CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, October 27, 2000

Inquiry No.: NQ-2000-002

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

CERTAIN STAINLESS STEEL ROUND BAR ORIGINATING IN OR EXPORTED FROM BRAZIL AND INDIA

FINDING

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 of a preliminary determination dated June 29, 2000, and of a final determination dated September 27, 2000, respecting the dumping in Canada of stainless steel round bar of sizes 25 mm in diameter up to 570 mm in diameter inclusive, excluding stainless steel round bar made to specifications ASN-A3380, ASN-A3294 and 410QDT (oil quenched), i.e. grade 410 quenched and double-tempered with an oil quenching medium, originating in or exported from Brazil, and the subsidizing of stainless steel round bar of sizes 25 mm in diameter up to 570 mm in diameter inclusive, excluding stainless steel round bar made to specifications ASN-A3380, ASN-A3294 and 410QDT (oil quenched), i.e. grade 410 quenched and double-tempered with an oil quenching medium, originating in or exported from Brazil and India.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods, originating in or exported from Brazil, and the subsidizing of the aforementioned goods, originating in or exported from Brazil and India, have caused material injury to the production in Canada of like goods.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Zdenek Kvarda
Zdenek Kvarda
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

The statement of reasons will be issued within 15 days.

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

Place of Hearing:		Ottawa, Ontario
Dates of Hearing:		September 27 to 29, 2000
Date of Finding:		October 27, 2000
Tribunal Members:		Richard Lafontaine, Presiding Member Peter F. Thalheimer, Member Zdenek Kvarda, Member
Director of Research:		Peter Welsh
Researcher:		Martin Giroux
Economist:		Ihn Ho Uhm
Statistician:		Julie Charlebois
Counsel for the Tribunal:		John Dodsworth Dominique Laporte (Articling Student)
Registrar Officer:		Claudette D. Friesen
Participants:		Ronald C. Cheng Benjamin P. Bedard Paul D. Conlin
	for	Atlas Specialty Steels
		(Domestic Manufacturer)
		Richard S. Gottlieb Darrel H. Pearson J. Peter Jarosz Jesse I. Goldman Peter Collins
	for	Viraj Impoexpo Limited
		Tom Pope Fidelity Stainless Ltd.
		(Exporter/Importer)

CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, November 14, 2000

Inquiry No.: NQ-2000-002

CERTAIN STAINLESS STEEL ROUND BAR ORIGINATING IN OR EXPORTED FROM BRAZIL AND INDIA

Special Import Measures Act — Whether the dumping and the subsidizing of the above-mentioned goods have caused material injury or retardation or are threatening to cause material injury to the domestic industry.

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping in Canada of stainless steel round bar of sizes 25 mm in diameter up to 570 mm in diameter inclusive, excluding stainless steel round bar made to specifications ASN-A3380, ASN-A3294 and 410QDT (oil quenched), i.e. grade 410 quenched and double-tempered with an oil quenching medium, originating in or exported from Brazil, and the subsidizing of stainless steel round bar of sizes 25 mm in diameter up to 570 mm in diameter inclusive, excluding stainless steel round bar made to specifications ASN-A3380, ASN-A3294 and 410QDT (oil quenched), i.e. grade 410 quenched and double-tempered with an oil quenching medium, originating in or exported from Brazil and India, have caused material injury to the domestic industry.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	September 27 to 29, 2000
Date of Finding:	October 27, 2000
Date of Reasons:	November 14, 2000
Tribunal Members:	Richard Lafontaine, Presiding Member Peter F. Thalheimer, Member Zdenek Kvarda, Member
Director of Research:	Peter Welsh
Researcher:	Martin Giroux
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333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

Richard S. Gottlieb
Darrel H. Pearson
J. Peter Jarosz
Jesse I. Goldman
Peter Collins
for Viraj Impoexpo Limited

Tom Pope
Fidelity Stainless Ltd.

(Exporter/Importer)

Witnesses:

Larry Kusiak
Marketing Manager
Atlas Specialty Steels

David G. Pastirik
Director - Sales and Marketing
Atlas Specialty Steels

Donald A. Cody
Consultant

Richard P. Rogers
Vice-President, Finance, and Chief Financial Officer
Slater Steel Inc.

Dale Bell
Sales Manager
RASCO Specialty Metals Inc.

David D. Neil
President
Unalloy-IWRC, a division of Samuel Manu-Tech Inc.

Tom Pope
Fidelity Stainless Ltd.

Nitan Chhatwal
Director
Viraj Impoexpo Limited

Address all communications to:

Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Ottawa, Tuesday, November 14, 2000

Inquiry No.: NQ-2000-002

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

CERTAIN STAINLESS STEEL ROUND BAR ORIGINATING IN OR EXPORTED FROM BRAZIL AND INDIA

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member
PETER F. THALHEIMER, 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 June 29, 2000, and of a final determination dated September 27, 2000, respecting the importation into Canada of stainless steel round bar from Brazil and India.

On June 30, 2000, the Tribunal issued a notice of commencement of inquiry.[2] As part of the inquiry, the Tribunal sent detailed questionnaires to the Canadian manufacturer, importers, purchasers and foreign producers of certain stainless steel round bar originating in or exported from Brazil and India. Respondents provided production, financial, import, market and other information for the period from 1997 to the first quarter of 2000 inclusive. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports covering that period.

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, their replies to the requests for information and the transcript of the proceedings. 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 to the use, disclosure, reproduction, protection and storage of confidential information in the record, 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 September 27 to 29, 2000. Atlas Specialty Steels (Atlas), of Welland, Ontario, the sole domestic producer, and Viraj Impoexpo Limited (Viraj) were represented by counsel at the hearing. In addition, Fidelity Stainless Ltd. (Fidelity) was represented.

1. R.S.C. 1985, c. S-15 [hereinafter SIMA].
2. C. Gaz. 2000.I.2232.

The Tribunal also heard testimony from a witness from RASCO Specialty Metals Inc. (RASCO), who appeared at the Tribunal's request, and from a senior official from Slater Steel Inc. (Slater), who had been subpoenaed by one of the parties.

During the course of the inquiry, the Tribunal denied a motion[3] to quash the subpoena issued to Slater. The Tribunal made a number of rulings on various matters raised prior to and during the hearing. These included requests for information addressed to the parties, notices of matters arising and requests for the limited disclosure of confidential information in Atlas's injury allegations. The Tribunal is satisfied that parties complied with its directions in these matters.

RESULTS OF THE COMMISSIONER'S INVESTIGATION

The Commissioner's dumping and subsidizing investigation covered all imports of the subject goods during the period from January 1 to December 31, 1999. He found that all the goods were dumped or subsidized. The margins of dumping and the amounts of subsidy are set out in the following table.

Table 1
Summary of Margins of Dumping and Amounts of Subsidy by Exporter

Exporter	Country of Origin	Margin of Dumping Expressed as a Percentage of Normal Value	Amount of Subsidy per Tonne in Currency of Country of Origin
Villares Metal SA	Brazil	37.3	1,419 reals
Duferco Steel Inc.	Brazil	37.3	1,419 reals
Ferrostaal Inc.	Brazil	37.3	1,419 reals
Ferro Alloys Corporation Limited	India	N/A	5,745 rupees
Panchmahal Steel Limited	India	N/A	10,406 rupees
Venus Wire Industries Limited	India	N/A	8,454 rupees
Viraj Impoexpo Ltd.	India	N/A	4,949 rupees

N/A = Not applicable.
Source: Canada Customs and Revenue Agency, *Final Determination of Dumping and Subsidizing* and *Statement of Reasons*, 27 September 2000, Tribunal Exhibit NQ-2000-002-4, Administrative Record, Vol. 1 at 102-148.

3. The Tribunal's decision is contained in a letter dated September 26, 2000.

PRODUCT

Product Definition and Description

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

> stainless steel round bar of sizes 25 mm in diameter up to 570 mm in diameter inclusive, originating in or exported from Brazil and India, excluding: (1) stainless steel round bar made to specifications ASN-A3380 and ASN-A3294; and (2) stainless steel round bar made to specification 410QDT (oil quenched), that is, grade 410, quenched and double tempered with an oil quenching medium.[4]

The stainless steel bar include all grades, with the exception of the exclusions, in cut lengths, with various diameters and in a variety of finishes.

