



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2004-002

Certain Steel Fuel Tanks

*Finding issued
Tuesday, August 31, 2004*

*Reasons issued
Wednesday, September 15, 2004*

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

**CERTAIN STEEL FUEL TANKS ORIGINATING IN OR EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA AND CHINESE TAIPEI**

FINDING

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping in Canada of new steel fuel tanks, gasoline or diesel, for passenger cars and light trucks, for the replacement market, originating in or exported from the People's Republic of China and Chinese Taipei has caused injury or retardation or is threatening to cause injury to the domestic industry.

This inquiry is pursuant to the issuance by the President of the Canada Border Services Agency of a preliminary determination dated May 3, 2004, and of a final determination dated August 3, 2004, that the aforementioned goods have been dumped and that the margins of dumping of the goods are not insignificant.

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 has not caused injury and is not threatening to cause injury to the domestic industry.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

Ellen Fry
Ellen Fry
Member

Hélène Nadeau
Hélène Nadeau
Secretary

The statement of reasons will be issued within 15 days.

| | |
|---------------------------|--|
| Place of Hearing: | Ottawa, Ontario |
| Dates of Hearing: | August 3 to 6, 2004 |
| Tribunal Members: | Richard Lafontaine, Presiding Member Zdenek Kvarda, Member Ellen Fry, Member |
| Director of Research: | Peter Welsh |
| Lead Researcher: | Roman Cooper |
| Economist: | Geneviève Chaloux |
| Statistical Officer: | Lise Lacombe |
| Counsel for the Tribunal: | Marie-France Dagenais Roger Nassrallah |
| Assistant Registrar: | Gillian E. Burnett |

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Mary Jane Matheson

Reliable Automotive Distributing

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Ross Fisher

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STATEMENT OF REASONS

BACKGROUND

1. The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry to determine whether the dumping in Canada of new steel fuel tanks, gasoline or diesel, for passenger cars and light trucks, for the replacement market, originating in or exported from the People's Republic of China (China) and Chinese Taipei (the subject goods) has caused injury or retardation or is threatening to cause injury to the domestic industry.
2. On December 19, 2003, the President of the Canada Border Services Agency (CBSA), following a complaint filed by Spectra Premium Industries Inc. (SPI), initiated an investigation into whether the subject goods were being dumped. On December 22, 2003, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping of the subject goods had caused material injury or retardation or was threatening to cause material injury to the domestic industry. On February 17, 2004, pursuant to subsection 37.1(1), the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury to the domestic industry.
3. On May 3, 2004, the CBSA issued a preliminary determination of dumping with respect to the subject goods. The CBSA was satisfied, as a result of this preliminary investigation, that the subject goods had been dumped, that the margins of dumping were not insignificant and that the volume of dumped goods was not negligible.²
4. On May 4, 2004, the Tribunal issued a notice of commencement of inquiry.³ The inquiry covered the period from January 1, 2001, to March 31, 2004. As part of the inquiry, the Tribunal sent questionnaires to the domestic producer, importers, purchasers and foreign producers. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.
5. On August 3, 2004, the CBSA issued a final determination that the subject goods had been dumped and that the margins of dumping were not insignificant.⁴
6. A hearing, with public and *in camera* testimony, was held in Ottawa, Ontario, from August 3 to 6, 2004.
7. The record of this inquiry consists of Tribunal exhibits, including the public and protected replies to questionnaires, the pre-hearing staff reports, requests for information and replies thereto, including replies by SPI to the Tribunal's requests to clarify revisions made to its questionnaire reply, witness statements and exhibits filed by the parties throughout the inquiry and the transcript of the hearing. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and confidentiality undertaking with the Tribunal in respect of confidential information.
8. The Tribunal issued its finding on August 31, 2004.

1. R.S.C. 1985, c. S-15 [*SIMA*].

2. Tribunal Exhibit NQ-2004-002-01A, Administrative Record, Vol. 1 at 20-37.

3. C. Gaz. 2004.I.1522.

4. Tribunal Exhibit NQ-2004-002-04, Administrative Record, Vol. 1 at 77.10.

RESULTS OF THE CBSA'S INVESTIGATION

9. The CBSA's investigation covered imports of the subject goods from September 1, 2002, to August 31, 2003.

10. The sole manufacturer/exporter in China cooperated fully with the CBSA and was subject to a verification visit in March-April 2004. During the period of investigation, 96.1 percent of imports from China were dumped at a weighted average margin of dumping of 39.4 percent when expressed as a percentage of the export price, determined on the basis of paragraph 19(b) of *SIMA*. The margins of dumping ranged from 0.3 to 83.4 percent.

11. In the absence of complete responses to the CBSA's request for information from the two manufacturers in Chinese Taipei, the margin of dumping for imports of the subject goods originating in or exported from Chinese Taipei was based on the highest margin of dumping of 83.4 percent found for the only cooperative exporter during the investigation. As a result, 100 percent of the subject goods exported to Canada by the exporters in Chinese Taipei were determined to be dumped.

PRODUCT

Definition

12. For the purposes of this inquiry, the subject goods are defined as new steel fuel tanks, gasoline or diesel, for passenger cars and light trucks, for the replacement market (replacement fuel tanks) originating in or exported from the People's Republic of China and Chinese Taipei. Passenger cars and light trucks include such vehicles as sport utility vehicles, minivans and pick-up trucks. Moreover, "replacement market" excludes fuel tanks produced for the original equipment manufacturer (OEM) market, which in this case refers to automobile manufacturers.

Product Information

13. Replacement fuel tanks are used to replace damaged fuel tanks on used vehicles and are available in many different models. SPI produces more than 650 models of replacement fuel tanks.⁵ Each model of fuel tank is designed to fit inside a specific make and model of car or light truck.

14. In addition to a steel fuel container, a replacement fuel tank usually includes the following components: filler neck, baffle, bowl and vent. For the North American market, the steel used in fuel tanks may have a corrosion-resistant characteristic.

Production Process

15. The production of replacement fuel tanks begins with the development of product specifications. For the vast majority of these fuel tanks, the producer does not have the original vehicle manufacturer's specifications. The producer must develop specifications for a replacement fuel tank based on its analysis of the original fuel tank that was installed in a new vehicle (i.e. "reverse engineering").

16. The steel sheets used in the production of replacement fuel tanks are ordered as pre-cut sheets according to the specifications of each model. The manufacturing process begins with the pressing of a half-tank pre-cut sheet (upper and bottom) using specially designed moulds for each model. Holes are then

5. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 149.

punched in the steel, which permits components to be inserted. The two half-tanks are assembled together using a manual spot welding process, and certain components are soldered to the fuel tanks. Finally, a bending machine is used to give the fuel tanks a final shape. Afterward, each tank is tested, boxed and placed in the warehouse ready for distribution.

DOMESTIC PRODUCER

SPI

17. SPI is the only Canadian producer of replacement fuel tanks. It is the largest of four known producers of replacement fuel tanks in the world. SPI manufactures replacement fuel tanks at its Boucherville, Quebec, facility. It exports the majority of its production of replacement fuel tanks, primarily to the United States. It imports small volumes of tanks from Chinese Taipei.

18. Spectra Steel Industries Ltd. was formed in 1989 with the acquisition of all the assets of Triple A Gas Tank Inc., one of two known Canadian manufacturers of replacement fuel tanks at the time. In 1993, Spectra Steel Industries Ltd. negotiated with Premium Automotive Tanks Inc., the other known Canadian manufacturer of replacement fuel tanks, to combine their efforts and assets. This merger led to the formation of SPI, which was incorporated under the *Canada Business Corporations Act*⁶ on February 1, 1993.

19. In 1997, SPI acquired its main North American competitor in the replacement fuel tank market, American Designers,⁷ and moved the operations to its Boucherville plant.

