effects of the dumping of the subject goods on the domestic industry, the Tribunal found the evidence submitted by the domestic producer, in the form of account-specific injury allegations, to be generally unreliable, taking into account the responses by the importers and testimony given during the hearing. Therefore, on the whole, the Tribunal did not find this evidence compelling. However, the Tribunal was persuaded by the account-specific pricing evidence submitted in response to the Tribunal's questionnaires and other evidence provided at the hearing.

While WCI was very active in both the retail and builder market segments, the evidence shows that dumped product from Whirlpool was very competitive against Camco's refrigerators, dishwashers and dryers in the retail segment of the market. The record shows that Whirlpool products displaced Camco products at a number of the large retail accounts.³¹ Therefore, it is clear to the Tribunal that dumped imports displaced Camco product at both retail and builder accounts.

WCI and Whirlpool argued that the increasing volume of imports from non-subject sources, such as Maytag and other unnamed importers, is competing in the Canadian market and has taken market share from them, as well as from Camco. In this regard, the record shows that imports from non-subject sources, including Maytag and Amana, increased in 1999 and the first quarter of 2000, but not nearly as rapidly as the subject imports. In addition, the Tribunal notes that these goods are not subject to the final determination of dumping and finds that the volume of these imports is not large relative to the size of the Canadian market and that the imports are generally at the higher end of the market in terms of price. Therefore, the Tribunal finds that these imports have not caused the injury suffered by Camco.

Central to the case made by Camco is that the dumped imports forced it to either meet the low-priced dumped imports or to lose sales. In this regard, the Tribunal has addressed the issue of price erosion and price sensitivity of appliances in the Canadian market in order to understand the reasons for Camco's large loss in market share for each of the separate products (refrigerators, dishwashers and dryers). While the injury suffered by Camco manifested itself primarily as lost sales volume and reduced market share during the Tribunal's inquiry period, Camco testified that it was forced to lower prices to a certain point and, when it determined its prices could go no lower, it lost sales. In this regard, the Tribunal heard testimony from witnesses representing the retail and the ABD segments of the market that verified the presence of aggressively priced imports in the market and the importance of price in terms of their overall purchasing decisions.

During the hearing, the Tribunal heard testimony to the effect that the market for certain refrigerators, dishwashers and dryers is very price sensitive.³² Witnesses provided examples of attempts to introduce price increases.³³ More often than not, these price increases did not hold. For example, the witnesses for Inglis testified that, as soon as the company tried to increase prices, market share would fall and would stay down until the old prices were reinstated.³⁴ Data collected by the Tribunal, through its market characteristics questionnaire, also support this testimony that the decision to purchase these products, instead of competing products or brands, is highly price-sensitive. The responses to the question regarding price sensitivity for substitution, in all three product categories, suggested that the average purchaser would switch its sourcing toward the imported product if the price for the imported product fell by about 5 percent.³⁵

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31. *Protected Pre-hearing Staff Report*, 23 May 2000, Tribunal Exhibits NQ-2000-001-31 (protected), NQ-2000-001-33 (protected) and NQ-2000-001-35 (protected), Administrative Record, Vol. 2B at 123-32, Vol. 2C at 119-28 and Vol. 2D at 125-33 respectively.
 32. *Transcript of Public Hearing*, Vol. 1, 26 June 2000, at 12-14, Vol. 3, 28 June 2000, at 435, and Vol. 5, 30 June 2000, at 751; and *Transcript of In Camera Hearing*, Vol. 1, 27 June 2000, at 11-12.
 33. *Transcript of Public Hearing*, Vol. 3, 28 June 2000, at 426, and Vol. 4, 29 June 2000, at 602-603; and *Transcript of In Camera Hearing*, Vol. 3, 29 June 2000, at 483-87.
 34. *Transcript of In Camera Hearing*, Vol. 3, 29 June 2000, at 483-87.
 35. *Public Pre-hearing Staff Report*, 23 May 2000, Tribunal Exhibits NQ-2000-001-30, NQ-2000-001-32 and NQ-2000-001-34, Administrative Record, Vol. 1B at 71, Vol. 1C at 48 and Vol. 1D at 50 respectively.

Turning to the price sensitivity in the builder and ABD segments of the market, the evidence shows that builders generally look for appliances with few value-added features, low-end and low-priced “builder models”.³⁶ A difference of a few percentage points in price can, and often does, change the purchasing decision of builders and ABDs.³⁷ Although some builders may be relatively loyal to certain brand names, as they or their customers perceive a certain implicit quality that is inherent with a given brand name, the Tribunal is persuaded by the evidence that price is a principal factor in terms of the builder segment.

The Tribunal also recognizes the aggressive and competitive nature of the retail segment. Evidence on the record clearly demonstrates that national retailers are a major force in the marketplace.³⁸ Retailers, such as The Brick, Future Shop and Leon’s, compete very aggressively on price. Evidence shows that constant and “in your face”³⁹ type advertising is a major theme of these retailers. Their advertisements focus on price.⁴⁰ Therefore, the Tribunal believes price to be the primary focus of these big national retailers.

Other retailers, such as Sears and many of the smaller independent ones, focus more on non-price factors. For example, Sears has sought to differentiate itself from other retailers by promoting quality, service and satisfaction guaranteed. It also appears that the smaller independents, where Camco has maintained sales volumes, focus on service and quality more than price.

The Tribunal examined the evidence on the record regarding the sales volumes and prices for certain refrigerators, dishwashers and dryers to major accounts in Canada as reported in the pre-hearing staff report.⁴¹ The overall pricing data for dishwashers and dryers do not generally show major decreasing trends for either imported or domestic product. The Tribunal recognizes the weaknesses inherent in using average prices. They are not always good indicators because of factors such as product mix, clearout pricing and the introduction of new products, to name a few. However, price decreases to certain accounts are present for specific models of refrigerators, dishwashers and, to a lesser extent, dryers.⁴²

The evidence shows that appliances are marketed at various price points and that Camco tried to maintain its prices over the period of the Tribunal’s inquiry. Within certain price points, in the past, Camco models competed with relatively equivalent models offered by WCI and Whirlpool. Today, Camco faces competition from dumped imports that allows WCI and Whirlpool to offer more highly featured models, compared to Camco’s, at or very close to Camco’s price points for less-featured models. The Tribunal believes that, if it were not for the dumping, the prices for the more highly featured products of WCI and Whirlpool would have been higher and, thereby, competed with Camco at a higher price-point level.

36. *Transcript of Public Hearing*, Vol. 6, 4 July 2000, at 1011 and 1110.