Bar is made of stainless steel, which is resistant to corrosion and heat, and which contains, by weight, a maximum of 1.2 percent of carbon and a minimum of 10.5 percent of chromium. There are many individual chemical compositions or grades of stainless steel. These typically include other alloys besides chromium (such as nickel and molybdenum, among others) and are tailored to meet the mechanical and/or physical properties of particular end-use applications. The most popular compositions and grades of stainless steel bar are AISI[5] types 303, 304, 304L, 316, 316L, 410, 416, 420 and 430F, and the 630 or 17Cr-4Ni precipitation hardening grade.

Production Process

To produce stainless steel bar, selected scrap steel is melted in an electric arc furnace, tapped into a ladle and transferred to the ladle refining station, where the steel is refined in a vacuum oxygen decarburization vessel. Its chemical composition is checked, and final additions are made to achieve the desired chemical analysis. Once the final composition is confirmed, the ladle is transferred either to a continuous caster or to a bottom-poured ingot forming station. After solidification, the ingots are transferred to the ingot re-heating furnaces prior to hot working. Liquid stainless steel may alternatively be solidified directly into the intermediate bloom or billet stage by the continuous casting process, then transferred to re-heating furnaces for hot rolling. In some cases, certain quality specifications require the use of the vacuum arc re-melting process after initial solidification before re-heating and hot working.

After heating, ingots or cast blooms are removed from the ingot-heating furnace and transferred to the bloom/billet rolling mill for hot rolling into the intermediate stage bloom or billet products. After appropriate cooling, blooms or billets may be conditioned or ground to enhance the quality of the surface. They are then reheated and hot-rolled on the billet or bar mill to produce stainless steel bar. All stainless steel bar products are then passed through an annealing process. Hot-rolled bar is inspected, bundled and shipped. Bar that is turned or peeled, or centreless-ground, as well as other cold-finished bar, is routed to the finishing area before final inspection and shipment.

Product Applications

Stainless steel bar is used in a variety of production and maintenance applications that require resistance to corrosion and heat. Consequently, stainless steel bar is used in a number of industries, including

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4. Hereinafter referred to as stainless steel bar.
5. American Iron and Steel Institute.

pulp and paper, power generation, petro-chemical, oil and gas, valves and fittings, automotive and transportation. Some of the applications for which stainless steel bar is used include various valve bodies, mixer shafts and pump shafts.

DOMESTIC PRODUCER

Atlas is the sole domestic manufacturer of stainless steel bar. Prior to August 1, 2000, Atlas was a division of Atlas Steels Inc. Atlas Steels Limited was originally incorporated in 1928 in Welland, Ontario, and has been producing stainless steel bar since the early years of its existence. Atlas Steels Limited was purchased by Rio Algom Limited in 1963 and sold to Sammi Steel of the Republic of Korea (Korea) in 1989. On March 20, 1997, Atlas Steel Limited filed for protection from its creditors under the *Companies' Creditors Arrangement Act*[6] following a similar action by its parent company in Korea on March 17, 1997. Under the court-approved plan of arrangement, the major creditors took ownership of the company and changed its name from Atlas Steels Limited to Atlas Steels Inc., on April 1, 1998.

Atlas Steels Inc. had two separate divisions: Atlas manufactures stainless steel ingots, blooms, billets and bar, tool steel, vacuum arc remelted steel, mining steel and SAE[7] alloy steel; and Atlas Stainless Steels, located in Sorel-Tracy, Quebec, manufactures stainless steel sheet, strip and plate. Atlas exports a significant part of its production of stainless steel bar, primarily to the United States.

On August 1, 2000, most of the assets of Atlas Steels Inc., including Atlas and Atlas Stainless Steels, were sold to Slater. Since then, Atlas has been operating as a division of Slater.[8]

IMPORTERS

There are many companies that import stainless steel bar into Canada. The major importers are: Fidelity; Sandvik Steel Canada, A Division of Sandvik Canada, Inc. (Sandvik); Carpenter Technology (Canada) Ltd. (Carpenter Canada); Earle M. Jorgensen (Canada) Inc. (Jorgensen Canada); Unalloy-IWRC, a division of Samuel Manu-Tech Inc. (Unalloy-IWRC); and ASA Alloys Inc. (ASA Alloys). Most of the stainless steel bar from Brazil and India were imported by Fidelity and ASA Alloys.

Fidelity was incorporated in 1991 and is located in Mississauga, Ontario. Fidelity is a master distributor of stainless steel products and sells round bar, flat bar, square bar, hex bar and angle bar. Fidelity also purchases stainless steel bar from Atlas.

ASA Alloys was established in 1982 and is situated in Etobicoke, Ontario. Between 1982 and 1987, ASA Alloys purchased stainless steel bar from other distributors and master distributors for resale to end users. In 1988, it began to import directly from offshore. ASA Alloys became a general distributor of stainless steel bar in 1992, and it has purchased stainless steel bar from Atlas on a regular basis since then.

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6. R.S.C. 1985, c. C-36.
7. SAE, International, formerly Society of Automotive Engineers.
8. Slater is a mini-mill producer of specialty steel products. It manufactures and markets stainless steel bar, carbon and low-alloy steel bar products, as well as mold, tool and die steel. Slater also operates a steel service centre in Toronto, Ontario. Its mini-mills are located in Fort Wayne, Indiana; Hamilton, Ontario; and Sorel-Tracy, Quebec. Slater manufactures stainless steel bar at its Fort Wayne mill.

Unalloy-IWRC was created in 1986 and is located in Brampton, Ontario. It is a master distributor of stainless steel bar products in Canada and has imported stainless steel bar since 1974. It purchases stainless steel bar from Atlas on a regular basis. In 1998, Unalloy-IWRC purchased Energy Steel Products in the United States which sells stainless steel bar supplied by Atlas at many locations in the United States.

Based in Arnprior, Ontario, Sandvik is a wholly owned subsidiary of AB Sandvik Steel, Sweden. Sandvik has been operating as a manufacturing facility and a sales office since 1993. Sandvik imports a range of stainless steel products from associated Sandvik companies.

Carpenter Technology Corporation was incorporated in the United States approximately 110 years ago and has been manufacturing specialty alloys since then. The Carpenter Specialty Alloys Division has sales offices worldwide, including Carpenter Canada, which is located in Mississauga. Its has been importing stainless steel bar for approximately 25 years.

Earle M. Jorgensen was incorporated in the United States more than 100 years ago. It is a large independently owned metal distributor of bar, sheet, plate and structural steel and aluminum. Located in Mississauga, Jorgensen Canada is a distributor of stainless steel bar that also purchases from Atlas.

FOREIGN PRODUCERS/EXPORTERS

The Tribunal had information respecting four foreign producers of stainless steel bar, all located in India: Viraj, Ferro Alloys Corporation Limited (FACOR), Panchmahal Steel Limited (Panchmahal) and Venus Wire Industries Limited (Venus).

Viraj was incorporated in 1995 and is located in Mumbai (formerly Bombay). It produces stainless steel hexagon bar, square bar and wire. Viraj began producing stainless steel bar in 1995 and exported it to Canada for the first time in 1996. All its production of stainless steel bar is sold to export markets.

FACOR is a public limited company that operates three manufacturing divisions: (1) Ferro Alloys Division; (2) Charge Chrome Division; and (3) Steel Division. The Steel Division located in Nagpur is only involved in the manufacture of stainless steel bar. The company began producing stainless steel bar in 1982 and exported it for the first time in 1997. The majority of its stainless steel bar production is sold in India.

Panchmahal is a limited liability company incorporated in 1972 that operates only one plant located in the state of Gujarat. It began producing stainless steel bar in 1995 and exported it to Canada for the first time in 1997. Almost all its production of stainless steel bar is sold to export markets.

Venus is a limited company incorporated in 1990 and is located in Mumbai. The company produces mainly stainless steel wire and stainless steel bar. Venus began producing stainless steel bar in 1994 and exported it to Canada for the first time in 1998. All its production of stainless steel bar is sold to export markets.

DISTRIBUTION

The distribution structure of the stainless steel bar market consists of master distributors and general distributors. For the bulk of sales, master distributors sell to general distributors that resell to end users. Both master distributors and general distributors maintain stocks to provide quick delivery. They obtain their supplies from Atlas, from foreign suppliers or from other distributors. However, Atlas and master distributors do make some sales directly to end users, and general distributors may sell to other general distributors. For example, most of Atlas's sales are to general distributors, followed by master distributors and end users.