20. In 1998, SPI acquired five major Canadian manufacturers of replacement radiators and radiator cores, along with their fifteen warehouses across Canada. They were: Radiateurs Laniel of Montréal, Quebec, Rick's Gas Tank Factory of Nepean, Ontario, Coulter Radiator Manufacturing of Calgary, Alberta, Radiateurs Roy of Sainte-Foy, Quebec, and Sanka Manufacturing Company of Halifax, Nova Scotia.⁸ These companies were all distributors of replacement fuel tanks. As a result of these acquisitions, SPI also manufactures automotive and industrial radiators, radiator components, new and reconditioned oil pans, and rebuilt compressors and related components for the car and light truck aftermarket. These products comprise the bulk of SPI's overall business.

21. In 2000, SPI acquired Titan Automotive Industries (Titan), a Canadian manufacturer of replacement fuel tanks between 1998 and early 2000. Titan had produced a limited range of replacement tank models and completed its range with imports from Chinese Taipei.⁹

FOREIGN PRODUCERS

22. The CBSA identified three companies that manufactured the subject goods for export to Canada during the period of investigation. Tribunal questionnaires were sent to all three foreign producers.

23. The two major foreign producers/exporters of the subject goods responded to the Tribunal's foreign producers' questionnaire. Chyuan Chang Industrial Co., Ltd. (Chyuan Chang), a producer of replacement fuel tanks in Chinese Taipei and whose products are sold by Jesse Lai of Chinese Taipei, is the larger of the two. The other foreign producer/exporter of the subject goods is Zhongshan Tianyi Auto Parts and

6. R.S.C. 1985, c. C-44.

7. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 14.

8. Manufacturer's Exhibit A-15 at 2, Administrative Record, Vol. 11.

9. Manufacturer's Exhibit A-05 at 2, 4, Administrative Record, Vol. 11.

Hardware Works (Tianyi), which started manufacturing replacement fuel tanks in China in 2001 and whose products are sold by Mintar International Corp. (Mintar International) based in Hong Kong, China, and Chinese Taipei. Prior to the startup of production of replacement fuel tanks by Tianyi, Mintar International sold replacement fuel tanks manufactured by Chyuan Chang. Golden Legion, another producer in Chinese Taipei that had sold very small volumes to Canada did not reply to the Tribunal's questionnaire.

24. Tianyi exports mainly to the United States, whereas Chyuan Chang exports primarily to Europe.

IMPORTERS

25. The CBSA identified 14 companies that imported¹⁰ the subject goods during its period of investigation. The Tribunal sent questionnaires to all importers identified by the CBSA and one additional importer¹¹ that was known to have imported during the Tribunal's period of inquiry. All the importers responded to the Tribunal's importers' questionnaire in part or in full.

26. The majority imported the subject goods from Chinese Taipei. In addition, a significant portion of imports of the subject goods, primarily goods originating in or exported from China, was re-exported to the United States.

PRODUCT DISTRIBUTION

27. Several levels of distribution characterize the replacement fuel tank market. At the top of the distribution chain is the warehouse distributor (WD), which typically purchases in large quantities (i.e. full containers) directly from a manufacturer, either domestic or offshore. For this reason, the importers of the subject goods were, for the purposes of the Tribunal's analysis, characterized as WDs. Moreover, the record indicates that SPI's 15 regional warehouses across Canada are WDs which compete with other WDs.¹² Other parties in the distribution network are wholesalers/jobbers (i.e. national automotive parts stores), followed by radiator shops (including salvage yards) and finally the installers (i.e. garages/body shops) which sell to the consumer.

28. WDs, in the case of both the importers and SPI's regional warehouses, sell for the most part at the wholesaler/jobber and radiator shop levels. Wholesalers/jobbers can purchase directly from SPI's main facility in Boucherville, or one of its regional warehouses,¹³ or from another WD and sell typically to radiator shops and installers. Radiator shops typically sell to installers, and some perform the installation of replacement fuel tanks themselves. Installers (i.e. garages and body shops) sell directly to consumers (end users).

10. Importers of the subject goods during the period from September 1, 2002, to August 31, 2003, include the following: Access International Automotive Ltd., Best Eglinton Canada Ltd., Canadian Auto Parts Suppliers, Cancore Industries, Capital and Dominion Radiator, Cross Canada Auto Body Supply (Windsor) Limited, Kingdom Auto Parts, Koolian Enterprises Inc., Les Entreprises Nicole Veronneau Inc., Lindsay Auto Sales (Affordable Gas Tanks) Ltd., MCL Heat Transfer Products Inc., Raco Management Company Limited, Reliable Automotive Distributing and SPI.

11. Gestion Favel Inc.

12. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 51.

13. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 136.

29. Because of generally indistinguishable pricing for sales to the various types of business below the WD level by importers,¹⁴ the reporting of sales to these types of business in the pre-hearing staff report were grouped together and referred to as sales to “Others”. As a result, SPI’s total sales are reported as sales to both WDs and “Others”, whereas importers’ total sales were attributable solely to the “Others” category, as the importers are WDs and generally sell to “Others”.

30. Replacement fuel tanks can be sold on their own, along with related accessories, such as fuel tank sending units or in combination with other aftermarket automotive parts.¹⁵ Generally, these aftermarket products account for the bulk of sales by WDs, including those that import, and wholesalers/jobbers, replacement fuel tanks being an important complement to the overall product line.¹⁶

POSITIONS OF THE PARTIES¹⁷

SPI

31. SPI submitted that dumped imports from China and Chinese Taipei have caused material injury to the domestic industry by way of lost sales, loss of market share, price suppression and price erosion. In this regard, it argued that it is clear that “but for” the dumping, SPI would have sold considerably more replacement fuel tanks at a considerably higher price; it would not have lost market share; it would not have had its prices eroded; and it would have been able to obtain and retain price increases. It also submitted that importers are allowed to reduce their prices to increase sales and gain market share, but that they are not allowed to offer their products at dumped prices that cause injury to the domestic industry.

32. SPI submitted that, if the provisional anti-dumping duties were removed, SPI would have to seriously consider transferring its production of replacement fuel tanks to Asia, which would result in major layoffs in its plant in Boucherville. Based on the margins of dumping found in the CBSA’s final determination, SPI submitted that it has been competing at the WD account level and, to a lesser extent, the wholesaler/jobber levels, with imports that should be priced 40 to 80 percent higher.

33. SPI submitted that imports of replacement fuel tanks from China and Chinese Taipei first began to make a renewed impact in Canada following a Las Vegas trade show in late 2001. In this regard, it stated that, when Mintar International switched from selling imports from Chinese Taipei to imports from China, a price war ensued. It submitted that this involved Mintar International trying to achieve its historical sales volumes in Canada and the Chinese Taipei manufacturer, through Jesse Lai, trying to maintain what it considered to be its historical sales volumes in Canada. The effect in its view was that the net delivered value of the products decreased dramatically between 2002 and 2004.

34. With respect to the prescribed factors that the Tribunal may consider regarding injury, SPI submitted that the following are the most important factors in this matter: the effect of the dumped goods on the price of like goods; the resulting impact of the dumped goods on the state of the domestic industry; the rate of increase of the dumped goods into Canada; whether the price of the goods have a significant depressing effect; and, the margin of dumping. SPI stated that the evidence indicates that, considering all

14. For example, Tribunal Exhibit NQ-2004-002-16.04 (protected), Administrative Record, Vol. 6 at 170; Tribunal Exhibit NQ-2004-002-16.04B (protected), Administrative Record, Vol. 6 at 186; Tribunal Exhibit NQ-2004-002-16.01 (protected), Administrative Record, Vol. 6 at 6.

15. Other automotive parts include radiators, oil pans, cooling systems, brake rotors and drums, and heat exchangers.

16. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 457.

17. This portion of the text is intended to outline a number of key submissions made by the parties. It is not intended to be exhaustive.

these factors, material injury has occurred or, alternatively, is threatened absent the continuation of the provisional anti-dumping duties. In particular, SPI submitted that it has suffered because demand declined between 2001 and 2002 and, in this regard, highlighted that the Tribunal's jurisprudence has emphasized that dumping in a shrinking domestic market is likely to have an increased destabilizing effect. It also stated that the Tribunal's record clearly illustrates that SPI has lost substantial sales and market share, and suffered eroded and substantially suppressed prices.