37. Manufacturer’s Exhibit A-2 (protected), Tab 11, Administrative Record, Vol. 12.

38. Importer’s Exhibit D-1, paragraphs 39, 76 and 84, Administrative Record, Vol. 13.2.

39. *Transcript of Public Hearing*, Vol. 5, 30 June 2000, at 924 and 925. Mr. Dietrich describes the Future Shop, Leon’s and The Brick as “price-aggressive category killers”.

40. Importer’s Exhibit F-2, para. 6, Administrative Record, Vol. 13.4. and Importer’s Exhibit D-4 (single copy), Vol. 1 to 8.

41. *Protected Pre-hearing Staff Report*, 23 May 2000, Tribunal Exhibits NQ-2000-001-31 (protected), NQ-2000-001-33 (protected) and NQ-2000-001-35 (protected), Administrative Record, Vol. 2B at 87-141, Vol. 2C at 63-137 and Vol. 2D at 66-143 respectively, as revised 19 June 2000.

42. *Protected Pre-hearing Staff Report*, revised 19 June 2000, Tribunal Exhibits NQ-2000-001-31A (protected), NQ-2000-001-33A (protected) and NQ-2000-001-35A (protected), Administrative Record, Vol. 2B at 155-160, Vol. 2C at 148-56 and Vol. 2D at 156-62 respectively.

Camco testified that it uses a contribution margin analysis to determine how low prices can go before a decision is made not to reduce them further. WCI argued that the basis on which Camco made this decision is flawed.⁴³ It pointed out the inadequacies of using a contribution margin analysis for product pricing purposes. Essentially, WCI argued that Camco's accounting methods are inappropriate and that they could have lowered prices further to maintain market share and still have made money. The Tribunal believes, however, that Camco was under no obligation to further reduce its prices in order to compete with dumped prices. Camco testified that it reached a point where it could not reduce its prices further without jeopardizing its revenues. Further, the Tribunal notes that, in spite of the argument put forth by Whirlpool and WCI, and notwithstanding the accounting methods used by Camco to determine minimum prices, the company has been a successful player in the Canadian market in the past and could continue to be in the future.

Having heard and questioned the retailer and ABD witnesses, and after reviewing the evidence, the Tribunal is of the view that price is a central factor in the purchaser's decision-making process to choose a given supplier to provide a specific line of appliances.

The Tribunal believes that, in an industry that is as price-competitive as this one, dumping margins of 5.5 to 16.3 percent for refrigerators, 13 to 13.7 percent for dishwashers and 13.3 to 15.9 percent for dryers are quite significant. In this market, these margins could afford a competitor a great deal of room to manoeuvre and to buy or maintain market share. The record of this inquiry contains many examples that illustrate the shift of sales from one supplier to another.⁴⁴ For example, despite a long-standing commercial relationship between The Brick and Camco, a letter on the record from The Brick to Camco demonstrates the impact of low-price offerings.⁴⁵

The Tribunal finds that Camco has experienced a significant loss of market share as a direct result of the increased sales of imports at dumped prices from WCI and Whirlpool. Further, the fact that the overall market was growing compounds Camco's losses because, the Tribunal believes that, absent the dumping, Camco's sales would have been greater. In addition, the Tribunal finds that Camco has experienced price suppression and, to a lesser extent, price erosion. The Tribunal finds that the magnitude of Camco's market share declines in each of the product markets, especially at a time of market growth, is material and constitutes injury to the production of like goods by the domestic industry.

Other Factors

Whirlpool, WCI, Sears and the Commissioner of Competition argued that there were factors other than dumping that caused the injury suffered by the domestic producer. The Tribunal notes that, in injury inquiries, there are almost always other factors present and that it cannot attribute any injury caused by these other factors to the dumping. Dumping, however, need not be the only or the principal cause of the injury. The statute requires that the injury caused by the dumping be material.

43. *Transcript of Public Argument*, Vol. 1, 5 July 2000, at 199.

44. *Protected Pre-hearing Staff Report*, 23 May 2000, Tribunal Exhibit NQ-2000-001-31 (protected), Administrative Record, Vol. 2B at 29, *Protected Pre-hearing Staff Report*, revised 29 June 2000, Tribunal Exhibit NQ-2000-001-33B (protected), Administrative Record, Vol. 2C at 223 and Tribunal Exhibit NQ-2000-001-35B (protected), Administrative Record, Vol. 2D at 238.

45. Manufacturer's Exhibit A-2 (protected), Tab 11, Administrative Record, Vol. 12.

The Tribunal examined the importance of non-price factors in the purchasing decisions of retailers, builders and ABDs. The Tribunal heard testimony from five different purchasers that provided their evaluation of the various suppliers of appliances in terms of these non-price factors. In this regard, the comments made related generally to each of the product groups. These non-price factors include: (1) product quality, performance, style and innovation; (2) selling and marketing practices, including trade partner relations, satisfaction, service and integrity; (3) Camco's business strategies and decisions; (4) Camco's selling directly to builders and the resulting lack of success in the builder and ABD markets; and (5) Camco's lack of investment and late timing of rationalization of production.

The first issue examined by the Tribunal deals with product quality, performance, style and innovation. In this regard, the Tribunal notes the success and acceptance in the United States of Camco's dishwashers and dryers, as well as its non-subject bottom-mount and custom-style refrigerators and Sears, Roebuck & Co. (U.S.) in the United States buys Camco dryers and the witness for Sears stated that Camco produces a good quality dryer.⁴⁶ Regarding the refrigerators produced in Hamilton, the Tribunal observes that these products meet Sears's high standards because certain top-mount refrigerators are manufactured by Camco in Canada for the Kenmore brand. During the hearing, the Tribunal heard much discussion regarding refrigerators with the coils on the back or "dirty back" refrigerators. Here, again, the Tribunal notes that WCI sells these products without any apparent consumer concerns. Regarding general product quality concerns, the Tribunal reviewed the study conducted by Inglis where it surveyed independent dealers. The study shows that Camco's product quality is within the range of WCI and Whirlpool.⁴⁷

Second, the Tribunal considered the claims made regarding Camco's selling and marketing practices. Inglis claimed that Camco's failure in the Canadian market can be attributed to a lack of national brand advertising. The Tribunal believes that there is sufficient evidence on the record that contradicts this statement. First, GE has a very well-known brand image that was developed over many years. The witness for Inglis stated that the GE brand goes on much more than appliances and that, overall, GE, as a brand, has a wide awareness in the Canadian marketplace with consumers.⁴⁸ Secondly, a company such as Maytag that does extensive national brand advertising and has very strong brand recognition and commitment does not have a market share concomitant with that advertising. As a witness testified, "People have Maytag on their minds but not in their homes".⁴⁹

Another component of the argument put forth regarding Camco's poor marketing practices deals with its trade partner relations, including satisfaction, service and integrity. It would appear that Camco did lose some business as a result of incidents such as when Camco changed the line of models that it was going to supply Brault et Martineau. This change occurred at a critical time for Brault et Martineau, during the "ménage" [moving day] time of year in Quebec.⁵⁰ It was reported that a retailer in Quebec cannot afford to have supply problems during the busiest time of the year. If product line-up changes and stocks cannot be guaranteed, purchasers and their sales personnel will not be in a position to sell or promote those appliances. In addition, it appears that, when Camco changed some of its sales representatives for various accounts and senior company officials, certain personality conflicts occurred and that purchasers and their sales personnel

46. *Transcript of Public Hearing*, Vol. 5, 30 June 2000, at 941.