As a general rule, prices vary by trade level, being highest at the end-user level and lowest at the master-distributor level. However, within this framework, large volumes can attract price rebates, and sellers may offer discounts to meet competition.

POSITION OF PARTIES

Domestic Producer

Atlas

Atlas argued that the dumping of stainless steel bar from Brazil and the subsidizing of the subject goods from Brazil and India have caused injury mainly in the form of a decline in market share, price erosion, price suppression and lost sales. Atlas argued that imports of the subject goods are also threatening to cause injury to the production in Canada of like goods.

Atlas submitted that the evidence should be considered in the context of the Tribunal's two recent injury findings regarding the dumping of stainless steel bar from nine countries, including India, in Inquiry No. NQ-98-001[9] and from Korea in Inquiry No. NQ-98-003.[10] Atlas argued that these two findings stopped the dumping from these countries and, therefore, should have allowed Canadian market prices to rise. However, the subject imports from Brazil and India replaced goods from those other countries. In Atlas's view, those goods from Brazil and India precluded Canadian market prices from increasing in 1999 and 2000 and led to the decline of Atlas's market volume and market share in 1999.

Atlas also noted that this matter was similar to two carbon steel plate cases[11] and to the photo albums cases,[12] where, in each case, an initial injury finding was closely followed by a second or even a series of injury findings on the same goods from other countries. What differentiates the present case from the carbon steel plate cases is that enough time has elapsed between the first two inquiries and the present one to attribute separate injury and causation evidence to imports from Brazil and India. In addition, Atlas submitted that the Tribunal had previously conducted an inquiry with respect to subsidizing by an exporting country, following an injury finding respecting dumping of the same product from the same country.[13]

Atlas indicated that its market share increased from 1997 to 1998, as a result of the first two inquiries but that, notwithstanding the 1998 injury finding, imports from India more than quadrupled in 1998 over 1997 because of subsidizing. Atlas noted that, during 1999, imports from India increased again

9. *Finding* (4 September 1998), *Statement of Reasons* (21 September 1998) (CITT).
10. *Finding* (18 June 1999), *Statement of Reasons* (5 July 1999) (CITT).
11. *Finding* (7 December 1983), *Statement of Reasons* (29 December 1983), ADT-10-83 (ADT); and *Finding* and *Statement of Reasons* (26 January 1984), ADT-13-83 (ADT).
12. *Finding* (2 January 1991), *Statement of Reasons* (17 January 1991), NQ-90-003 (CITT), *Finding* and *Statement of Reasons* (3 November 1987), CIT-5-87 (CIT); and *Finding* (26 February 1988), *Statement of Reasons* (11 March 1988), CIT-11-87 (CIT).
13. *Finding* and *Statement of Reasons* (14 October 1983), ADT-9-83 (ADT); and *Finding* (7 June 1985), *Statement of Reasons* (21 June 1985), CIT-1-85 (CIT).

from 628 to 796 net tons, achieving a larger share of a smaller Canadian market when compared to 1998. Atlas also outlined the dramatic decline in the import unit value of stainless steel bar from India. Atlas submitted that the subject imports from Brazil entered the market in 1999 at a lower unit value than that of the Indian goods, forcing imports from India to compete with imports from Brazil. Atlas further submitted that, during the first quarter of 2000, the volume of imports from Brazil and India increased even more dramatically.

Atlas argued that, throughout 1999 and during the first quarter of 2000, the subject imports from Brazil and India caused Atlas's market share to decline nearly to the level to which it had fallen in 1997. Atlas argued that it was forced to offer periodic transaction discounts, discounted list prices and supplementary rebates to its customers and, thus, suffered price erosion on its domestic sales.

Furthermore, Atlas argued that the emerging presence of dumped imports from the United Arab Emirates and Russia contributed to Atlas's inability to increase its market share during the first quarter of 2000 and affected its pricing. Therefore, Atlas requested that the Tribunal render an advice to the Commissioner respecting the goods from these two countries, as provided by section 46 of SIMA.

Atlas rejected Fidelity's allegation that Atlas would have refused to sell to it, stating that Fidelity, being attracted by the low prices offered on dumped and subsidized imports, requested Atlas to match those prices or lower its prices, despite its volume-based pricing policy.

On the question of the acquisition of Atlas by Slater, Atlas submitted that it was not relevant to the Tribunal's consideration of past injury or threat of injury, the only impact being on Atlas's costs. It is Atlas's position that the Tribunal has to assess injury to the domestic industry, regardless of the corporate body or entity represented before the Tribunal.

Finally, Atlas submitted that all the conditions were present to analyze the impact of dumping from Brazil and subsidizing by Brazil and India in a cumulative manner. This rationale for cumulating is consistent with the principle that it is the global effect of dumping and subsidizing which is required to be assessed by the Tribunal under section 42 of SIMA. Atlas also argued that no exceptional circumstances existed in the present case to grant exclusions.

Exporter/Importer

Viraj

Viraj argued that the acquisition of Atlas by Slater prevents Atlas from asserting injury and threat of injury. Given that Slater bought only the assets of Atlas, Atlas Steels Inc. ceased to be the domestic industry on August 1, 2000, the date of acquisition of Atlas by Slater.

Viraj argued that the evidence indicated that 1999-2000 was the relevant period for the consideration of injury because, if there had been any evidence of injury caused by subsidized imports from India, Atlas would have included it in the previous inquiry[14] involving Korea. Viraj's average pricing for the subject and non-subject goods was unreliable as an indicator of the real pricing in the market. Prices are a function of product mix in a given shipment and are also influenced by the grade and diameter of the bar, as well as the price of nickel.

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14. *Supra* note 10.

Viraj submitted that Atlas did not establish that the subsidized goods from Viraj have caused or will cause material injury. Indeed, Viraj argued that, if there has been any reduction of prices by Atlas, they were certainly not caused by Viraj, as its prices had risen three times since the first quarter of 1999. In addition, Viraj noted that the evidence indicated that Canadian prices for bar measuring less than one inch in diameter, which are not subject goods and which Atlas does not produce, went up substantially, as Atlas could not suppress those prices like it was suppressing the prices for its own stainless steel bar. Viraj further submitted that it was not focusing its export sales on Canada and that it had a non-disruptive marketing policy that takes into account the domestic mill prices to the extent that the market could bear Viraj's high prices.

Viraj argued that Atlas's financial statements demonstrated that it was a profitable company, particularly with respect to its earnings derived from sales of like goods. In addition, Viraj submitted that the evidence indicated that the current case was irrelevant to Slater when it decided to acquire Atlas. For these reasons, Viraj submitted that Atlas did not have the profile of an injured company.

Viraj also argued that there was no evidence with respect to threat of injury to Slater. In fact, it was asserted that Slater was not a party to the proceedings. In the alternative, the evidence suggested that Slater was a successful company that expects substantial success as a result of the acquisition of Atlas.

Viraj stated that the present case met all the criteria required to grant an exclusion to Viraj. Viraj submitted that, because of the zero margin of dumping found by the Commissioner on its exports in a previous inquiry[15] and the very low margin of subsidizing found by the Commissioner in the present case, its exports could not have injured Atlas's domestic sales.

Fidelity

Fidelity submitted that, if Atlas suffered injury, it is essentially the result of its own decisions regarding its master distributor policy and pricing strategy, its poor marketing activities and its difficulties in operating competitively. Fidelity submitted that Atlas's inability to satisfy many of its customers' objectives could have caused injury to it. Fidelity further argued that it has tried to establish a strong relationship with Atlas over the years, but indicated that prices quoted to it were not competitive when compared to those offered by other major master distributors. Fidelity indicated that this situation has caused it to purchase stainless steel bar from elsewhere.

Finally, Fidelity submitted that the products offered by Atlas were of higher quality than imported stainless steel bar and, therefore, should command a price premium in the market. In Fidelity's view, this situation represented a tremendous opportunity to increase profitability and, by choosing not to increase prices, Atlas caused injury to itself.

ANALYSIS

According to section 42 of SIMA, the Tribunal is required to "make inquiry . . . as to whether the dumping or subsidizing of the goods . . . 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". The Tribunal is of the view that injury and threat of injury are distinct findings and that a finding relating to both under subsection 43(1) is required only in the event of a finding of no injury.

15. *Supra* note 9.