35. With respect to materiality of injury, SPI cited the Tribunal's decision in *Xanthates*¹⁸ as establishing that a price decline, with no price suppression, of 6 percent in a price-sensitive industry was found to have caused material injury to domestic producers. In this regard, SPI highlighted evidence that, it submitted, supports a finding of material injury, including the following: the substantial increase in the volume of dumped imports of replacement fuel tanks in the domestic market; the injury that it suffered at the WD level, which, it submitted, represents a very substantial portion of its business; the permanent and significant loss of market share that it suffered; and the lower prices that SPI had to charge in order to preserve market share. Furthermore, SPI submitted that it was unable to raise prices to its customers, notwithstanding the increased costs of raw materials, labour, energy and overall expenses. It also argued that the performance of its replacement fuel tank business has reduced its overall net return on investment, which in turn has resulted in diminished profit growth, reduced cash flow and, consequently, a reduced ability to raise capital.

36. With respect to threat of injury, SPI argued that the evidence on the record points to a finding of a clear and imminent threat of material injury. In this regard, it submitted that the Tribunal should pay particular attention to: the production capacity utilization of the three foreign producers; the evidence that exporters will sell to whoever orders a container-load, with no knowledge of its impact in Canada; the fact that the loss of one or more of SPI's largest-volume customers is a real possibility; the price spreads between SPI's prices to WDs and the prices of the dumped imports; and the fact that there is a limited number of markets for replacement fuel tanks. In summary, it stated that the limited number of markets, with the recent investment made by overseas exporters to produce many fuel tank models for export, combined to increase the threat posed to the already vulnerable domestic industry. SPI submitted that, prior to 2002, imported replacement fuel tanks from the subject countries had been sold in Canada for many years without causing injury to the domestic industry, but that that had changed. In this regard, in 2002, with the addition of manufacturing facilities of aftermarket steel fuel tanks in the subject countries, the price of imported replacement fuel tanks dropped, forcing SPI to either drop prices or lose sales.

37. With respect to factors other than dumping, SPI argued that dumping does not need to be the only or even the principal cause of material injury to the domestic industry for the Tribunal to acknowledge the causal link between dumping and injury. It submitted that the issue of SPI's dominant market position or its decision to sell to various levels of trade is irrelevant to the question of injury or threat of injury. It also dismissed as irrelevant the arguments of the importer witnesses that stated that SPI was the author of its own misfortune by virtue of its business decisions made in the 1990s to expand its customer base. Further, it dismissed the argument that SPI ought not to be afforded the protection of Canada's anti-dumping legislation because it is the sole producer of the goods in Canada.

38. With respect to cumulation, SPI submitted that an assessment of the conditions of competition that the Tribunal typically considers indicates that the effect of the imports from both countries should be cumulated.

18. (4 March 2003), NQ-2002-003 (CITT).

Mintar International, Sparkle Developments Ltd., Mintar Auto Industries Company and Tianyi¹⁹

39. Mintar submitted that the subject goods have not caused and are not threatening to cause material injury. In the alternative, they argued that the replacement fuel tanks from China specifically are not causing and are not threatening to cause injury to SPI. Furthermore, they submitted that whatever injury might have occurred is not material in nature and was caused by factors other than the dumping of the subject goods.

40. With respect to cumulation, Mintar stated that the timing of the arrival of the imports from China was different from that of the imports from Chinese Taipei and that, on this basis, the Tribunal ought not to cumulate the effect of the imports from China with the effect of the imports from Chinese Taipei. They also submitted that the Tribunal should keep in mind the fact that they had fully participated in the CBSA's investigation and the Tribunal's inquiry, whereas the Chinese Taipei producer had not.

41. Mintar submitted that SPI's continued success makes it very difficult to accept its contention that imports of replacement fuel tanks have caused injury that is material. They submitted that the record does not support a finding that the subject goods have caused injury that is material in nature, nor does it support a finding that the imports are threatening to do so.

42. Mintar submitted that a comparison of the volumes of the subject imports and the volumes of SPI's total production clearly indicates that production of replacement fuel tanks in Canada is being affected by a factor other than dumping. Furthermore, they submitted that the consideration of the total apparent market also indicates that the subject imports did not make a material impact on production in Canada.

43. Mintar contended that SPI's performance was remarkable in light of the 14 percent contraction of the market between 2001 and 2003 and that this performance is not indicative of injury being suffered as a result of the modest volumes of subject goods that came into the country. Furthermore, they submitted that SPI's annual reports reflect this positive performance. In this regard, they highlighted excerpts from the annual reports that stated that SPI's loss of customers in 2002-2003 was "nominal", that SPI indicated that 2003 was a year of "favorable turnaround" and that SPI is proud of its capacity to effectively resist Asian competition in the replacement fuel tank business. Furthermore, they argued that SPI's financial data do not illustrate material injury to the production in Canada resulting from the presence of the subject goods during the period of investigation.

44. With respect to pricing, Mintar submitted that the Tribunal should keep in mind that the imports from Asian exporters are sold in U.S. dollars and that ocean freight is priced in U.S. dollars. With this in mind, they submitted that the Tribunal should observe the steadiness of the prices, in U.S. dollars, found in the responses to the importers' questionnaire. They emphasized that there was no material decrease in the price or any indication of steep price discounting by the importers. They submitted that this trend is similar for the prices for all importers. On the basis of this trend, they dismissed SPI's allegation that the foreign producers were in any way attacking the Canadian market with significant discounting.

45. With respect to threat of injury, Mintar submitted that there has been no significant increase in the volume of subject goods entering Canada for the Canadian market; that the responding exporters have no plans to increase capacity; that Chinese import prices are currently increasing; that the foreign producers' inventories are extremely small; and that the Chinese producers and exporters will be seeking a review by the CBSA for their normal values that, they submit, will decrease their margins of dumping.

19. Hereinafter referred to collectively as Mintar.

46. With respect to non-dumping factors, Mintar submitted that the Tribunal should keep in mind SPI's rationalization and integration issues following its many acquisitions, which, they argued, led to some incoherence in the marketplace based on SPI's customers having to compete against SPI. By aggressively going after market share, they submitted that SPI caused market disruptions that essentially resulted in SPI inflicting injury on itself. Moreover, they argued that the incoherence in the marketplace should not be blamed on the modest imports of the subject goods. They also submitted that SPI's natural advantages over importing offshore goods has led to the offshore imports playing a modest, niche role in the Canadian market.

ANALYSIS

Like Goods

47. Subsection 2(1) of SIMA defines "like goods", in relation to any other goods, as "(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".

48. As the Tribunal indicated at the preliminary injury inquiry stage, SPI has submitted that the subject goods compete directly with, have the same use as and may be used as substitute products for the replacement fuel tanks made in Canada. The Tribunal did not receive any submissions that challenged SPI's submissions on like goods at the final injury inquiry stage. In the absence of any submissions to the contrary, and based on the evidence before it at this time, the Tribunal is of the opinion that the replacement fuel tanks produced in Canada are like goods to the subject goods.

Domestic Industry

49. The term "domestic industry" is defined in subsection 2(1) of *SIMA* in part as follows:

domestic industry" means . . . 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.

50. As indicated above, SPI is the only Canadian producer of replacement fuel tanks and, as such, the producer of 100 percent of the domestic production. On this basis, the Tribunal determines that SPI represents the domestic industry for the purposes of its inquiry.^{20,21}

20. The Tribunal notes that SPI is an importer of the subject goods, albeit in small volumes, from Chinese Taipei. The evidence indicates that SPI only imports those models that it cannot yet produce. The Tribunal also notes that the definition of "domestic industry" in *SIMA* provides the Tribunal with discretion to exclude from the domestic industry those domestic producers that are importers of the subject goods. However, on the basis of the minimal volumes of imports, the Tribunal will not exclude SPI.

21. With respect to the issue of retardation, the Tribunal notes that section 2 of *SIMA* defines the term "retardation" as "material retardation of the establishment of a domestic industry". In light of the Tribunal's determination that SPI constitutes the already established "domestic industry" in this case, the Tribunal is of the opinion that it does not need to address the issue of retardation any further.