47. Tribunal Exhibit NQ-2000-001-RI-3A (protected), Administrative Record, Vol. 10.2A at 298-417; and *Transcript of In Camera Hearing*, Vol. 3, 29 June 2000, at 433-34.

48. *Transcript of Public Hearing*, Vol. 4, 29 June 2000, at 592.

49. *Transcript of Public Hearing*, Vol. 1, 26 June 2000, at 120.

50. *Transcript of In Camera Hearing*, Vol. 5, 4 July 2000, 745-47.

were not motivated to do business with Camco or to promote the GE line-up.⁵¹ The Tribunal acknowledges that certain of Camco's lost sales were due to the issues described by the witnesses for Midnorthern Appliance Inc. and Brault et Martineau. These lost sales cannot be attributed to the dumping.

The third factor examined by the Tribunal deals with the arguments put forth by WCI and Whirlpool that the poor strategic business decisions by Camco, such as its decision to focus its selling efforts on the decreasing independent dealer segment and retailers, such as Eatons and The Bay, have caused injury to the domestic industry. Camco argued that its focus on independent retailers instead of big retailers was a result of necessity. The record shows that the effects of the dumping were more apparent among the large retailers compared to the independents, and, as such, the Tribunal considers that this hindered Camco's ability to compete in that segment of the market. As a result, Camco's only alternative was to focus on the smaller independent dealers where Camco did not have to compete on price in the same way that it had to at the larger retail accounts. With respect to Eatons and The Bay, the Tribunal notes that the performance of these large retailers in terms of appliance sales and market share has been relatively weak and pales in comparison to the success of Sears. Therefore, in the Tribunal's view, the business decision by Camco to sell to independent dealers did not, in and of itself, cause injury to Camco, rather it demonstrates an additional effect of the dumping.

The fourth factor evaluated by the Tribunal addresses arguments that Camco's lack of success in the builder market is a result of Camco selling directly to builders, thereby alienating the ABDs. Camco argued that selling directly to the builder segment is not new. Many manufacturers sell directly to builders, have done so for many years and will continue to do so in the future.⁵² The witness for GEA testified as to the importance of the direct-builder market to GEA and that selling directly to builders has been a normal practice for the company.⁵³ The witness for Midnorthern Appliance Inc. explained that it was not the fact that Camco sold directly to the builder channel but rather how Camco went about obtaining builder accounts that was of concern to Midnorthern Appliance Inc. The Tribunal believes that some of the losses experienced by Camco in the builder segment are a result of the nature of its activities in that segment. However, the Tribunal maintains that the importance of price and the availability of dumped product are the overriding factors that caused Camco to lose sales. Because of the presence of dumped imports at ABD accounts, Camco found that it could not compete on price with the dumped imports and, therefore, focused more on the builder segment directly.⁵⁴ Camco submitted that, since the preliminary determination of dumping, a number of ABDs have approached Camco because they now find Camco's prices competitive.

The final factor that the Tribunal reviewed dealing with all three product groups, addresses the allegations made by WCI and Whirlpool that Camco's lack of investment and late timing of rationalization of production are the cause of any injury suffered by Camco. They claimed that rationalization and its derived cost efficiencies are an important factor in competing in the marketplace and that Camco's failure to rationalize production and reduce costs has affected its ability to compete and has been injurious to its overall profitability. Regarding the ability and timing of Camco's decision to rationalize production, the Tribunal notes the type of relationship that Camco has with GEA. The position of Camco in the overall plans of GEA, appears to be somewhat different from what one would expect. The witness for GEA explained to the Tribunal that it has controlling interest of Camco from a shareholding standpoint, but not from a board standpoint. GEA views Camco as an affiliate, not a subsidiary. It has a buy/sell relationship with Camco. In

51. *Transcript of In Camera Hearing*, Vol. 5, 4 July 2000, at 792-97.

52. *Transcript of Public Hearing*, Vol. 1, 26 June 2000, at 22.

53. *Transcript of In Camera Hearing*, Vol. 4, 30 June 2000, at 629-31.

54. *Transcript of Public Hearing*, Vol. 2, 27 June 2000, at 323-24 and 353-54.

this regard, Camco competes for the business of GEA. Recently, a new supply agreement was reached to supply GEA with certain models of dryers through to December 2003. However, the witness for GEA noted that the last round of dryer rationalization for small dryers went to Frigidaire Company in the United States.⁵⁵ With respect to dishwashers, the evidence shows that Camco lost a large volume of sales to GEA in 1998. The witness for Camco testified that Camco's sales of dishwashers to GEA fluctuate quite significantly from year to year because Camco acts as a "surge" facility when demand is strong in the United States.⁵⁶ Therefore, depending on the competition in the U.S. market, Camco could win or lose sales to GEA. As Camco does not appear to be part of GEA's overall North American plan, Camco is forced to plan its rationalization independently from GEA. Because of the nature of the relationship with GEA, the Tribunal sees that Camco must be very competitive to become part of GEA's North American plan. To the extent that Camco is doing poorly in terms of sales and market share in Canada, rationalization becomes more difficult.

The Tribunal believes that Camco's success with its export sales to GEA is based on its ability to develop and produce a competitive product in Canada. The ability of Camco to rationalize is very much dependent on its ability to offer new and acceptable products to GEA. In this respect, the Tribunal believes that Camco is well advanced with its rationalization plans. It is successful in the production of dryers. Camco is half way there with respect to dishwashers and has started to focus on the rationalization of its production of refrigerators. Camco and GEA also collaborate in the purchasing of certain parts and assemblies, giving Camco the benefit of GEA's buying power. Given these various improvements, Camco should have been able to meet the competition, had it not been for the dumping.