Subsection 37.1(1) of the *Special Import Measures Regulations*[16] prescribes certain factors that the Tribunal may consider in determining whether dumped or subsidized imports have caused or are threatening to cause material injury to a domestic industry. These factors include the volume of dumped and subsidized goods and their effect on the price of like goods in the domestic market and the consequent impact of these imports on a number of economic factors relating to the domestic industry's performance. In this case, these factors include the effect of the dumped or subsidized imports on the domestic industry's volume of sales, prices, market share and financial performance. Subsection 37.1(3) also requires the Tribunal to consider other factors not related to the dumping, including the volumes and prices of imports of like goods that are not dumped or subsidized, the export performance of domestic producers and any other factors that are relevant in the circumstances, to ensure that injury caused by those other factors is not attributed to the dumped or subsidized imports.

If the Tribunal finds that dumped or subsidized imports of stainless steel bar have not caused material injury to the domestic industry, the Tribunal must turn its attention to whether imports of dumped or subsidized stainless steel bar 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 factors such as the rate of increase of dumped or subsidized goods imported into Canada, whether there is sufficient freely disposable capacity that indicates a likelihood of a substantial increase in the volume of dumped or subsidized goods, the effects of the dumped or subsidized goods on the price of like goods and the magnitude of the margins of dumping or the amounts of subsidy. In making a finding of threat of material injury, subsection 2(1.5) of SIMA requires that the "circumstances in which the dumping or subsidizing of [the subject] goods would cause injury [be] clearly foreseen and imminent".

"Domestic industry" is defined, in part, as "the domestic producers as a whole of the like goods or those . . . . whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods". Therefore, the Tribunal must determine which domestically produced goods are "like goods" to the imported stainless steel bar. The Tribunal must then determine which are the domestic producers of those goods, i.e. which producers constitute the domestic industry.

Like Goods

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 Commissioner defined the goods that are the subject of the Tribunal's inquiry as stainless steel bar of sizes 25 mm in diameter up to 570 mm in diameter inclusive originating in or exported from Brazil and India, but excluding stainless steel bar made to specifications:

- ASN-A3380 and ASN-A3294; and
- 410QDT (oil quenched), i.e. grade 410 quenched and double-tempered with an oil quenching medium.

The evidence shows that domestically produced stainless steel bar, of the same description as the subject goods, is generally similar in terms of physical characteristics, end uses and other relevant market

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

characteristics and competes in the marketplace with the subject goods. Although the evidence indicates that there are some differences in quality between domestically produced and imported stainless steel bar, the evidence shows that domestically produced stainless steel bar closely resembles the subject goods in terms of physical characteristics, end uses and substitutability.

As such, for the purpose of this inquiry, the Tribunal finds that domestically produced stainless steel bar, of the same description as the subject goods, constitutes like goods to the imported goods.

Domestic Industry

Having determined that domestically produced stainless steel bar of the same description as the subject goods constitutes “like goods”, the Tribunal must next determine what constitutes the domestic industry for the purposes of assessing injury. Atlas is the only domestic producer of those goods, and its production constitutes 100 percent of total domestic production. The Tribunal, therefore, finds that Atlas constitutes the domestic industry for this inquiry.

At the hearing, Viraj argued, on technical legal grounds, that the acquisition of Atlas by Slater affects the nature of the domestic industry and prevents both Atlas and Slater from asserting injury and threat of injury. Viraj argued that Atlas is inseparable from the corporation to which it belongs. On August 1, 2000, the date on which the assets of Atlas were purchased by Slater, Atlas, as a division of Atlas Steels Inc., ceased to be a producer of stainless steel bar, and Atlas Steels Inc. ceased to be the domestic industry. Therefore, Viraj argued, Atlas cannot assert that Atlas Steels Inc. has been injured. In terms of past injury and threat of injury, any injury suffered by Atlas Steels Inc. prior to August 1, 2000, has been rendered moot.

Viraj argued that, on the date of acquisition of Atlas by Slater, the domestic industry became Atlas, Division of Slater. However, Atlas, as a division of Slater, did not exist during the period of inquiry and, therefore, could not have been injured. Viraj pointed out that Atlas took the position that Slater was not a party to the proceeding and that, therefore, Atlas did not produce evidence with respect to either injury or threat of injury to Slater. Further, Viraj pointed out that evidence that it had obtained under subpoena regarding Slater indicated that Slater expects substantial success as a result of the acquisition of Atlas and suggests that the current inquiry was irrelevant in its decision to purchase Atlas.

The Tribunal is of the view that the ownership of Atlas has no bearing on the issue of what constitutes the domestic industry. SIMA requires the Tribunal to make inquiry into whether the dumping or subsidizing of the goods has caused or is threatening to cause material injury to the domestic industry. As stated above, the Tribunal must determine which producers constitute the domestic industry for the purposes of assessing injury, meaning the domestic producers of like goods. Nowhere does SIMA define the term “domestic producer” nor does it require a specific legal status for a domestic producer.

The technical legal argument made by Viraj suggests that the Tribunal should find that there was no domestic industry prior to August 1, 2000, which is not the case. The evidence clearly indicates that Atlas’s production constituted the total domestic production of the like goods and, in fact, the Tribunal found Atlas to be the domestic industry in two previous inquiries involving stainless steel bar (Inquiry Nos. NQ-98-001 and NQ-98-003). The Tribunal has, on the record, information of the kind that it typically obtains and considers in conducting an inquiry concerning the entirety of domestic production of like goods. Information concerning Atlas Steels Inc. and Slater relevant to the inquiry, for example, with respect to cost allocations, was obtained by Viraj by subpoena.

The purpose of an inquiry pursuant to section 42 of SIMA is to ascertain whether the domestic industry has been injured. The status of a particular entity before the Tribunal as a corporation or as a division during an inquiry is not relevant to the question of whether there was a domestic industry or whether there were domestic producers of like goods.

Cumulation

Subsection 42(3) of SIMA provides the Tribunal with discretion to cumulate imports from the subject countries when making its assessment of injury, provided certain conditions are met. Subsection 42(3) states:

> (3) In making or resuming its inquiry under subsection (1), the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the preliminary determination applies that are imported into Canada from more than one country if
>
> (*a*) the margin of dumping or the amount of the subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and
>
> (*b*) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and
>
> (i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or
>
> (ii) like goods of domestic producers.

In considering the issue of cumulation, the Tribunal took into consideration the related provisions of SIMA and the Commissioner’s final determination of dumping and subsidizing. The margin of dumping in the case of Brazil and the subsidies by Brazil and India are in excess of the relevant thresholds. Therefore, the Tribunal finds that the margin of dumping in relation to the goods from Brazil is not insignificant. Further, the Tribunal finds that the amount of subsidy in relation to the goods from both Brazil and India is not insignificant.

With respect to the issue of negligibility, the Tribunal notes that all the subject goods from Brazil were both dumped and subsidized, that all the goods from India were subsidized and that the volume of imports from each country surpasses the relevant threshold. Therefore, the Tribunal finds that the volume of goods from each of the subject countries is not negligible.

The Tribunal is of the view that the subject goods are fungible and interchangeable and that they compete with the like goods in the same market and at the same trade levels. In addition, the Tribunal finds that the subject goods from Brazil and India compete with one another in the domestic market. Therefore, the Tribunal is of the view that, taking into account the conditions of competition, it is appropriate to make an assessment of the cumulative effect of the dumped and subsidized goods from Brazil together with the subsidized goods from India.

State of the Market and Industry

The Tribunal reviewed developments in the Canadian market for stainless steel bar during the period of inquiry from 1997 to the first quarter of 2000, inclusive. Table 2 provides publicly available data on changes in the key market and industry performance indicators for stainless steel bar.

Table 2
Key Market and Industry Performance Indicators
Stainless Steel Bar
(Percent Change from Previous Period)

	1998	1999	2000-Q1[1]
Imports (volume)			
Subject Countries	303	173	132
Specified Countries[2]	(69)	(90)	(94)
Other Countries	37	41	(10)
Sales (volume)			
Atlas	32	(18)	14
Subject Countries	313	153	104
Specified Countries	(70)	(83)	(90)
Other Countries	25	28	4
Average Prices ($/net ton)			
Atlas	(2)	(4)	4
Subject Countries	1	(7)	(4)
Specified Countries	6	28	28
Other Countries	(5)	7	13

1. Percent change as compared with the first quarter of 1999.
2. Countries other than India, subject to the Tribunal's findings in Inquiry Nos. NQ-98-001 and NQ-98-003.

Source: *Public Pre-hearing Staff Report*, revised 29 August 2000, Tribunal Exhibit NQ-2000-002-6B, Administrative Record, Vol. 1A at 105, 108 and 117.