Cumulation

51. Pursuant to subsection 42(3) of *SIMA*, the Tribunal shall, when conducting an inquiry under subsection 42(1), make an assessment of the cumulative effect of the dumping of the goods that are imported into Canada from more than one country if it is satisfied that the following conditions are met: “(a) the margin of dumping . . . 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.”

52. Based on the CBSA’s final determination of dumping, the Tribunal finds that the margins of dumping in relation to the imports from each of the subject countries are not insignificant.²² Therefore, the first criterion under paragraph 42(3)(a) of *SIMA* has been met.

53. On the basis of volume data on the record, the Tribunal finds that the volume of dumped goods from each of the two subject countries is not negligible,²³ thus satisfying the second criterion under paragraph 42(3)(a) of *SIMA*.

54. In considering the conditions of competition between these goods, the Tribunal typically considers the following factors: the degree to which the subject goods from each subject country are interchangeable with goods from the other subject countries; the presence or absence of sales or offers to sell in the same geographical markets of imports from different subject countries and of the domestic like goods; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, and of the availability of like goods supplied by the domestic industry.²⁴ As the Tribunal has previously stated, it recognizes that there may be other factors that it could consider in deciding whether the exports of a particular country should be cumulated and that no single factor may be determinative.

55. The evidence demonstrated that there is competition in the same geographical markets between the like goods and the subject goods, and among the subject goods themselves.²⁵ The evidence also indicated that the domestic like goods and the subject goods are generally interchangeable.²⁶ As indicated above, the evidence on the record demonstrates that both the like goods and the subject goods are sold through WDs and that the WDs sell to the “Others” category. On this basis, the Tribunal finds that the subject goods themselves, and in comparison to the like goods, are sold through similar channels of distribution.

22. Subsection 2(1) of *SIMA* defines the term “insignificant” in part to mean “in relation to a margin of dumping, a margin of dumping that is less than two per cent of the export price of the goods”.

23. Subsection 2(1) of *SIMA* defines the term “negligible” in part to mean “in respect of the volume of dumped goods of a country, (a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods”. For the purposes of the negligibility percentage calculation, the Tribunal relied on country-specific import data from the CBSA for the numerator and on data gathered through its inquiry for the total volume of imports into Canada from the subject and non-subject countries for the denominator.

24. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 at 15 (CITT).

25. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-002-07 (protected), Administrative Record, Vol. 2.1 at 23-24.

26. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-002-06, Administrative Record, Vol. 1.1 at 50.

56. With respect to the difference in the timing of the imports, Mintar argued, in the alternative, that the effect of the imports from China should not be cumulated with the effect of the imports from Chinese Taipei, on the basis that the imports from China entered the Canadian market during a different time frame from that of the imports from Chinese Taipei. The Tribunal is not convinced by Mintar's argument in this regard. Although imports from China began arriving in Canada only early in 2002, the evidence indicates that the imports from both subject countries competed against each other and also against the like goods at the same time in the Canadian market for the majority of the period of inquiry. Therefore, the Tribunal determines that, upon having conducted an assessment of the conditions of competition, cumulating the effects of the subject goods is appropriate.

INJURY

57. Subsection 37.1(1) of the *Special Import Measures Regulations*²⁷ prescribes certain factors for the purposes of determining whether the dumping of goods has caused injury to the domestic industry. Subsection 37.1(3) also prescribes for consideration factors other than the dumping to ensure that any injury caused by those other factors is not attributed to the effects of the dumped imports.

Volume of Dumped Goods

58. During the period of inquiry, the subject goods entered Canada first from Chinese Taipei and, as of the early part of 2002, from both Chinese Taipei and China. Prior to 2002, Chinese Taipei had been the only source of imported replacement fuel tanks.²⁸ Moreover, during the period of inquiry, a significant portion of the subject goods was re-exported to the United States, the bulk of the re-exports consisting of replacement fuel tanks from China.²⁹ In 2001, the volume of replacement fuel tanks that entered Canada was relatively small, originating exclusively in Chinese Taipei.³⁰ There was a significant increase in the volume of subject goods between 2001 and 2002, a small decrease in 2003, followed by a relatively large increase in the first quarter of 2004 compared with the first quarter of 2003. The significant increase in the volume of imports in 2002 was a result of the entry of replacement fuel tanks from China in that year. Regarding the increase in the first quarter of 2004, the Tribunal notes that close to half of the imports were either re-exported or kept in inventory for either domestic or export sales.

59. With the increase in imports in 2002, there was also a significant increase in the volume of sales of imports in Canada.³¹ As a result of this increase in the volume of subject goods for sale in Canada in 2002, their initially very small share of the market in 2001 rose by 5 percentage points. The subject goods maintained the same market share through 2003 and the first quarter of 2004. With respect to the relative shares of sales from imports from the two subject countries, those from Chinese Taipei have made up the larger percent share throughout the period of inquiry. However, the Tribunal notes that, in 2003, in absolute terms, sales of imports from China increased, whereas sales of imports from Chinese Taipei declined somewhat. In the first quarter of 2004, sales of imports from Chinese Taipei increased, while sales of imports from China stabilized.

27. S.O.R./84-927 [*Regulations*].

28. Tribunal Exhibit NQ-2004-002-21.01, Administrative Record, Vol. 5.2 at 21; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-002-07 (protected), Administrative Record, Vol. 2.1 at 17.

29. Tribunal Exhibit NQ-2004-002-15.01, Administrative Record, Vol. 5 at 56; Tribunal Exhibit NQ-2004-002-16.01A (protected), Administrative Record, Vol. 6 at 69-73.

30. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-002-07 (protected), Administrative Record, Vol. 2.1 at 17, 109.

31. *Pre-hearing Staff Report*, revised 27 July 2004, Tribunal Exhibit NQ-2004-002-06B, Administrative Record, Vol. 1.1 at 109.

60. SPI's domestic sales dropped sharply in 2002, coinciding with a sharp decline in the overall market. The total apparent market shrank in 2002 by 12 percent and by an additional 2 percent in 2003. This decline in the market accounts for a very large proportion of SPI's decline in domestic sales in 2002 and carried forward in 2003. In the Tribunal's view, this general market contraction can partly be explained by milder weather conditions.³² Although the evidence indicated that products such as OEM replacement fuel tanks, southern tanks³³ or rebuilt tanks can be substituted for replacement fuel tanks, the evidence does not indicate that an increase in sales of these alternative products contributed to the contraction of the new steel fuel tank aftermarket that occurred in 2002.³⁴

61. In 2003, both SPI's sales and sales of imports declined proportionately. Although the largest part of the significant decline in SPI's sales resulted from a smaller market, SPI, as already noted, nonetheless lost market share in 2002 to the subject goods. In the first quarter of 2004, both SPI's sales and sales of imports recovered strongly in line with the overall stronger growth in the market.

62. SPI submitted that the bulk of its loss in volume occurred in its sales to WDs.³⁵ In 2001, SPI's sales were more or less evenly split between WDs and "Others". In 2002, SPI's sales to WD accounts decreased by 29 percent, with sales to "Others" declining by 5 percent. This much sharper decline in sales to WDs marked a shift in the structure of SPI's sales by market segment, also showing that the sharp decline in the overall market in 2002 was felt primarily in the WD segment. From 2002 onwards, SPI's sales to "Others" exceeded its sales to WD accounts.

63. In the Tribunal's view, the subject goods displaced a relatively small volume of SPI's sales primarily for reasons discussed below under "Other Factors". The data show that, like the impact of the decline in the market, the impact of the displacement by imports was concentrated in 2002. Subsequently the share of imports remained stable through 2003 and into the first quarter of 2004. The Tribunal is also of the view that the vast majority, if not all, of the displacement took place at the WD level. Overall, in the Tribunal's view, the bulk of the decline in SPI's sales, which occurred in 2002, was the result of general market contraction.