For certain appliances, there were other factors that the Tribunal examined. First was Camco's decision to stop production of 16- and 18-cubic-foot refrigerators when the new energy standards come into effect in Canada, around July 2002, and, second, Camco's export performance for dishwashers and dryers.

Regarding Camco's decision to stop production of certain refrigerators, the Tribunal notes that production of these refrigerators will continue in Canada until the new energy standards come into effect. This is estimated to be around July 2002. The decision to cease production has been known publicly for some time. A press release dated November 1999, announced Camco's plans with respect to discontinuing production of 16- and 18-cubic-foot top-mount refrigerators and the supply agreement with Amana for 16- and 19-cubic-foot refrigerators. It is clear from the evidence that purchasers in the retail and builder segments have continued to buy Camco products since its decision was made public. Further, Camco is not abandoning the refrigerator business. It will simply change its focus and specialize in the production of certain niche refrigerator products. Further, between now and the time when Camco will stop production and source certain refrigerators from Amana, the Tribunal is of the view that, from the consumer's perspective, there will be no change. Camco will still stand behind its warranties, and 16- and 18-cubic-foot GE brand refrigerators will continue to be available on the Canadian market after production is stopped.

With regard to Camco's export performance for dishwashers and dryers, all the evidence points to the conclusion that Camco is profitable and reasonably healthy with respect to its export sales of dishwashers and dryers. The Tribunal recognizes that Camco's export business has aided its overall operation by helping to pay for plant and product improvements. In addition, the export sales have contributed greatly to higher productivity. In normal circumstances, this should have made Camco a formidable competitor. However, the circumstances were not normal, as the presence of dumped product resulted in Camco having to struggle in its home market. The majority of the Tribunal, in this case, believes that the financial success in the export

55. *Transcript of Public Hearing*, Vol. 5, 30 June 2000, at 790 and 796.

56. *Transcript of Public Hearing*, Vol. 2, 27 June 2000, at 317.

market should not be used to offset Camco's injury in the domestic market and that injury cannot be judged on Camco's worldwide operations.

In conclusion, most of the above factors do not explain Camco's large loss of market share of certain refrigerators, dishwashers and dryers. The Tribunal agrees that some of Camco's selling and marketing practices have resulted in injury and recognizes that they are a very important aspect of doing business. However, the incidents cited on the record do not appear to be of a magnitude to explain the large loss of market share. Instead, the major source of recent market change is the fact that WCI and Whirlpool are dumping certain refrigerators, dishwashers and dryers in Canada. The importance of the price factor cannot be underestimated. The renewed interest in Camco's products, since the preliminary determination, is eloquent testimony to the role of price in this industry.⁵⁷ In this respect, the impact of these other factors does not detract from the Tribunal's conclusion that the dumped prices caused Camco to lose market share for certain refrigerators, dishwashers and dryers.

Finally, the Tribunal looked at the revenues that Camco earned on sales of certain refrigerators, dishwashers and dryers in the Canadian market. The Tribunal observes that, if Camco had maintained its 1997 share of the market for each of the product groups, its revenues on domestic sales for 1999 would have been significantly higher. Based on the average selling prices earned by Camco in 1999, the lost revenue amounts to over \$18 million for refrigerators, \$10 million for dishwashers and \$7 million for dryers. In this regard, WCI and Whirlpool argued that Camco could have lowered its prices to maintain market share. The Tribunal believes that, even if Camco had lowered its prices, there was no guarantee that Camco would have maintained its share of the market, because of the presence of dumped imports.

Turning to the financial results that Camco reported for its domestic sales, the Tribunal notes that the picture is less clear. The Tribunal accepts the arguments of WCI and Whirlpool that the fixed manufacturing costs and general, selling and administrative (GSA) cost allocation methodologies are imperfect and somewhat arbitrary. In addition, for dishwashers and dryers, the Tribunal questions the allocation of costs between domestic sales and export sales. It was argued that the overall effect of Camco's allocation is to freeze manufacturing overhead allocated to export sales at the 1995 level of exports. The Tribunal is also of the view that, as a result of the allocation methods chosen by Camco, the costs associated with the production of domestic product are overstated compared to those exported, especially in light of the increasing export volumes. For dishwashers and dryers, the Tribunal is of the view that the costs, as reported by Camco, do not properly reflect the costs of manufacturing domestic product and, in turn, the gross margin and operating income reported. Camco agreed that, when using a contribution margin analysis, it is vital to separate fixed and variable costs carefully, otherwise the results could be misleading.⁵⁸ During cross-examination of the witnesses for Camco, it became clear to the Tribunal that many of the allocations that Camco made for fixed and variable expenses and domestic and export expenses for dishwashers and dryers were questionable. This left the Tribunal doubting the appropriateness of the allocations made by Camco and the financial results that it reported. As such, the Tribunal put little weight on the results of the contribution margin analysis prepared by Camco.

In order to provide a more accurate income statement for domestic sales of dishwashers and dryers, the Tribunal combined the statements for domestic and export cost of goods manufactured and then reallocated the costs based on the actual production volumes for export and domestic goods, for the years covered by the period of inquiry. To minimize the effect of GSA allocation issues with respect to each of the

57. *Transcript of In Camera Hearing*, Vol. 5, 4 July 2000, at 734, 740 and 753.

58. *Transcript of In Camera Hearing*, Vol. 1, 27 June 2000, at 191.

three products, the Tribunal only considered the restated income statements to the gross margin line. In the case of refrigerators, the gross margin earned by Camco fell by 33 percent in 1998 and by a further 25 percent in 1999.⁵⁹ In the case of dishwashers, the gross margin on domestic sales fell by 33 percent in 1998, before rebounding in 1999, but still not reaching levels earned in 1997. In the case of dryers, the gross margin on domestic sales fell by 13 percent in 1998 and by a further 1 percent in 1999. The Tribunal is convinced that these decreases in Camco's gross margins for certain refrigerators, dishwashers and dryers are related, to a significant degree, to the large and increasing competition with dumped imports from WCI and Whirlpool.

In summary, it is clear from the evidence that dumping has caused material injury to Camco's production of certain refrigerators, dishwashers and dryers.

MASSIVE IMPORTATION

Camco submitted that, in addition to finding injury or threat of injury, the Tribunal should also make a finding of massive importation based on paragraph 42(1)(b) of SIMA, which allows for such a finding where the importation of the subject goods is considerable or where the importer of the goods is aware or should be aware that the exporter was dumping and causing injury, and where such an importation is massive or forms part of a series of importations which, in the aggregate, are massive and have occurred within a relatively short period of time.