The period of inquiry was marked by volatility in the stainless steel bar market.[17] There was a strong increase in the apparent volume of stainless steel bar sold in Canada from 1997 to 1998, followed by a slight decline in 1999 and a sharp increase in the first quarter of 2000.

The period of inquiry was also characterized by major changes in the sourcing of imports[18] of stainless steel bar. Imports from the subject countries increased from 162 net tons in 1997 to 655 net tons in 1998. In 1999, the volume reached close to 1,800 net tons. The strong upward trend in subject imports continued in the first quarter of 2000. Imports of stainless steel bar from the subject countries, which had been only 5 percent of total imports in 1997, climbed to more than 50 percent in 1999 and close to 70 percent in the first quarter of 2000. Over the period, these imports replaced almost all the imports from countries, other than India, that had been designated in the Tribunal's earlier findings on stainless steel bar. In 1997, imports from these countries exceeded 2,000 net tons. By 1999, these imports had declined to 63 net tons and virtually ceased in the first quarter of 2000. Imports of stainless steel bar from other countries, mainly the United States, also increased between 1997 and 1999, but less rapidly than imports from the

17. *Protected Pre-hearing Staff Report*, revised 28 August 2000, Tribunal Exhibit NQ-2000-002-7B (protected), Administrative Record, Vol. 2A at 112.
18. *Public Pre-hearing Staff Report*, revised 29 August 2000, Tribunal Exhibit NQ-2000-002-6B, Administrative Record, Vol. 1A at 105.

subject countries. In the first quarter of 2000, their share of total imports of stainless steel bar was 32 percent, down from over 45 percent in 1999.

Atlas's sales of stainless steel bar increased by 32 percent in 1998 over 1997, resulting in a 13 percentage point increase of its market share. However, its sales declined by 18 percent in 1999, and its market share returned to close to its 1997 level. Atlas's sales in the first quarter of 2000 increased by 14 percent over the first quarter of 1999, but its market share was unchanged from 1999. Trends in sales of imports of the subject goods mirrored closely trends in imports from the subject countries described above, i.e., rising strongly through the period of inquiry. The market share of the subject goods increased by 23 percentage points between 1997 and the first quarter of 2000. The market share of imports from countries, other than India, subject to the earlier stainless steel bar findings declined by more than 27 percentage points over the period. Imports of stainless steel bar from other countries, mainly the United States, increased over the period into 1999. However, the growth in their sales in the first quarter of 2000 did not keep up with the growth in sales of other suppliers, and their market share declined.

Depending on the source of the product, there were differing trends in average prices[19] of stainless steel bar sold in Canada during the period of inquiry. Atlas's average selling prices decreased by 2 percent in 1998 over 1997. They continued to decline in 1999, by another 4 percent. In the first quarter of 2000, Atlas's average selling prices recovered slightly and were marginally above the average 1999 levels. Average prices of imports of stainless steel bar from the subject countries increased minimally between 1997 and 1998, and then declined by 7 percent in 1999. In the first quarter of 2000, average selling prices of the subject imports had declined further, to 2 percent below the average 1999 price. Average prices of imports from countries, other than India, subject to the earlier findings increased throughout the period. There was also a distinct year-to-year upward trend in average prices of stainless steel bar from other countries, mainly the United States, over the period of inquiry.

With the possible exception of average prices of imports of stainless steel bar from the United States, the Tribunal considers that the average price trends[20] for sales in Canada reported during the period are reliable indicators of pricing of stainless steel bar. With regard to the submissions by Viraj and Fidelity that changes in product mix make the average pricing data unreliable indicators, the Tribunal notes the similarity of trends in the pricing of four clearly defined benchmark products[21] by Atlas and of the subject imports, particularly with respect to the large volume[22] 304 and 316 grades. Viraj and Fidelity also argued that fluctuations in

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19. *Protected Pre-hearing Staff Report*, revised 28 August 2000, Tribunal Exhibit NQ-2000-002-7B (protected), Administrative Record, Vol. 2A at 121.
20. Average price trends for sales of imports from the United States are likely affected by the relatively higher prices of varying volumes of U.S. products that meet special requirements that cannot be satisfied by other suppliers in Canada. *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 166-67; and *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 196-97 and 211-12.
21. *Protected Pre-hearing Staff Report*, revised 28 August 2000, Tribunal Exhibit NQ-2000-002-7B (protected), Administrative Record, Vol. 2A at 123-26.
22. Tribunal Exhibit NQ-2000-002-10.1 (protected), Administrative Record, Vol. 4 at 32-73 and 287-88; and Tribunal Exhibit NQ-2000-002-16 (protected), Administrative Record, Vol. 6 and 6A, replies to question 22 by Macsteel International (Canada) Ltd., Olbert Metal Sales Limited, Carpenter Technology (Canada) Ltd., Atlas Ideal Metals Inc., Earle M. Jorgensen (Canada) Inc., Unalloy-IWRC, Fidelity, A.M. Castle & Co. and Rasco Specialty Metals Inc.

nickel prices affect stainless steel bar prices. The evidence[23] shows that there were declines in nickel prices during the inquiry period into 1999. However, these declines explain only a part of the decrease in average prices for stainless steel bar.[24] The declines in the price of nickel were followed by large increases late in 1999, and especially in the first quarter of 2000.[25] Notwithstanding these increases in the first quarter of 2000, average selling prices for the subject imports declined further, and there was only a slight increase in Atlas's prices.

Atlas's financial performance[26] on its domestic sales of stainless steel bar improved significantly in 1998 compared with 1997 but then deteriorated. In 1999, Atlas's domestic sales value and gross margins declined significantly. Atlas's net income before taxes on domestic sales, expressed as a share of the value of net sales, also declined. This decline, which amounted to 4 percentage points compared with 1998, occurred even though Atlas experienced a decrease in its unit cost of goods sold in 1999.[27]

Injury and Causality

Having examined the state of the Canadian market and industry for stainless steel bar, the Tribunal then considered whether the dumping and subsidizing of the subject goods have, in and of themselves, caused material injury to Atlas.

In considering trends in the market for stainless steel bar, the Tribunal notes that Atlas's large increase in sales of stainless steel bar in 1998, compared with 1997, exceeded by far the growth in the market. Atlas strongly improved its market share, as it benefited from the large decline in sales of imports from countries, other than India, designated in the previous findings. Imports from India, which the Commissioner has found to be subsidized, also increased, taking a larger share of the market. There was also an increase in imports from the United States in 1998, but, in actual volumes, it was significantly less than the increase in imports from India. On balance, it appears to the Tribunal that a large part of the domestic industry's recovery in sales and market share in 1998 is attributable to the effects of the previous findings.

In 1999, as imports from the countries, other than India, subject to the earlier findings fell sharply, a large volume of imports from Brazil appeared in the market. Imports from India, notwithstanding the 1998 finding, continued to increase. At the same time, Atlas's sales of stainless steel bar declined sharply, and it lost significant market share. The Tribunal notes that imports from the United States increased both in sales volume and market share during this period. However, as was the case in 1998, the increase in the volume of

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23. Manufacturer's Exhibit A-1 (protected), para. 55-56, Administrative Record, Vol. 12; and *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 328.
24. Atlas's average prices for stainless steel bar reported in the staff report include any surcharges relating to the cost of nickel (*Transcript of Public Hearing*, Vol. 1, 27 September 2000, at 87). Atlas's prices for stainless steel bar are based on a cost of US$3/lb. for nickel. If the price of nickel increases beyond that threshold, buyers pay a surcharge calculated on the basis of any excess cost above the threshold. According to evidence, the prices reported by other suppliers also include higher nickel costs (Manufacturer's Exhibit A-1 (protected), para. 54, Administative Record, Vol. 12; and *Transcript of In Camera Hearing*, Vol. 2, 28 September 2000, at 238).
25. *Transcript of Public Hearing*, Vol. 1, 27 September 2000, at 89; and *Transcript of In Camera Hearing*, Vol. 2, 28 September 2000, at 243-44.
26. *Protected Pre-hearing Staff Report*, revised 28 August 2000, Tribunal Exhibit NQ-2000-002-7B (protected), Administrative Record, Vol. 2A at 127.
27. *Protected Pre-hearing Staff Report*, revised 28 August 2000, Tribunal Exhibit NQ-2000-002-7B (protected), Administrative Record, Vol. 2A at 128.

imports from the subject countries was much larger than the increase in the volume of imports from the United States. There is no doubt that, as imports from the countries, other than India, were priced out of the market by the earlier injury findings, they were rapidly replaced by imports from Brazil and an increase in imports from India. The Tribunal considers that Atlas's decline in sales volumes and its loss of market share in 1999 were almost entirely attributable to a large increase in imports of stainless steel bar from the subject countries.