Prices

64. A review of SPI's selling prices between 2001 and 2004 does not reveal any significant decline in SPI's average selling prices.³⁶ In percentage terms, the very small decline that did occur was evenly divided between 2002 and 2003. In contrast, the average selling prices of imports over the same period, which were consistently higher than SPI's average prices, declined by almost 8 percent, with almost all the decline occurring in 2002. This decline brought the level of average prices for sales of imports much closer to SPI's average prices.

32. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 38.

33. Southern tanks refer to fuel tanks from vehicles driven in the southern United States (i.e. Texas, Florida). Because of the favourable weather conditions in these states, the tanks are rust-free. Consequently, they can be re-used and resold in the northern U.S. and Canadian markets, as they are generally still in good condition. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 20-21.

34. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 20-21.

35. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 133-34, 137, 167.

36. *Pre-hearing Staff Report*, revised 27 July 2004, Tribunal Exhibit NQ-2004-002-06B, Administrative Record, Vol. 1.1 at 111.

65. SPI submitted that it had to reduce its prices to WDs to meet price competition from the subject goods in the WD segment of the market.³⁷ The Tribunal compared prices paid by importers, which the Tribunal considers to be WDs,³⁸ with prices at which SPI sold like goods to WD accounts. Unit purchasing costs of imports in Canadian dollars dropped by 11 percent in 2002 and 17 percent in 2003.³⁹ SPI's average unit selling price to WD accounts dropped to a lesser extent, by only 4 percent in 2002 and a further 2 percent in 2003.⁴⁰

66. Because SPI competes not only at the WD level but also at the lower trade levels, the Tribunal also compared SPI's selling prices and those of importers to the "Others" trade level which encompasses the remainder of the market. SPI's unit selling price to "Others" dropped by 1 percent in both 2002 and 2003. Importers' unit selling price to "Others" decreased to a greater extent, by 9 percent in 2002, but increased by 1 percent in 2003. In 2003, the unit selling price to "Others" by both SPI and importers was comparable.

67. This review of pricing trends by market segment indicates that there was a small amount of price erosion in the WD segment at the same time as import prices were decreasing, but that the price erosion experienced in the "Others" segment was negligible.

68. The Tribunal also examined the import purchasing costs and selling prices of a series of benchmark products during the period from January 1, 2002, to March 31, 2004.⁴¹ The Tribunal notes that these benchmark products accounted for roughly one quarter of total domestic sales during the period covered. The data for benchmark products on SPI's sales to WDs show similar trends to those observed for SPI's average unit selling prices to WD accounts. However, the declines between 2002 and 2003 were somewhat greater, at between 5 and 7 percent by model.⁴² Importers' cost of imports for the benchmark products also declined, but at a sharper rate than for their overall imports. Regarding SPI's and importers' sales of benchmark products to "Others", prices did not drop significantly, and both sold at comparable prices throughout the period.

69. Based on the foregoing analysis, the Tribunal is of the view that SPI's level of pricing eroded only a small amount over the period of inquiry. Overall, it declined by less than 3 percent between 2001 and 2003 and appears to have stabilized based on pricing data for the first quarter of 2004.⁴³ The Tribunal notes similar pricing trends for SPI's sales to WD accounts. The Tribunal does note that price erosion is more evident in the case of the benchmark products; however, as noted above, they only represent a relatively small percentage of total domestic sales during the period covered.

70. In its submissions, SPI provided several examples where it alleged to have incurred reduced prices due to the presence of dumped imports in the Canadian marketplace. The Tribunal carefully examined these

37. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 167.

38. As importers typically purchase in large quantities, they are considered WD.

39. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-002-06, Administrative Record, Vol. 1.1 at 19.

40. *Pre-hearing Staff Report*, revised 27 July 2004, Tribunal Exhibit NQ-2004-002-06B, Administrative Record, Vol. 1.1 at 111.

41. The Tribunal's questionnaires did not request benchmark product pricing data for 2001.

42. *Pre-hearing Staff Report*, revised 15 July 2004, Tribunal Exhibit NQ-2004-002-06A, Administrative Record, Vol. 1.1 at 87-91.

43. *Pre-hearing Staff Report*, revised 27 July 2004, Tribunal Exhibit NQ-2004-002-06B, Administrative Record, Vol. 1.1 at 111.

submissions and concluded that the questionnaire replies of SPI and importers provided the most reliable data on which to base its analysis of price erosion.⁴⁴

71. SPI claimed that average prices masked the price erosion caused by imports, in that it was able to offset somewhat the price declines by raising the prices of the small percentage of models (7 percent⁴⁵) not offered by the foreign producers.⁴⁶ The Tribunal notes however that this relatively minimal price increase, coupled with the small percentage of units affected, has had a negligible impact on the overall price decline. SPI further claimed that, by removing models above a certain price threshold,⁴⁷ most of which were not available from the foreign producers, the impact would have been greater. The Tribunal is of the view that this approach would be tantamount to removing from the domestic industry's production basket those goods that are profitable in order to claim a loss on only those that were not profitable. The Tribunal is therefore of the view that all like goods sold in the domestic market must be considered for the purposes of determining injury and that, in its analysis, the domestic industry's profitability should be considered based on its overall sales and not selective sales.

72. In its statement of reasons in the preliminary injury inquiry, the Tribunal indicated that the effects of changes in the U.S. dollar exchange rate needed further consideration in the final injury inquiry.⁴⁸ According to replies to the importers' questionnaire and testimony, imports of the subject goods and associated costs of bringing the goods to Canada are all expressed and payable in U.S. dollars. When changes in the exchange rate, particularly the appreciation of 11 percent of the average value of the Canadian dollar in 2003 compared with the average value in 2002,⁴⁹ are taken into account, the sharp decline in importers' purchasing costs of imports observed in 2003 would appear to be attributable more to exchange rates than to a deliberate effort by the foreign producers to reduce their selling prices in the Canadian market. The Tribunal notes that, in the first quarter of 2004, when the value of the Canadian dollar had become relatively stable, the average unit cost of imports was unchanged from 2003.⁵⁰

73. SPI submitted that it has suffered price suppression, in that the presence of dumped replacement fuel tanks in Canada had prevented it from increasing its prices to offset increased costs. The Tribunal has reviewed SPI's financial statements, including its unit costs of goods sold, unit GS&A expenses and its unit financial expenses.⁵¹ On review of this information, the Tribunal is of the opinion that, where SPI experienced price suppression, it was minimal. In this connection, the Tribunal notes SPI's testimony that it cannot price itself outside the market and that, in setting its prices, it must take into account the lower-priced used tanks, as well as the higher-priced OEM tanks, all of which represent 30 percent of the fuel tanks replaced in Canada.⁵²

44. Generally, the examples in SPI's witness statements were inconsistent with SPI's revised reply to the producers' questionnaire which modified significantly its initial response to the producers' questionnaire.

45. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 148-51.

46. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 140; Manufacturer's Exhibit A-06 (protected), para. 23, Administrative Record, Vol. 12.

47. *Transcript of In Camera Hearing*, Vol. 1, 3 August 2004 at 95-96.

48. *Steel Fuel Tanks* (17 February 2004), PI-2003-005 at 2 (CITT).

49. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-002-06, Administrative Record, Vol. 1.1 at 46.

50. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-002-07 (protected), Administrative Record, Vol. 2.1 at 19.

51. *Protected Pre-hearing Staff Report*, revised 15 July 2004, Tribunal Exhibit NQ-2004-002-07A (protected), Administrative Record, Vol. 2.1 at 92.

52. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 21-22, 30.

74. On the basis of the foregoing analysis, the Tribunal is of the view that SPI incurred price erosion of only a small amount on its total sales of replacement fuel tanks and of a small but slightly larger amount on its sales to WD accounts. This price erosion coincides with a decline in the unit costs of imports. In percentage terms, half of the price erosion on total sales and two thirds of that on sales to WDs occurred in 2002, the year when almost all of the decline occurred in unit costs of imports.