Camco stressed that imports for the first quarter of 2000 increased by 94 percent for refrigerators, 80 percent for dishwashers and 107 percent for dryers. Camco pointed out that, for January and February 2000, its market share for certain refrigerators, dishwashers and dryers decreased significantly in comparison with the same period in 1999 and was at its lowest in its history. Camco referred to numerous reports from its sales force that dealt with massive importation in the form of both inventory stockpiling by Inglis and WCI Canada and dealer loading and stockpiling inventory well in excess of requirements in the normal course of business. Camco claimed that many additional reports from its sales force showed that all sizes of customers in all parts of the country were being loaded, many with preferential prices, payment terms and offers by the importer to pay for outside warehousing.

In Camco's estimation, imports of the subject goods in February 2000 alone, which exceeded the total volume of imports from the named importers in the first quarter of 1998 and the first quarter of 1999, should be considered massive. Moreover, Camco noted that the importers were aware that these goods were being imported at dumped prices and were causing injury to the domestic industry, as these companies are sophisticated operators that understand the relationship between the pricing and the volume of the products that they import.

The importers pointed out that they were unaware whether the goods were dumped. They further noted that the surge of imports in the first quarter of 2000 must be attributed to the need to fill orders from purchasers that had commitments and to the significant growth of the market between the first quarter of 1999 and the first quarter of 2000. They referred to the testimony of various purchasers who testified that they had purchased greater quantities of the subject goods in the first quarter of 2000 in order to allow them

59. The Tribunal recognizes that Camco's gross margins for each of the three product categories improved in the first quarter of 2000. The Tribunal believes that, as a result of the initiation of the investigation by the CCRA on November 30, 1999, Camco's losses at the gross margin level have been mitigated. In addition, first quarter results may not be reflective of total annual results.

to fulfil price and sale commitments, as well as the growing demand in the marketplace. They argued that there is no evidence of injury caused by the presence of a larger volume of imports in the domestic market.

As noted in Inquiry No. NQ-95-001,⁶⁰ the massive importation provision of SIMA allows for the retroactive assessment of anti-dumping duties against imported goods under exceptional circumstances and, hence, the Tribunal and its predecessors have made such findings in just a few cases.

In examining the issue of massive importation in this case, the Tribunal, first, looked at the conditions contained in subparagraph 42(1)(b)(i) of SIMA, more particularly in clauses 42(1)(b)(i)(A) and (B). Clause 42(1)(b)(i)(A) requires, among other things, “a considerable importation of like goods that were dumped”. The Tribunal is of the view that, while there is no question that there was a marked increase in imports of the subject goods in the first quarter of 2000, such an increase does not amount to a “considerable importation” in the context of this case. The Tribunal notes, in this regard, that, in this growing market, the bulk of the increase for that period relates to catalogue commitments already made by Sears, to contractual arrangements made with respect to the builder segment of the market and, in the case of the Quebec market, in consideration of the “*ménage*” [moving day] that takes place later in the second quarter of the year. For the reasons outlined above, the Tribunal is not persuaded, having regard to clause 42(1)(b)(i)(B) of SIMA, that the importers were or should have been aware that the exporters were practising dumping and that such dumping would cause injury. The evidence does not support Camco’s claim and the Tribunal is of the view that the importers’ actions were not speculative but resulted, for that specific time period, from previous commitments. These conditions not being met, it is not necessary to examine the other elements in subparagraph 42(1)(b)(ii).

In light of the foregoing, the Tribunal finds that the requirements for making a finding of massive importation under paragraph 42(1)(b) of SIMA have not been met.

REQUEST FOR A REFERENCE TO THE COMMISSIONER

Whirlpool and Inglis requested that, pursuant to section 46 of SIMA, the Tribunal advise the Commissioner to cause an investigation to be initiated respecting the dumping of the subject goods by Maytag and other unnamed U.S. exporters. Maytag, however, objected to the request on the grounds that the goods that it produced are not being dumped in Canada and have not caused or are not threatening to cause injury to Camco.

The relevant portions of section 46 of SIMA read as follows:

46. Where, during an inquiry referred to in section 42 respecting the dumping or subsidizing of goods to which a preliminary determination under this Act applies, the Tribunal is of the opinion that

(a) there is evidence that goods the uses and other characteristics of which closely resemble the uses and other characteristics of goods to which the preliminary determination applies have been or are being dumped or subsidized, and

(b) the evidence discloses a reasonable indication that the dumping or subsidizing referred to in paragraph (a) has caused injury or retardation or is threatening to cause injury,

the Tribunal, by notice in writing setting out the description of the goods first mentioned in paragraph (a), shall so advise the Commissioner.

60. *Caps, Lids and Jars, Finding* (20 October 1995), *Statement of Reasons* (6 November 1995) (CITT).

In addition to its earlier comments to the effect that Maytag and other unnamed U.S. exporters' goods not being injurious to the domestic industry, the Tribunal is not persuaded, with respect to Maytag, that the evidence indicates that Maytag's refrigerators, dishwashers and dryers are being dumped in the Canadian market. The Tribunal notes and agrees with Camco that there is no evidence that Maytag's marketing and pricing practices have been injurious to the domestic industry. As for the goods from the unnamed exporters, the Tribunal is of the opinion that the evidence before it is insufficient to support a conclusion that the goods produced by these exporters have been or are presently being dumped in Canada and that their presence has been injurious to the domestic market. The Tribunal, therefore, declines to advise the Commissioner to investigate these exporters.

REQUESTS FOR EXCLUSIONS

It is well established that the Tribunal has discretion to grant exclusions under subsection 43(1) of SIMA.⁶¹ The Tribunal has granted product exclusions in circumstances when, for instance, the domestic industry does not produce the particular product.⁶² The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods,⁶³ whether the domestic industry is an "active supplier" of the product or whether it normally produces the product.⁶⁴

Whirlpool and Inglis requested exclusions with respect to Kitchen Aid brand products, stainless steel tub dishwashers, top-mount refrigerators with a capacity of 18 cubic feet and above, dryers sold to the builder trade, private-label dryers sold to retailers and specialty dryers, including compact dryers, smart-card dryers and coin-operated dryers. Finally, Inglis requested exclusions for imports of certain refrigerators, dishwashers and dryers destined for use in the Habitat for Humanity Program and for Inglis's employees.

For its part, WCI argued that an exclusion in respect of refrigerators with a capacity over 17.7 cubic feet should be granted, since Camco does not produce such items in Canada and in light of the considerable presence of undumped large refrigerators from other exporters. WCI also requested an exclusion for electric or gas dryers, with controls at the front, removable tops and chassis designed to be stacked on top of matching front-load washers, since they are usually sold in pairs.