The Tribunal heard testimony that the market for stainless steel bar was very strong in the first half of 2000.[28] Data for the first quarter of 2000 show that Atlas increased its sales volume of stainless steel bar significantly over the first quarter of 1999. However, notwithstanding this increase in sales, Atlas did not increase its market share. Imports from the subject countries also went up significantly in the first quarter of 2000, as compared with the first quarter of 1999, increasing further their market share. It is clear to the Tribunal that this continued growth in imports from the subject countries has given them a strong position in the market, with their share approaching the level obtained by the exporters in the countries involved in the previous injury findings.

The Tribunal then examined if Atlas's decline in sales of stainless steel bar and its large loss in market share to the subject imports in 1999, and the further market share increase in imports from the subject countries in the first quarter of 2000, were caused by the pricing of the subject imports. In addition to the data on the pricing of stainless steel bar described above, the Tribunal heard much testimony regarding pricing competition between Atlas and imports from the subject countries.[29] Witnesses testified that price was a determining factor in purchases of stainless steel bar.[30] The Tribunal heard testimony that the demand for stainless steel bar from any supplier is, to a large degree, highly price sensitive.[31] This means that purchasers have a marked tendency to switch from one supplier to another on the basis of price alone. It also means that, over time, prices from all suppliers in the market will tend to converge on the lowest-priced offering. Suppliers that do not adopt this strategy run the risk of losing sales.

The Tribunal has already noted that, from 1998 to 1999, the decline in the average prices of the subject imports was greater than the decline in domestic prices. In the first quarter of 2000, the average prices of the subject imports continued to decline, while Atlas's selling prices increased only marginally, despite a large increase in the cost of nickel. Looking at the prices of the benchmark products, and particularly the prices of the large volume 304 and 316 grades, the trends in prices are essentially the same as those of all stainless steel bar. It is also clear from the data that the pricing of these two grades of stainless steel bar from the subject countries is clearly undercutting Atlas's prices both in 1999 and in the first quarter of 2000.

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28. *Transcript of Public Hearing*, Vol. 1, 27 September 2000, at 118; and *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 220.
29. *Transcript of Public Hearing*, Vol. 1, 27 September 2000, at 29; and *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 256-57.
30. *Transcript of Public Hearing*, Vol. 1, 27 September 2000, at 103: *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 189; *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 289; and *Transcript of In Camera Hearing*, Vol. 2, 28 September 2000, at 148 and 156.
31. *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 206-207; and *Transcript of In Camera Hearing*, Vol. 2, 28 September 2000, at 148-49.

The Tribunal also examined the evidence on the record regarding the sales volumes and prices for stainless steel bar to Atlas's 11 largest accounts[32] in Canada, which account for a very large share of its total sales. The trends in Atlas's pricing for stainless steel bar to these accounts are similar to the average selling prices described above to all customers.

These conclusions on stainless steel bar pricing trends and levels are based on price competition between Atlas, master distributors and distributors and end users. Price competition was also occurring between Atlas and producers from the subject countries to supply master distributors and a large distributor. Data provided by Atlas on its pricing of stainless steel bars sold to Unalloy-IWRC, Fidelity and ASA Alloys, compared with the average unit cost of imports from the subject countries, show declines in prices that are similar to those discussed above. They also show that Atlas's prices are significantly higher than the per net ton landed import cost to these distributors for purchases of stainless steel bar from the subject countries.[33] The Tribunal has already noted that Fidelity and ASA Alloys account for most of the imports of stainless steel bar from the subject countries. Unalloy-IWRC also purchased stainless steel bar from the subject countries, but in smaller amounts. Fidelity submitted that these landed import unit costs were not proper indicators of price competition, as several cost factors have to be taken into account in establishing resale prices to Canadian customers. In this regard, the Tribunal notes that some of the costs cited by Fidelity (e.g. import costs: customs duties, brokerage, shipping costs to Canada) are already accounted for in the landed import unit cost data and that the others (e.g. costs of the stocking, profits) would also apply to purchases from Atlas. Accordingly, the Tribunal considers that, in the competition to supply these distributors, the costs of imports of stainless steel bar from the subject countries were undercutting Atlas prices.

The witnesses from Atlas testified that Atlas had attempted to introduce a price increase in the first quarter of 1998, but it did not hold and was rescinded at the end of 1998.[34] The Tribunal notes that Atlas's attempt to increase prices coincided with a growing presence in the market of the subject imports at dumped and subsidized prices that would make buyers resist higher Atlas prices.

According to Atlas, imports from the subject countries forced it to lower prices starting at the end of 1998. Atlas discounted its prices and introduced several rebate programs.[35] At a certain point, when it could no longer lower its prices, it lost sales.[36] The Tribunal notes that there is other evidence that confirms the price competition between Atlas and the importers of the subject goods, which forced Atlas to lower its prices.[37] When asked why the company would source goods from India, the witness from Unalloy–IWRC said that it was for reasons of price.[38] Other witnesses confirmed the attractiveness of the prices of imports

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32. *Protected Pre-hearing Staff Report*, revised 28 August 2000, Tribunal Exhibit NQ-2000-002-7B (protected), Administrative Record, Vol. 2A at 122.
33. Revised Table 6 "Sales to Importer Customers", Manufacturer's Exhibit A-10 (protected), Administrative Record, Vol. 12.
34. *Transcript of Public Hearing*, Vol. 1, 27 September 2000, at 44.
35. Manufacturer's Exhibit A-1 (protected), para. 69-71 and Tables 4 and 5, Administrative Record, Vol. 12; and *Transcript of In Camera Hearing*, Vol. 1, 27 September 2000, at 55 and 56.
36. Manufacturer's Exhibit A-3 (protected), para. 67 and 68, Administrative Record, Vol. 12.
37. *Transcript of Public Hearing*, Vol. 1, 27 September 2000, at 24-28; and Manufacturer's Exhibit A-1 (protected), para. 62 and 66-68 and Table 3, Administrative Record, Vol. 12.
38. *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 198; and Tribunal Exhibit NQ-2000-002-16.19 (protected), Administrative Record, Vol. 6 at 200 and 211.

from the subject countries.[39] The witness for Fidelity submitted that the company needed to purchase offshore in order to compete with another firm supplied by Atlas.[40] Clearly, Fidelity and others have the option of sourcing from other countries. However, if the Commissioner finds the goods to be dumped or subsidized, SIMA mandates the Tribunal to determine whether these goods have injured the domestic industry. In this case, the Tribunal notes that all of the goods were found to be dumped or subsidized by significant margins or amounts.

Viraj also submitted that its products were of lower quality[41] than those of Atlas, which explained its lower prices. Other testimony confirmed that the price of imports from the subject countries had to be discounted against Atlas's product to be accepted in the market.[42] There was unanimous testimony regarding the superior quality of Atlas's stainless steel bar. In addition, the Tribunal heard testimony about negative experiences with stainless steel bar imported from India.[43] The Tribunal recognizes that imports from the subject countries may have to be priced lower than the domestic product for a variety of reasons, thus giving the domestic producer scope for demanding and receiving a premium over import prices. However, when, because of dumping and subsidizing, the price of the subject goods declines more rapidly than that of the domestically produced goods, as they have in this case, the domestic industry will lose sales if it does not move its prices closer to those of the subject goods. It is clear to the Tribunal that Atlas lowered its prices to a certain point to keep its stainless steel bar competitive. However, those reductions were not sufficient to prevent lost sales to the subject imports. The most striking example in this regard is the significant decline in purchases of stainless steel bar from Atlas by Fidelity.[44]

Taking into account the rapidly increasing volume of the subject goods at dumped and subsidized prices, the Tribunal is convinced that the imports of the subject goods had two distinct effects on Atlas's performance. Atlas had to lower its prices to meet the competition and clearly suffered price erosion in 1999. In addition, Atlas was unable to increase its prices in any significant manner in the first quarter of 2000, compared with its average prices in 1999, when faced with further increases in the volume of dumped and subsidized imports of stainless steel bar. However, the reduction in prices in 1999 was not sufficient to prevent a loss of sales and a consequent decline in market share. Atlas was unable to recover this lost market in the first quarter of 2000.