Impact on the Domestic Industry

75. The Tribunal examined the effects of the volume and the costs of the dumped subject goods on SPI's performance. SPI's overall volume of production of replacement fuel tanks for domestic and export sales declined by 12 percent in 2002. SPI's production recovered in 2003, increasing by 4 percent, but declined in the first quarter of 2004.⁵³ As already noted, a large part of the production decline in 2002 was due to a sharp contraction in sales in the domestic market. The Tribunal also notes that there was also a significant decline in SPI's export sales in 2002. The remainder of the decline was a loss of 5 percentage points of the domestic market to the subject goods in 2002. However, in 2003 and through the first quarter of 2004, trends in SPI's total production largely tracked its export sales, as both its sales in the domestic market and the share of imports stabilized.

76. The Tribunal notes that, coincident with the decline in SPI's production, capacity utilization dropped moderately in 2002, increased minimally in 2003 and declined in the first quarter of 2004.⁵⁴ In terms of employment, the Tribunal notes that it dropped in both 2002 and 2003,⁵⁵ the decline continuing in the first quarter of 2004. However, in 2003, unit productivity increased from both 2002 and 2001 levels, further improving in the first quarter of 2004.⁵⁶

77. The Tribunal examined SPI's financial statements relative to its fuel tank operation for the entire period of the inquiry. The Tribunal notes that deterioration in its financial performance, expressed in absolute terms, was most pronounced in 2002.⁵⁷ However, most of the 2002 decline is attributable to lower sales volume. The remainder of the decline in 2002 is due to a small drop in the unit selling price of 2 percent. The Tribunal notes a slight improvement in the first quarter of 2004 compared with the first quarter of 2003.

78. The Tribunal also examined key financial indicators relative to SPI's fuel tank operation when expressed on a percentage and unit basis. From this standpoint, the Tribunal notes only moderate changes in these indicators throughout the period of inquiry.

79. Regarding total investments, the Tribunal notes that they dropped in 2002 and 2003 and are projected to increase in 2004.⁵⁸

80. In summary, SPI suffered an overall decline in its production, capacity utilization and employment from 2001 to the first quarter of 2004, primarily in 2002. From the standpoint of SPI's financial

53. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-002-06, Administrative Record, Vol. 1.1 at 16.

54. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-002-07 (protected), Administrative Record, Vol. 2.1 at 41.

55. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-002-06, Administrative Record, Vol. 1.1 at 39.

56. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-002-06, Administrative Record, Vol. 1.1 at 40.

57. *Protected Pre-hearing Staff Report*, revised 15 July 2004, Tribunal Exhibit NQ-2004-002-07A (protected), Administrative Record, Vol. 2.1 at 92.

58. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-002-07 (protected), Administrative Record, Vol. 2.1 at 42.

performance on its sales in Canada, the significant decline in sales resulted in a decrease in its overall gross margin and net income that was felt almost exclusively in 2002. Most of the decline was caused by a decline in sales volume that, in the Tribunal's view, is primarily due to a market contraction in Canada in 2002. The Tribunal recognizes that the prices of the dumped subject goods declined and that their market share increased by 5 percentage points during the period of investigation, most of this impact being felt in 2002. However, subsequently and notwithstanding further price declines in the unit cost to WDs of purchasing imports, imports did not increase further their very small share of the market. This suggests to the Tribunal that, although there would appear to be a correlation in time between the presence of dumped imports and the deterioration in SPI's performance, this deterioration, insofar as it is not attributable to a market contraction, is mostly attributable to other non-dumping factors.

Factors Other Than Dumping

81. As discussed above, the Tribunal has concluded that most of the injury suffered by the domestic industry in the Canadian marketplace can be attributed to a single non-dumping factor, the significant contraction in the Canadian market in 2002. The remainder is mostly due to other non-dumping factors. The most important of these are SPI's virtual monopoly position as the sole domestic producer and the way in which SPI has conducted itself in the marketplace. In the Tribunal's opinion, these factors led some SPI customers and potential customers to seek an alternative source of supply. To better understand how these factors explain SPI's loss of market share, the Tribunal is of the opinion that it is relevant to look at how SPI came to occupy the dominant position that it has in the Canadian market for replacement fuel tanks.

82. With the merger of Spectra Steel Industries Ltd. and Premium Automotive Tanks Inc. in 1993, SPI became the sole domestic source of replacement fuel tanks. SPI briefly faced domestic competition with the establishment of Titan in 1998-99. However, Titan's production was limited, and it was acquired by SPI in the early part of 2000. As of 2000, SPI was once again the sole domestic producer of replacement fuel tanks.

83. Imports were present in the market during the period from 1993 to 2001. SPI testified that it imported replacement fuel tanks from Chinese Taipei through Mintar, especially in the 1990s when its product line was limited.⁵⁹ Evidence on the record also shows that, prior to 2001, the only other company that was importing was Titan, which also purchased from Chinese Taipei. Therefore, prior to 2001, SPI was the main if not the only importer of replacement fuel tanks.⁶⁰

84. Therefore, between 1993 and 2001, SPI was, for the most part, operating under monopoly conditions, as it was the sole Canadian manufacturer and virtually the sole supplier of imported goods. Under these circumstances, the Tribunal considers that it is normal commercial behaviour for current and potential customers to seek a second source of supply. In this regard, there is considerable evidence on the record about the importance to customers of having access to alternative suppliers.⁶¹ Also, SPI's higher pricing of replacement fuel tanks for which there were no import models available is illustrative of how the market can be affected in the absence of alternative sources of supply.

85. In addition to the fact that SPI's dominant position in the Canadian market created a situation where customers would naturally seek other sources of supply, SPI's strategy to expand its activities to sell to new types of customers also had significant repercussions on competition in the Canadian market for

59. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 15.

60. *Transcript of In Camera Hearing*, Vol. 1, 3 August 2004 at 54, 56, 90.

61. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 407, 409, 450; Tribunal Exhibit NQ-2004-002-26A, Administrative Record, Vol. 7 at 224.

replacement fuel tanks. Prior to 1998, there were distinct pricing levels for the various levels of trade. WDs bought replacement fuel tanks at lower prices than the next level of trade (smaller wholesalers, jobbers, etc.) and, hence, were able to make a reasonable profit by selling to their customers at the next level of trade. SPI testified that, prior to 1998, it only sold to WDs, not to lower levels of trade.⁶² In 1998, SPI acquired five major regional radiator manufacturers, which distributed replacement fuel tanks through 15 warehouses across Canada. It should be noted that these radiator manufacturers acquired by SPI were WD accounts of SPI. As a result of these acquisitions, SPI began to sell directly to the customers of the companies that it acquired, at the lower trade levels to which it had not previously sold, through its new warehouses, and also began to accept orders at lower volumes than previously accepted.⁶³ Moreover, it did not confine its sales at the lower trade levels to the customer lists of the radiator manufacturers that it acquired in 1998, but expanded its activities in these trade levels generally.⁶⁴ Since 1998, SPI has sold and continues to sell to all levels of distribution in the Canadian replacement fuel tank market with the exception of the very lowest level, being the installer level,⁶⁵ applying pricing that is not consistent with historical practice for the various trade levels. Based on the foregoing, the Tribunal is of the view that SPI has thus been primarily responsible for blurring the lines with respect to the traditional pricing structure that existed in the Canadian replacement fuel tank market prior to its acquisitions in 1998-99.

86. By competing at multiple levels in the marketplace and in all ranges of volumes, from the one-at-a-time sale⁶⁶ to container loads, SPI put many of its customers in the unfortunate position of competing with their own supplier.⁶⁷ The Tribunal heard considerable testimony that this situation put pressure on them to seek an alternate source of replacement fuel tanks if they wanted to survive in the replacement fuel tank business.⁶⁸ The evidence also indicated several other business practices of SPI which exacerbated the pressure on customers to seek an alternative source. For example, Lindsay Auto Sales sought a second source of supply due to poor customer service by SPI.⁶⁹ In the case of Cross Canada Auto Body Supply (Windsor) Limited (Cross Canada), it was forced to withdraw from an arrangement that it had negotiated in the United States to supply replacement fuel tanks because of a surcharge that SPI would impose on Cross Canada if it continued to export SPI replacement fuel tanks to the United States.⁷⁰ This action by SPI led Cross Canada to explore the possibility of importing replacement fuel tanks from overseas. Similarly, Raco Management Co. Ltd. (Raco) was forced by SPI to stop selling SPI replacement fuel tanks in the United States.⁷¹ FineLine Fuel Systems Inc. (FineLine) testified that customers were reluctant to purchase sending units of replacement fuel tanks from FineLine for fear that SPI would sell them replacement fuel tanks at a less favourable price, as they would not be purchasing sending units from SPI.⁷² Cancore Industries Inc. (Cancore) testified that aggressive competition on the part of SPI's network of distributors left little room to a WD such as Cancore to charge a price to its customers that would allow it to

62. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 90.

63. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 90.

64. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 91.

65. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 55-56.

66. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 56.

67. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 446.

68. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 450.

69. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 409.

70. *Transcript of Public Hearing*, Vol. 2, 4 August 2004 at 299-300.

71. Importer's Exhibit D-03 at 1, Administrative Record, Vol. 13.

72. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 367, 370.

at least cover its GS&A expenses and show a small profit.⁷³ It should be noted that all these aforementioned customers testified that, all things being equal, they would prefer to buy from a domestic source.⁷⁴

87. The Tribunal is of the view that any injury suffered by the domestic industry in terms of lost volumes, beyond those resulting from general market declines in 2002 and 2003, is primarily due to the need by customers for a second source of supply, in light of SPI's monopoly position, internal competition in Canada prompted by SPI between itself and its distributors at multiple levels in the market, and SPI's other business practices. The Tribunal closely examined how buyers and former buyers of SPI reacted to its market behaviour. There is evidence on the record that three of the four companies that imported the subject goods in 2001 were driven to seek an alternative supplier due to SPI's actions.⁷⁵ It should be noted that these three companies accounted for the bulk of imports in 2001. In 2002, three more companies began importing, and there is evidence on the record that their main reason for switching to imports was the fact that SPI was competing for their customers.⁷⁶ Moreover, of these three SPI clients, two came back to SPI once this issue was partially resolved.⁷⁷ In the case of one such customer, Cancore, it testified that it is still competing with SPI today, although the playing field is a little more even.⁷⁸ In 2003, three more companies, two of which were clients of SPI, began importing the subject goods as a result of the way SPI was behaving in the Canadian marketplace: Lindsay Auto Sales cited SPI's poor customer service,⁷⁹ Les Entreprises Nicole Veronneau Inc. noted price competition,⁸⁰ and MCL Heat Transfer Products Inc. indicated that it was urged by its customers to offer a secondary source of replacement fuel tanks.⁸¹ In sum, during the period of inquiry, there is evidence on the record that, of the 14 importers of the subject goods, 9 of them were driven to source elsewhere because of SPI's actions. Moreover, the Tribunal notes that these 9 importers accounted for roughly 80 percent of total imports during the period of inquiry.

88. Based on the evidence, it is the Tribunal's view that SPI's market behaviour prompted these former customers of SPI to source replacement fuel tanks elsewhere. It is thus the Tribunal's view that, had SPI not engaged in this type of market disruptive behaviour, a significant portion of the companies that imported during the period of inquiry would not have done so.

89. Taking into account the foregoing, the Tribunal is of the view that the portion of the decline in SPI's sales volumes in 2002, which is not explained by the contraction in the market, should be attributed primarily to natural commercial behaviour resulting from SPI's virtual monopoly position and the way in which SPI chose to conduct its business. The loss of 5 percentage points of market share by a monopoly, in these circumstances, is not excessive.

73. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 445.

74. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 385, 407, 409, 449-50.

75. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 352; Importer's Exhibit F-01 at 2, Administrative Record, Vol. 13; questionnaire replies (protected), Administrative Record, Vol. 6.1.

76. Tribunal Exhibit NQ-2004-002-15.02B, Administrative Record, Vol. 5 at 106.5-106.6; Tribunal Exhibit NQ-2004-002-26A, Administrative Record, Vol. 7 at 224; Tribunal Exhibit NQ-2004-002-19.06 (protected), Administrative Record, Vol. 6.1 at 46.

77. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 445-47; Tribunal Exhibit NQ-2004-002-26A, Administrative Record, Vol. 7 at 224.

78. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 447.

79. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 409.

80. Tribunal Exhibit NQ-2004-002-15.03, Administrative Record, Vol. 5 at 110.

81. Tribunal Exhibit NQ-2004-002-15.09, Administrative Record, Vol. 5 at 194.

90. The Tribunal will now examine the extent to which factors other than dumping explain the small decline in SPI pricing. As discussed above, during the period of inquiry, SPI suffered a decline of less than 3 percent in overall pricing to all trade levels.

91. It is the Tribunal's view that price is not the main consideration in purchasing the subject goods. The vast majority of respondents to the market characteristics questionnaire indicated that price was not the most important factor in their decision to purchase replacement fuel tanks and, moreover, they were prepared to pay a significant premium to buy domestic product.⁸² There was also testimony from major players in the business that the premium would be in the range of 15 to 25 percent.⁸³ In their explanation of the large magnitude of the premium, witnesses cited several significant disadvantages of imports, such as the long lead times, the need to purchase large volumes to have adequate inventories, the need for payment in cash at the time of purchase and rate of exchange risks. The relatively minor role of price when choosing a replacement fuel tank supplier, in the Tribunal's view, is further supported by SPI in its 2003-2004 annual report, where it lists major non-price advantages of its product over foreign products, such as "a solid reputation relative to quality, a vast distribution network of replacement parts located in proximity of the markets that it services, its capacity to conceive and manufacture new models precisely and rapidly, its wide range of fuel tanks, the integration of its manufacturing activities and its excellence relative to its approach to customer service."⁸⁴

92. The Tribunal notes, as further evidence of the minor role that price plays in the decision to purchase replacement fuel tanks, the fact that, over the period of inquiry, the gap between SPI's pricing to WD accounts and the purchasing costs of the subject goods became progressively wider, but was not accompanied by a corresponding trend of increases in the volume of imports or decreases in the volume of SPI's sales. In fact, SPI's sales to WDs increased in the first quarter of 2004 notwithstanding the fact that the gap in pricing is the widest in the period of inquiry. Moreover, the Tribunal notes that the price differential observed during the period of inquiry was significantly larger than the premium that purchasers were prepared to pay for domestic goods, which is indicative that there are factors other than price at play in the marketplace.

93. Where price was a concern for a distributor, the Tribunal finds that this concern generally arose as a result of aggressive competition on the part of SPI or its network of distributors which pushed SPI's customer, now also SPI's competitor, to stop purchasing from SPI. Because SPI is the sole source of domestic supply, this situation meant that, as discussed above, a number of distributors of replacement fuel tanks were forced to turn to imports when they did not wish to purchase from SPI. This was the case for Cancore which briefly sourced its supplies offshore to deal with a low margin situation directly resulting from Cancore having to compete with SPI through SPI's distribution division. This was also the case for a distributor that purchased from Titan, a small Canadian replacement fuel tank manufacturer, which, as indicated above, was later the object of an SPI acquisition. This company was targeted for low-price competition by SPI or one of its distributors.⁸⁵ As a result of SPI's or its distributor's actions, it lost a major portion of its replacement fuel tank business.⁸⁶ Raco, a distributor in Atlantic Canada, suffered the same fate, as large accounts were taken by SPI.⁸⁷ This distributor used to sell to smaller WDs which, on average,

82. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-002-06, Administrative Record, Vol. 1.1 at 51, 53-55.

83. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 452, 476.

84. Tribunal Exhibit NQ-2004-002-08, Administrative Record, Vol. 3 at 153.

85. *Transcript of Public Hearing*, Vol. 2, 4 August 2004 at 292.

86. Tribunal Exhibit NQ-2004-002-15.02, Administrative Record, Vol. 5 at 71-72; *Transcript of In Camera Hearing*, Vol. 2, 4 August 2004 at 209-210.

87. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 373.

purchased 100 replacement fuel tanks at a time, but it now sells primarily to garages and installers, which purchase in much smaller volumes. It is at this level only that it can compete with SPI.⁸⁸ The evidence indicated that the foregoing types of problems were not confined to these particular companies, but were also experienced by other distributors.⁸⁹

94. In sum, the net effect of SPI's virtual monopoly position and behaviour in the marketplace has been to push some of SPI's customers to seek an alternative source of supply. This demand could only be filled by seeking import sources.

95. The Tribunal concludes that any price decline was primarily caused by the non-price factors discussed above.

96. Finally, SPI submitted that, under *SIMA*, it was entitled to lower its prices to compete with dumped import competition even in the absence of aggressive price undercutting of the subject goods. In this regard, SPI told the Tribunal that the reduction in prices that it implemented in the second half of 2002 and through 2003 was intended to stop imports and that, in the absence of those reductions, it would have lost further market share.⁹⁰ It is certainly true that, in many instances, injury can be attributable to the pricing of dumped imports. An example of such a circumstance is where the low price of dumped imports caused purchasers to switch from a domestic to an imported source of supply. However, it is clear in this case that sales lost by SPI were not attributable to price, but to a variety of other factors. In addition, the Tribunal notes that it appears that, when SPI implemented its price reductions, it had the impression that the volume of dumped imports for sale in Canada was much greater than was actually the case.⁹¹ In the Tribunal's view, SPI could have forgone the price reductions that it implemented, absent which the small deterioration in financial performance resulting from these price reductions could have been avoided.

97. Accordingly, as discussed above, the Tribunal finds that SPI incurred injury in the form of lost sales, lost market share, price erosion and price suppression. In addition, SPI suffered an overall decline in its production, capacity utilization and employment from 2001 to the first quarter of 2004. The injury due to price erosion and price suppression, however caused, was not material. The remainder of the injury, caused by declining sales volume and the consequent impact on SPI's financial performance, was primarily attributable to factors other than dumping. Any portion of this injury that could be attributable to dumping is not material.

Threat of Material Injury

98. Having found that dumping has not caused material injury, the Tribunal must consider whether dumping is threatening to cause material injury. In considering this question, the Tribunal is guided by subsection 37.1(2) of the *Regulations*, which prescribes factors to take into account for the purposes of determining whether the dumping of goods is threatening to cause material injury.

99. Moreover, paragraph 37.1(3)(a) of the *Regulations* prescribes certain factors to establish whether a causal relationship exists between the dumping and the threat of material injury. Finally, the Tribunal notes that, in making a finding of threat of material injury to the domestic industry, subsection 2(1.5) of *SIMA*

88. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 378-80.

89. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 387; *Transcript of In Camera Hearing*, Vol. 2, 4 August 2004 at 179.

90. *Transcript of Public Hearing*, Vol. 1, 3 August 2004 at 102-105.

91. Tribunal Exhibit NQ-2004-002-27 (protected), Administrative Record, Vol. 8 at 16-17, 199.

requires that the circumstances in which the dumping of goods would cause material injury must be clearly foreseen and imminent.

100. While indicating that there was a significant increase in imports of the subject goods from 2001 to 2002, the record also shows that, since 2002, imports have maintained a stable market share. In addition, there has been no aggressive marketing in Canada by either manufacturers or export agents in China or Chinese Taipei. The absence of an aggressive marketing strategy for Canada is confirmed in the witness statement of the sales manager for North America for Mintar.⁹² In fact, the sales manager testified that he is not actively seeking new customers and is rather focussing on maintaining his existing customer base.⁹³ This testimony was corroborated by the testimony of a large buyer of replacement fuel tanks that, prior to the Tribunal's inquiry, he had been unaware of the presence in Canada of imports from China.⁹⁴ Regarding imports of replacement fuel tanks from Chinese Taipei, evidence on the record shows that, since 2002, they have maintained a stable market share. Moreover, the number of importers of replacement fuel tanks from Chinese Taipei remained relatively unchanged throughout the period of inquiry. In the Tribunal's view, the evidence indicates that, to date, the subject goods have not been a disruptive source of supply in the Canadian marketplace.

101. Although the Tribunal is of the view that both China and Chinese Taipei have annual excess capacity, the evidence indicates that neither has inventory that could be used to significantly expand sales in the Canadian market.⁹⁵ The two manufacturers that participated in this inquiry have both confirmed that they have no plans to expand capacity. In fact, in the case of Tianyi, it testified that it has plans to increase production for both the U.S. and European markets, yet has no such plans for the Canadian market.⁹⁶ Moreover, the evidence on the record does not suggest that there is a production-related imperative in the industry to keep plants loaded.⁹⁷ Furthermore, it is clear from their respective responses to the foreign producer's questionnaire that, although both Chyuan Chang and Tianyi recognize Canada as an important market, both have other priority geographic markets. The Tribunal notes that the Chinese producers' market of choice is the United States, where in 2003 Chinese export sales grew by 69 percent compared to a 5 percent growth in Canada.⁹⁸

102. Although, in the Tribunal's view, the decline in SPI's sales was not primarily attributable to imports, the Tribunal notes that there is evidence that import prices are increasing. In the first quarter of 2004, the U.S. dollar costs of imports either remained unchanged or, in some instances, increased compared with what they were throughout the period of inquiry, which has had the effect of raising the Canadian dollar prices of the subject goods. In addition, the witness for Mintar indicated that Tianyi has incurred higher costs for its raw materials (i.e. steel)⁹⁹ and freight, the latter due to higher fuel prices.¹⁰⁰ These higher costs have already been and will increasingly be reflected in the landed costs of imports from China. In the Tribunal's view, there is nothing to suggest that producers in Chinese Taipei will be shielded from the same kind of higher costs.

92. Exporter's Exhibit B-03 at 3, Administrative Record, Vol. 13.

93. *Transcript of Public Hearing*, Vol. 2, 4 August 2004 at 212.

94. *Transcript of Public Hearing*, Vol. 2, 4 August 2004 at 320.

95. Exporter's Exhibit B-03 at 4, Administrative Record, Vol. 13.

96. *Transcript of Public Hearing*, Vol. 2, 4 August 2004 at 213-14.

97. Importer's Exhibit B-01 at 3, Administrative Record, Vol. 13.

98. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-002-06, Administrative Record, Vol. 1.1 at 62.

99. *Transcript of Public Hearing*, Vol. 2, 4 August 2004 at 215.

100. *Transcript of Public Hearing*, Vol. 2, 4 August 2004 at 243.

103. Imports from China and Chinese Taipei occupy a small share of the Canadian market, which has remained stable since 2002 through the first quarter of 2004. The rise in imports in the first quarter of 2004 that was noted earlier by the Tribunal has only been sufficient to allow import sales to maintain their market share in light of the recovery of the overall market in the first quarter of 2004. The Tribunal is not convinced that there will be a significant rate of increase of imports that is clearly foreseen and imminent. The Tribunal notes SPI's comments in its 2004 annual report that results for fiscal year 2003-2004 constituted "the beginning of a favourable turnaround" and further comments that it was proud of its capacity to effectively resist Asian competition in the replacement fuel tank business.¹⁰¹ Furthermore, the Tribunal's earlier analysis confirms that SPI is a premium supplier in the market, and this is a major consideration that leads buyers in the market to choose domestic over foreign goods, despite significant price differences.

104. SPI has argued that it is vulnerable to injury because of the introduction of plastic tanks. Based on the evidence, the Tribunal is not convinced that plastic tanks will have a significant impact on the market in the near future.¹⁰²

105. Therefore, the Tribunal is of the view that the dumping of replacement fuel tanks from China and Chinese Taipei is not threatening to cause injury to the domestic industry.

Richard Lafontaine

Richard Lafontaine
Presiding Member

Zdenek Kvarda

Zdenek Kvarda
Member

Ellen Fry

Ellen Fry
Member

101. Tribunal Exhibit NQ-2004-002-08, Administrative Record, Vol. 3 at 133.

102. *Transcript of Public Hearing*, Vol. 3, 5 August 2004 at 463-64.