Sears requested exclusions for refrigerators with a capacity over 17.7 cubic feet, private label dishwashers and dryers, dishwashers with stainless steel tubs and dryers that match front-load washers and stackable dryers. Sears also requested an exclusion for dryers that are exclusive to Sears, specifically, new dryers with electronic-control panels. The Commissioner of Competition also argued that the Tribunal should exclude from the scope of the subject goods, refrigerators with a capacity greater than 17.7 cubic feet and stainless steel tub dishwashers, since Camco does not produce these goods.

61. *Certain Cold-rolled Steel Sheet Originating in or Exported from the United States of America (Injury) (United States v. Canada)* (1994), CDA-93-1904-09 (Ch. 19 Panel) at 54. See, also, *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA).

62. See, for example, *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products, Finding* (2 July 1999), *Statement of Reasons* (19 July 1999), NQ-98-004 (CITT). See, also, *Stainless Steel Round Bar, Finding* (4 September 1998), *Statement of Reasons* (21 September 1998), NQ-98-001 (CITT) [hereinafter *Round Bar*].

63. *Ibid.*

64. *Round Bar, ibid.*

Camco generally opposed the granting of any exclusion with respect to the three products, except with respect to the request for exclusion made by Whirlpool and Inglis for imports certified to be destined for the Habitat for Humanity Program.

After reviewing the evidence and considering the discretionary and exceptional nature of product exclusions, the Tribunal is of the view that a certain number of exclusions are warranted for the reasons below.

With respect to the request for exclusion for top-mount refrigerators with a capacity greater than 17.7 cubic feet, the Tribunal grants the exclusion for top-mount refrigerators with a capacity of 18.5 cubic feet and above. The Tribunal notes that these refrigerators are not produced domestically by Camco, that they are sold in a different segment of the market and, therefore, that they do not compete directly with the domestic goods. This is further evidenced by the fact that Camco itself imports these specific products.

With respect to stainless steel tub dishwashers, while there is a degree of interchangeability between plastic tub and stainless steel tub dishwashers, the Tribunal is persuaded that there are major differences between plastic and stainless steel tub dishwashers with respect to their price, appearance and performance characteristics. The evidence also shows that stainless steel tub dishwashers are clearly sold in a different segment of the market, fill a particular market niche, are unique, are not produced in Canada and do not compete directly with the domestically produced like goods. In light of the foregoing, the Tribunal is of the view that the requested exclusion should be granted.

Regarding WCI's request for exclusion for electric or gas dryers, with controls at the front, removable tops and chassis designed to be stacked on top of washers, the Tribunal notes the uniqueness of the products in the market and the fact that they are complimentary to the non-subject front-load washers. The Tribunal also acknowledges that these dryers are unique, are not easily substitutable for ordinary dryers and are not produced in Canada. Based on the foregoing, the Tribunal concludes that this request for exclusion is warranted.

The Tribunal notes that the domestic industry agreed to the request for exclusion made by Inglis for imports of the subject refrigerators, dishwashers and dryers destined for use in the Habitat for Humanity Program. In accordance with its previous practice with respect to such agreements, and considering that there are no other valid reasons not to grant the exclusion, the Tribunal concludes that the requested exclusion should be granted.

Finally, the Tribunal notes that Whirlpool requested a general exclusion for its goods on the grounds that there was no evidence that its imports had caused and were threatening to cause material injury to the domestic industry. As noted earlier, the Tribunal has considered, in its injury analysis, the overall effects of the dumped imports on the domestic industry. Having conducted such an assessment and considered Whirlpool's participation in the Canadian market and, in particular, its volume of sales of dumped product in Canada, the Tribunal is of the view that there are no valid reasons to generally exclude Whirlpool from its findings.

CONCLUSION

For the foregoing reasons, the Tribunal finds that:

1. the dumping in Canada of certain top-mount electric refrigerators has caused material injury to the domestic industry, excluding those:
 - with a capacity of 18.5 cubic feet and above; or
 - destined for use in the Habitat for Humanity Program;
2. the dumping in Canada of certain electric household dishwashers has caused material injury to the domestic industry (Member Close dissenting), excluding those:
 - with stainless steel interiors (tubs); or
 - destined for use in the Habitat for Humanity Program; and
3. the dumping in Canada of certain gas or electric laundry dryers has caused material injury to the domestic industry (Member Close dissenting), excluding those:
 - with controls at the front, removable tops and chassis designed to be stacked on top of washers; or
 - destined for use in the Habitat for Humanity Program.

The Tribunal also finds that the requirements of paragraph 42(1)(b) of SIMA, with respect to massive dumping, and of section 46 of SIMA, with respect to an advice to the Commissioner regarding other allegedly dumped goods from the United States, have not been met.

Pierre Gosselin

Pierre Gosselin
Member

Zdenek Kvarda

Zdenek Kvarda
Member

PARTIAL DISSENTING OPINION OF MEMBER CLOSE

While I agree with my colleagues' decision on refrigerators, I do not agree with their conclusion on the other two appliances, dishwashers and dryers. I base my dissent on a different interpretation of the scope of an injury analysis. This interpretation is derived primarily from my reading of the relevant sections of SIMA and the relevant paragraphs of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*.⁶⁵ Nothing in these legal or negotiated texts leads me to concur that material injury to a domestic industry should be assessed only on the basis of the domestic production that enters as sales into the domestic market. Rather, it is my view that domestic production, in its entirety, needs to be examined before it can be concluded that the impact of the dumped imports has been or is threatening to be materially injurious to the domestic industry.

Article 3.1 of the WTO Anti-dumping Agreement states that injury is to be determined by:

(a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent **impact of these imports on the domestic producers** of such products. [Emphasis added]

While it is logical to assess the effects of the dumping on prices in the domestic market, given that this is the only market where the dumping will affect prices, the same logic does not follow in an examination of the impact of the dumped imports on the domestic producers. Nowhere, in either SIMA or the WTO Anti-dumping Agreement, is this impact analysis restricted to the domestic market. "Injury" in subsection 2(1) of SIMA is defined in terms of "material injury to a domestic industry". "Domestic industry" is, in turn, defined in terms of the "domestic production of the like goods". It is not defined in terms of the domestic production of the like goods for sale in the domestic market. As a result, it is my opinion that an injury analysis should not necessarily be undertaken with reference to domestic market sales only.