Atlas's large loss in market share, along with eroded prices through 1999, had a direct impact on its financial performance. Based on the information provided by Atlas, the Tribunal considers that most of the 21 percent decline in domestic sales value for 1999 could be attributed to dumped and subsidized imports. Atlas's gross margin also declined significantly in 1999. Atlas's profits fell in 1999. Expressed as a percent share of net revenue for domestic sales, Atlas's profits did not improve in the first quarter of 2000, compared with 1999. The increase in average selling prices in the first quarter of 2000 did not fully absorb the significant increase in nickel costs. Continued low-priced imports from the subject countries available in the marketplace affected Atlas's ability to raise prices and increase profits in that quarter. The deterioration of

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39. *Transcript of In Camera Hearing*, Vol. 2, 28 September 2000, at 216; and Exporter's Exhibit B-1, para. 8, Administrative Record, Vol. 13.
40. Importer's Exhibit C-2 (protected), Administrative Record, Vol. 14.1.
41. Exporter's Exhibit B-1, para. 8, Administrative Record, Vol. 13.
42. *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 279.
43. Importer's Exhibit C-1, Administrative Record, Vol. 13.1; *Transcript of In Camera Hearing*, Vol. 2, 28 September 2000, at 217; and *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 285.
44. *Protected Pre-hearing Staff Report*, revised 28 August 2000, Tribunal Exhibit NQ-2000-002-7B (protected), Administrative Record, Vol. 2A at 174.

Atlas's financial performance in 1999 and the lack of any significant improvement in the first quarter of 2000 occurred despite the previous injury findings. In the Tribunal's view, it was reasonable to expect that, the cause of that injury being removed, Atlas maintain the performance that it achieved in 1998.

Based on the foregoing, the Tribunal concludes that Atlas has suffered a significant deterioration in performance in the form of lost sales volumes and market share, price erosion and suppression, and reduced revenue and profitability. Moreover, the injury suffered by Atlas as a result of the dumped and subsidized imports sold in the Canadian market was clearly material.

Other Factors

The Tribunal also examined other factors to ensure that injury caused by such factors is not attributed to the dumped and subsidized imports.

Parties identified several factors other than dumping that have contributed to the loss of market share and profits by the domestic industry. Those included Atlas's focus on the U.S. market, difficulties in operating competitively, lack of sales and marketing activities, Atlas's pricing strategy, lack of capital investment, imports from the United States and the influence of world pricing on the price for stainless steel bar in the Canadian market.

With regard to Atlas's focus on the U.S. market to the detriment of its performance in the Canadian market, the Tribunal is of the view that its export business has actually aided its overall operation and contributed to higher productivity. The Tribunal is not persuaded that Atlas's U.S. export activities have come at the expense of its domestic customers, nor that this factor, like many of the other factors mentioned, has anything to do with price erosion and suppression in Canada. Moreover, it is difficult to see, on the basis of the evidence, how U.S. sales efforts by Atlas could have been responsible for its loss of market share and resultant loss of profits in the Canadian market.

Concerning the submission that Atlas's difficulties in operating competitively were the cause of injury, the Tribunal notes that its performance on the U.S. market shows that it can compete in that highly competitive market and that, notwithstanding recent declines in sales, Atlas's financial results are much better in the U.S. market, where most of its exports are sold,[45] than in the Canadian market. It could be expected that Atlas's performance in this market should have made it a better competitor. In light of the foregoing, the Tribunal does not believe that a lack of competitiveness on the part of Atlas was a significant factor in its domestic performance during the last few years.

Another argument put forth is that Atlas lost some business because of its poor marketing practices. There is considerable evidence concerning Atlas's relations with its customers.[46] The Tribunal also heard the witness for Atlas testify that its marketing practices are guided by the competition between it and certain of its clients and especially by a volume-based pricing strategy. The Tribunal is not convinced that, taking into account the prices of the subject imports, Atlas's marketing relations with its customers have in any manner contributed to its loss in sales. In the Tribunal's view, the overriding factor as to whether Atlas got the

45. *Protected Pre-hearing Staff Report*, revised 28 August 2000, Tribunal Exhibit NQ-2000-002-7B (protected), Administrative Record, Vol. 2A at 131 and 132.

46. *Transcript of Public Hearing*, Vol. 1, 27 September 2000, at 96-98; *Transcript of In Camera Hearing*, Vol. 1, 27 September 2000, at 52 and 53; *Transcript of In Camera Hearing*, Vol. 2, 28 September 2000, at 175-77; and *Transcript of In Camera Hearing*, Vol. 2, 28 September 2000, at 151-54.

business had to do with pricing considerations. These considerations also apply with respect to the argument that Atlas lost business because it did not take advantage of Fidelity's quick delivery capability. While Fidelity may consider that Atlas missed out on a chance to increase sales, the Tribunal considers that the lower prices demanded by Fidelity would have more than nullified any benefit that Atlas might have gained in selling larger volumes to Fidelity (and other master distributors).[47]

The submissions that Atlas's pricing strategy contributed to injury, and in particular that Atlas suppressed its own prices, do not stand up against overwhelming evidence of the price erosion caused by the imports from the subject countries.[48] The evidence was clear that, where producers occupy a particular niche in the market, they translate that advantage into higher prices.[49] However, the bulk of Atlas's sales consist of large volume items that compete directly with the subject imports. The Tribunal has already concluded that declines in the prices of the subject imports forced Atlas to lower its prices, thus eliminating the benefit of any premium that Atlas might have obtained because of its superior quality products.

Regarding Atlas's lack of capital investment, the evidence shows, on the contrary, that its total capital investment increased by 44 percent in 1999.[50] The Tribunal also notes that Atlas also plans to increase its investments by a further 14 percent in 2000 and another 14 percent in 2001.

With respect to the submission that imports of stainless steel bar from the United States had caused injury to Atlas, the Tribunal has already observed that the increase in these imports was much less rapid than the increase in imports of the subject goods. While the market share of imports from the United States increased between 1997 and 1999, it is difficult to reconcile that increase with injury to the domestic industry given the fact that the average price of imports from the United States increased significantly in 1999 in a market where the prices of stainless steel bar sold by other suppliers were declining. The Tribunal cannot attribute the declines in Atlas's prices to imports from the United States, particularly as, according to the evidence, many imports consist of grades or sizes not supplied by Atlas. Moreover, imports of stainless steel bar from the United States declined in the first quarter of 2000. The Tribunal, however, notes the argument put forward by Fidelity with respect to the likely effects on the market of the arrival in Canada of certain affiliates of distributors in the United States. The Tribunal observes that there is no evidence in this regard.

Another factor raised was that Canadian prices for stainless steel bar were bound to follow world prices. It is evident to the Tribunal that the Canadian market is not and cannot be insulated from world price pressures. However, the relatively small amount of evidence on world pricing on the record is conflicting.[51] Witnesses testified that Canadian prices were lower than those in many other markets.[52] However, Viraj, which exports to more than 50 countries, submitted that it gets its highest prices for stainless steel bar in the

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47. *Transcript of In Camera Hearing*, Vol. 1, 27 September 2000, at 55-63.
48. *Transcript of Public Hearing*, Vol. 1, 27 September 2000, at 30; and Manufacturer's Exhibit A-1 (protected), para. 62-72 and Tables 3-5, Administrative Record, Vol. 12.
49. *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 211-12; and *Transcript of In Camera Hearing*, Vol. 2, 28 September 2000, at 174.
50. *Protected Pre-hearing Staff Report*, revised 28 August 2000, Tribunal Exhibit NQ-2000-002-7B (protected), Administrative Record, Vol. 2A at 119.
51. Exporter's Exhibit B-1, para. 14, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 317; and Importer's Exhibit C-1, Administrative Record, Vol. 13.1.
52. *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 203; and *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 329 and 340.

Canadian market.[53] The Tribunal also heard uncontested evidence that U.S. prices are excellent and have been higher than Canadian prices in the past few years.[54] The Tribunal is, therefore, not convinced that the price erosion experienced by Atlas, particularly in 1999, can be attributed to trends in world stainless steel bar prices. In the Tribunal's view, the price erosion incurred by Atlas was caused by the very low prices of the dumped and subsidized imports.