The Tribunal's finding in Inquiry No. NQ-92-006⁶⁶ clearly sets out this position in the context of internal transfers of production. The Tribunal ruled that:

The fact that there is no sale, in itself, does not preclude the product from being considered as production in Canada. Neither SIMA nor the Code restricts the meaning of production in Canada to the expression "production in Canada for sale in Canada".⁶⁷

This interpretation in the *Tomato Paste* finding of 1993 is not affected by the replacement of the definition of "material injury" by the definitions of "injury" and "domestic industry", as a result of the Uruguay Round of Multilateral Trade Negotiations. Drawing on the precedent set in this case, which included internally transferred goods as part of domestic production, I see no logic or reason for excluding export sales from production in Canada.

Furthermore, SIMA defines "domestic industry" in terms of the production of "a major proportion of the **total** domestic production of the like goods" [emphasis added]. I find it difficult to understand the logic that would support, on the one hand, including total production as valid, and in fact required, when

65. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm [hereinafter WTO Anti-dumping Agreement].

66. *Tomato Paste, Finding* (30 March 1993), *Statement of Reasons* (14 April 1993) [hereinafter *Tomato Paste*].

67. *Ibid.* at 5.

determining who are the domestic producers and, on the other hand, ignoring the total production of those producers when conducting the injury analysis itself.

A further reason for including the totality of domestic production in an injury analysis stems from Article 3.4 of the WTO Anti-dumping Agreement, which requires that:

[t]he 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. [Emphasis added]

Subsection 37.1(1) of the SIMA Regulations mirrors this article⁶⁸ and, like Article 3.4 of the WTO Anti-dumping Agreement, continues with a non-exhaustive list of factors to be examined. Paragraph 37.1(1)(c) of the SIMA Regulations lists these factors as follows:

- (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity,
- (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or ability to raise capital.

Although these factors are listed in terms of their negative effect on the state of the industry, I see no reason why an examination of these factors should be limited in this fashion. The Tribunal is required to determine if the domestic industry has been or could be materially injured by dumping. If the dumping has had, or is likely to have, little impact on the state of the industry because of some of the factors mentioned in the legislation are not declining but actually increasing, then it seems not only reasonable but consistent with the legislation to take these factors into account. Paragraph 37.1(1)(d) of the SIMA Regulations reinforces this interpretation. It states that “any other factors that are relevant in the circumstances” are prescribed in determining whether the dumping has caused injury or retardation.

If a case before the Tribunal involves an industry that produces only, or mainly, for the domestic sales market, then an injury analysis focussed on sales in the domestic market is not a cause of concern. The issue of the scope of the inquiry arises when the Tribunal has to determine the impact of dumping on an export-oriented company or a company largely involved in intra-corporate internal transfers. In such cases, if the analysis is restricted to the domestic sales market, then the prescribed factors in paragraph 37.1(1)(c), for the most part, either have to be ignored or can end up being misconstrued.

Only one factor in the list logically refers to the domestic sales market. That one factor is market share. The factors of output, productivity, return on investments, utilization of industrial capacity, cash flow, inventories, employment, wages and the ability to raise capital cannot easily, if at all, be divided between different markets. They pertain to the operations of the industry as a whole. These factors would, therefore, have to be ignored if only the domestic sales market is to be analyzed for export-oriented industries or for those industries where a large proportion of their production was transferred downstream within the corporation. If other factors, such as sales and profitability, are assessed only insofar as they relate to the domestic sales market, the results could easily distort the impact of the dumping for industries that do not sell the vast majority of their production into the domestic market.

68. 37.1(1) For the purposes of determining whether the dumping or subsidizing of any goods has caused injury or retardation, the following factors are prescribed: . . .

(c) the resulting impact of the dumped or subsidized goods on the state of the domestic industry and, in particular, **all relevant economic factors** and indices that have a bearing on the state of the domestic industry. [Emphasis added]

I do not believe that taking the totality of production into account will “gut SIMA”. An export-oriented company can still be materially injured or be threatened to be materially injured by dumping, as is argued below. A restriction to the domestic sales market, on the other hand, is, in my view, contrary to the intent of the WTO Anti-dumping Agreement and SIMA, both of which require an examination of all relevant economic factors that have a bearing on the state of the domestic industry in an injury assessment.

This requirement that an examination of all factors be taken into account in an injury analysis is not new. It stems from Article 3 (1967) of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*.⁶⁹ The pertinent paragraph of Article 3, entitled “Determination of Injury”, reads as follows:

(b) The valuation of injury—that is the evaluation of the effects of the dumped imports on the industry in question—**shall** be based on examination of **all** factors having a bearing on the state of the industry in question, such as: development and prospects with regard to turnover, market share, profits . . . export performance, employment, . . . utilization of capacity . . . and productivity. [Emphasis added]

In 1968, Canada adopted the material injury test, as set out in Article 3 of the GATT Anti-dumping Code. This material injury test was the major reason for the enactment of the Canadian *Anti-dumping Act*,⁷⁰ replacing section 6 of the *Customs Act*, which had remained virtually unchanged since 1904, when Canada introduced the world to anti-dumping legislation.⁷¹

Some of the factors outlined in Article 3(b) of the GATT Anti-dumping Code have changed, and now there are two articles (3.1 and 3.4) of the WTO Anti-dumping Agreement describing the examination of the impact of dumped imports on the domestic industry. Nevertheless, through two subsequent rounds of multilateral negotiations, the essence of Article 3(b) of the GATT Anti-dumping Code remains unaltered. The requirement to consider all factors and the lack of a restriction of the analysis to the domestic sales market continues in the present anti-dumping agreement.

Had the negotiators of the WTO Anti-dumping Agreement or the legislators of the Canadian *World Trade Organization Agreement Implementation Act*⁷² intended that the determination of injury be restricted to sales of like goods in the domestic market and that the only pertinent factors be those that could be

69. Fifteenth Supp. B.I.S.D. (1968) 24 [hereinafter GATT Anti-dumping Code].

70. Government of Canada, “Introduction”, *White Paper on Anti-dumping*, 1968.

71. P. Clark, *A comparison of the Antidumping Systems of Canada and the USA: A Study Prepared for the Department of Finance, Government of Canada*, 1996. Even a century ago, anti-dumping duties were not meant to protect a small portion of a company’s domestic production, but, as in the 1904 Budget Speech, where dumping was equated with “slaughtering”, Anti-dumping duties were meant to prevent the “crushing” of infant Canadian manufacturing industries. (Budget Speech, June 7, 1904, delivered by the Hon. William S. Fielding at 43-45.) And while the concept of predatory dumping had been removed as early as 1921 from U.S. anti-dumping legislation (Seth Kaplan, *Injury and Causation in USITC Antidumping Determinations: Five Recent Approaches in P.K.M.*, Tharakan (ed.); *Policy Implications of Antidumping Measures*, Elsevier Science Publishers, North Holland, 1991 at 165), experts of the day still argued that the application of anti-dumping duties “should be contingent upon the existence of a distinct probability that the continuance of such dumping would result in substantial injury to the domestic industries”. (Jacob Viner, *Memorandum on Dumping*, submitted to the Preparatory Committee for the International Economic Conference, League of Nations, 1926).