In conclusion, the Tribunal is not convinced that any of these other factors have contributed to Atlas's significant loss of market share and declining profitability. The Tribunal is of the view that, but for the presence of the dumped and subsidized goods from Brazil and the subsidized goods from India, the domestic industry would not have suffered material injury in the form of lost sales and market share, price erosion and price suppression.

REQUEST FOR EXCLUSION

Viraj argued that the evidence indicates that a number of criteria examined by the Tribunal in previous cases when considering whether to grant a producer exclusion are satisfied[55] and, therefore, that it should be granted an exclusion. Viraj argued that it has not caused, nor does it threaten to cause, injury to the domestic industry.

Viraj argued that it increased its prices significantly over the period of inquiry and would like to raise them further. Viraj also pointed to evidence that indicates that it exports to more than 50 countries, maintains a limited presence in each one and observes a non-disruptive marketing policy in those markets. Viraj also referred to evidence that indicates that its projected exports for the upcoming year are below those of 1999 and that it deals only with reputable stockists, with whom it has developed relationships over time. Viraj also argued that, in Inquiry No. NQ-98-001, it was found to have a zero margin of dumping and that the amount of subsidy found by the Commissioner is small in relation to the price differential between Atlas's prices and prices found in India. Viraj submitted that Indian prices were lower than Atlas's prices, due to quality considerations.

Atlas argued that an exclusion should not be granted to Viraj. Atlas argued that exporter exclusions are generally granted only in exceptional circumstances, for example, when an exporter is shipping a specific product that is not produced in Canada. Atlas argued that it produces the full range of like goods and that it can supply the Canadian domestic market. Further, Atlas argued that all the subject goods are substitutable and commodity-type products and that they do not satisfy particular niche markets that may not be supplied in Canada.

Atlas further referred to the criteria that the Tribunal listed in Inquiry No. NQ-99-001, which are to be considered in determining whether to grant a producer exclusion. Atlas suggested that the Tribunal should examine those factors, such as whether or not the domestic industry agrees to the request for exclusion. Atlas stated that, in the present case, the domestic industry opposes any request for exclusion. Atlas further stated that the Tribunal should not grant exclusions in situations where countries have a large export capacity and, in this regard, referred to evidence of the consolidated capacity and production of the Indian producers. In

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53. Exporter's Exhibit B-1, para. 8, Administrative Record, Vol. 13.
54. *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 215; *Transcript of Public Hearing*, Vol. 1, 27 September 2000, at 90-91; and *Transcript of Public Hearing*, Vol. 2, 28 September 2000, at 274.
55. *Certain Cold-rolled Steel Sheet Products*, *Finding* and *Statement of Reasons* (27 August 1999), NQ-99-001 (CITT).

this context, Atlas referred to evidence on the levels of Viraj's exports to Canada. Atlas argued that, of all its export markets, Viraj receives its highest price in Canada and, therefore, has a strong incentive to continue to sell in Canada. Therefore, Atlas submits that no exclusion should be granted.

It is well established that, pursuant to subsection 43(1) of SIMA, the Tribunal has discretion to grant exclusions.[56] However, the Tribunal will only grant producer exclusions in exceptional circumstances,[57] such as when an exporter is shipping a specific product that is not produced in Canada.[58] The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods,[59] whether the domestic industry is an "active supplier" of the product or whether it normally produces the product.[60]

In this regard, the Tribunal notes that the evidence indicates that Atlas produces the full range of like goods. Atlas has the capacity to supply and is an active supplier of the entire Canadian market for like goods. Therefore, the Tribunal is of the view that the evidence does not support Viraj's request for an exclusion, based on these criteria.

Both Viraj and Atlas referred to the Tribunal's decision in Inquiry No. NQ-99-001, in which the Tribunal stated that the simultaneous existence of certain factors can be the source of exceptional circumstances that would justify an exclusion for a given country or producer. The Tribunal was of the view, in that case, that none of these factors, by themselves, would normally be sufficient to support the existence of exceptional circumstances; a combination of some or all of these factors would usually be necessary. In this regard, the Tribunal is of the view that the consideration of the factors produced by Viraj, relating to subsidized imports of the subject goods, does not disclose exceptional circumstances that would justify granting it an exclusion. The Tribunal is of the view that the volume of imports into Canada of the subject goods produced by Viraj, which are subsidized, accounts for a significant part of the subject goods sold in Canada.

In addition, the volume of exports to Canada is likely to remain high, given that Viraj has a high export capacity. Viraj does not sell into its domestic market, selling all of its product in export markets. Viraj has a high incentive to export to Canada. The witness for Viraj admitted that Canada is an attractive market and, of its more than 50 export markets, that it is the destination where it obtains the highest prices. Therefore, although Viraj has other export markets, it is likely that it will continue to sell into Canada at injurious prices.

In light of the above, the Tribunal does not grant an exclusion to Viraj.

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56. *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).
57. *Certain Hot-rolled Carbon Steel Plate*, *Finding* (27 June 2000), *Statement of Reasons* (12 July 2000), NQ-99-004 (CITT).
58. *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 *supra* note 9.
59. *Supra* note 9.
60. *Ibid.*

REQUEST FOR A REFERENCE TO THE COMMISSIONER

Atlas requested that, pursuant to section 46 of SIMA, the Tribunal advise the Commissioner of the injurious dumping of stainless steel bar originating in or exported from the United Arab Emirates and Russia.

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 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].

Subsection 31(7) of SIMA provides:

> (7) The [Commissioner] may, on receipt of a notice in writing from the Tribunal pursuant to section 46 respecting the dumping or subsidizing of any goods, cause an investigation to be initiated respecting the dumping or subsidizing of any goods described in the notice.

The Tribunal is of the view that, in order to warrant advising the Commissioner pursuant to section 46 of SIMA, the evidence in a particular case must indicate that: (1) the imports from the subject countries are goods that compete with or are substitutable for domestically produced goods as described by the Commissioner in the present inquiry; (2) these goods "have been or are being" imported into Canada; (3) the pricing of these goods indicates that they have been or are being dumped in Canada or subsidized; and (4) there is a reasonable indication that the dumping or subsidizing of these goods has caused or is threatening to cause injury.[61] In making its request, Atlas referred to statements and evidence provided by its witnesses and, in particular, by Mr. Kusiak, as well as dumping margin calculations. Atlas did not allege that imports of stainless steel bar were subsidized, nor was there any evidence to that effect.

There was some testimony and evidence regarding imports into Canada of stainless steel bar from the United Arab Emirates and Russia in 2000. However, the calculations of the margins of dumping provided by Atlas are based on reports of offers made to Canadian importers in 1999. There is no confirmation that the sales were made at those prices or of the volumes sold, if any. While volumes of stainless steel bar from the United Arab Emirates and Russia are reported for the year 2000, no evidence regarding volumes sold into Canada in 1999 is provided by Atlas or is found on the Tribunal's record. Therefore, the Tribunal is of the opinion that the information provided does not constitute evidence that imports of stainless steel bar from the United Arab Emirates and Russia have been dumped. The Tribunal is also of the view that the evidence does not disclose a reasonable indication that imports of stainless steel bar from the United Arab Emirates and Russia have caused injury or threaten to cause injury. However, given the Tribunal's conclusion that there is no evidence of dumping of the goods from these countries, it is unnecessary to address this further.

The Tribunal, therefore, declines to advise the Commissioner as requested.

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61. *Ibid*.

CONCLUSION

For the reasons stated above, the Tribunal concludes that the dumping in Canada of certain stainless steel bar originating in or exported from Brazil and the subsidizing of certain stainless steel bar originating in or exported from Brazil and India have caused material injury to the domestic industry.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Zdenek Kvarda
Zdenek Kvarda
Member

Ottawa, Tuesday, November 21, 2000

Inquiry No.: NQ-2000-002

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

CERTAIN STAINLESS STEEL ROUND BAR ORIGINATING IN OR EXPORTED FROM BRAZIL AND INDIA

CORRIGENDUM

In the English version of the statement of reasons, the fifth and sixth sentences of the first paragraph under the heading "Distribution" are replaced with the following: "Atlas does make some sales directly to end users. However, most of Atlas's sales are to general distributors, followed by master distributors and end users."

In the French version of the statement of reasons, the fifth and sixth sentences of the first paragraph under the heading "Distribution" are replaced with the following: "Atlas vend aussi directement aux utilisateurs finals. Cependant, Atlas vend principalement à des distributeurs généraux, et ensuite à des maîtres-distributeurs et à des utilisateurs finals."

By order of the Tribunal,

Michel P. Granger
Secretary