72. Bill C-57, *An Act to implement the Agreement Establishing the World Trade Organization*, 1st sess., 35th Parl. (as passed by the House of Commons, 30 November 1994).

assessed in that domestic sales market, then they could have explicitly provided for such restrictions. They did not.

In these days of globalization, internationalization of production and world product mandates, it is my opinion that the Tribunal is not always going to be able to rely on analyzing all the relevant factors in only the context of the domestic sales market. In the past 15 years, the Tribunal has only been presented with a handful of cases where the domestic sales market did not represent the total, or at least a significant proportion, of domestic production.⁷³ The Tribunal has seen two such cases in the last several months.⁷⁴

Camco's dryers present the Tribunal with a case of not merely export orientation but export-dependent production. In 1999, Camco exported approximately 90 percent of its dryers to GEA in the United States. It is my view, for the reasons stated above, that total production, including that production that goes to the export market, needs to be taken into account in determining whether or not Camco's production of dryers was injured by dumping in the Canadian market.

Camco has rationalized its production of dryers, a requirement for profitability according to the witnesses for Whirlpool and GEA.⁷⁵ Over the last three years, the period of the Tribunal's inquiry, Camco's capacity utilization for dryers increased steadily. It is now at or close to a level that the industry describes as full capacity.⁷⁶ During this period of time, its production increased considerably each year, 32 percent in 1998, 17 percent in 1999, and 37 percent in the first quarter of 2000. As a result, Camco has increased its combined domestic and export sale profitability in dryers more than threefold in the last three years. This profitability contributed a major portion to Camco's success in 1999, its "best year ever".⁷⁷ This contribution to profitability comes from the fact that, in total, Camco sells more than eight times as many dryers as it does refrigerators, and four times as many dryers as dishwashers. It appears that the profit made on the dryer business is what makes Camco profitable overall.

The volume of domestic dryer sales lost between 1997 and 1999 is only about two percent of Camco's total sales volume of dryers in 1999. Even if one attributes all the loss to dumping, the injury to the domestic production of dryers cannot, in my opinion, be considered material.

Nor do I find that the importation of the dumped dryers threatens to cause injury to the domestic industry of dryers. Camco's contract to sell dryers to GEA extends until December 31, 2003. It provides for the sale of 2.7 million dryers, with an anticipated sales value of \$600 million for the term of the agreement. In my mind, this contract militates against any imminent injury to the production of Camco dryers. Camco will continue to sell dryers into the domestic market, given that the GE brand is well-recognized in Canada. The retailers, even Sears, have to have GE dryers on their floors.⁷⁸ In addition, Camco will continue to sell the major portion of its production of dryers to GEA in the United States. As a result, I see little, if any, injury from the continued dumping of dryers in the domestic market in the foreseeable future.

73. See *Tomato Paste; Certain Cold-Rolled Steel Sheet, Finding* (29 July 1993), *Statement of Reasons* (13 August 1993), NQ-92-009 (CITT); and *Certain Flat Hot-rolled Carbon Steel Sheet Products, Finding* (31 May 1993), *Statement of Reasons* (15 June 1993), NQ-92-008 (CITT).

74. See *Certain Iodinated Contrast Media*, NQ-99-003, *Finding* (1 May 2000), *Statement of Reasons* (16 May 2000).

75. *Transcript of Public Hearing*, Vol. 3, 28 June 2000, at 453 and 454, and Vol. 5, 30 June 2000, at 782-90.

76. *Ibid.* at 480 and 481.

77. *Transcript of Public Hearing*, Vol. 1, 26 June 2000, at 128.

78. *Transcript of Public Hearing*, Vol. 5, 30 June 2000, at 944, and Vol. 6, 4 July 2000, at 1017 and 1094.

Dishwashers present a somewhat different picture. The percentage of Camco's export sales out of its total sales of dishwashers is not as high, nor are these export sales as secure. Camco has a de facto North American product mandate to sell portable dishwashers, which are not made in the United States, to GEA. However, it only serves as a "surge supplier" of built-in dishwashers for the Louisville plant. Nevertheless, over the period of inquiry, there is little evidence of material injury, as Camco's total production of dryers increased by 52 percent in 1999 and by 133 percent in the first quarter of 2000 over the first quarter of the previous year. Sales of the subject dishwashers in the Canadian market increased by 28 percent between 1997 and 1999 and by 49 percent in the first quarter of 2000 over the same period in 1999. However, the market only grew by 17 percent and 33 percent, respectively, over the same time periods. Notwithstanding the level of sales of dumped imports in Canada, Camco's overall operating income and profitability on dishwashers increased by over 200 percent in the first quarter of 2000 compared to the first quarter of 1999. The results for 1999 were not as good, but increased substantially over 1998. These financial results and increases in output show that the dumping had, in my opinion, no materially injurious effect on Camco's total production of dishwashers.

It would appear that 1998 represents a more probable picture of the future for Camco's dishwasher business than 1999 or the first quarter of 2000. In that year, when Camco supplied fewer built-in dishwashers to meet the "surge" needs of GEA,⁷⁹ it was much more vulnerable to the dumping. As reported by Camco, its loss of operating income from sales in the domestic market between 1997 and 1998 equated to almost half of its total operating income for 1998. It seems likely that the events of 1998 may repeat themselves in the near future, as the Louisville plant has just added a third shift and does not expect to buy as many of the built-in dishwashers from Camco.⁸⁰ For this reason, I find that the production of dishwashers is threatened with material injury in the near future, should the dumping continue. As my colleagues have argued, the price-sensitive nature of the domestic market for dishwashers makes dumping a material factor to that injury.

For the above reasons, I find that there has not been, nor is there likely to be, any material injury to the production of Camco dryers as a result of the dumped imports. I find, however, that the dumped imports threaten such injury to the production of dishwashers in Canada in the foreseeable future.

Patricia M. Close
Patricia M. Close
Presiding Member

79. *Transcript of Public Hearing*, Vol. 2, 27 June 2000, at 317 and 318.

80. *Transcript of Public Hearing*, Vol. 5, 30 June 2000, at 824; and *Transcript of In Camera Hearing*, Vol. 4, 30 June 2000, at 632.