CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, June 1, 2001

Inquiry No. NQ-2000-007

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

CERTAIN CONCRETE REINFORCING BAR ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF INDONESIA, JAPAN, THE REPUBLIC OF LATVIA, THE REPUBLIC OF MOLDOVA, THE REPUBLIC OF POLAND, CHINESE TAIPEI AND UKRAINE

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 of hot-rolled deformed carbon or low alloy steel concrete reinforcing bar in straight lengths or coils, originating in or exported from the Republic of Indonesia, Japan, the Republic of Latvia, the Republic of Moldova, the Republic of Poland, Chinese Taipei and Ukraine, has caused injury or retardation or is threatening to cause injury to the domestic industry.

This inquiry is pursuant to the issuance by the Commissioner of the Canada Customs and Revenue Agency of a preliminary determination dated February 1, 2001, and of a final determination dated May 2, 2001, that the aforementioned goods imported into Canada are being dumped.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods has caused injury to the domestic industry.

The Canadian International Trade Tribunal also finds that the requirements of paragraph 42(1)(*b*) of the *Special Import Measures Act* with respect to massive importation have not been met.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

James A. Ogilvy
James A. Ogilvy
Member

Michel P. Granger
Michel P. Granger
Secretary

The statement of reasons will be issued within 15 days.

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Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	May 1 to 3, 2001
Date of Finding:	June 1, 2001
Tribunal Members:	Pierre Gosselin, Presiding Member Richard Lafontaine, Member James A. Ogilvy, Member
Director of Research:	Réal Roy
Lead Researcher:	Simon Glance
Researcher:	Po-Yee Lee
Director of Economics:	Dennis Featherstone
Economist:	Geneviève Chaloux
Statistical Officers:	Julie Charlebois Marie-Josée Monette
Counsel for the Tribunal:	John Dodsworth
Registrar Officer:	Gillian E. Burnett
Participants:	Lawrence L. Herman Craig S. Logie for Stelco Inc., on behalf of AltaSteel Ltd. and Stelco McMaster Ltée **(Domestic Producer)**
	Jon R. Johnson Cyndee B. Todgham Cherniak for Co-Steel Inc.
	Ronald C. Cheng Paul D. Conlin for Ispat Sidbec Inc. **(Parties Supporting the Domestic Producer)**

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, June 15, 2001

Inquiry No. NQ-2000-007

CERTAIN CONCRETE REINFORCING BAR ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF INDONESIA, JAPAN, THE REPUBLIC OF LATVIA, THE REPUBLIC OF MOLDOVA, THE REPUBLIC OF POLAND, CHINESE TAIPEI AND UKRAINE

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

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping of hot-rolled deformed carbon or low alloy steel concrete reinforcing bar in straight lengths or coils, originating in or exported from the Republic of Indonesia, Japan, the Republic of Latvia, the Republic of Moldova, the Republic of Poland, Chinese Taipei and Ukraine, has caused injury to the domestic industry.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	May 1 to 3, 2001
Date of Finding:	June 1, 2001
Date of Reasons:	June 15, 2001
Tribunal Members:	Pierre Gosselin, Presiding Member Richard Lafontaine, Member James A. Ogilvy, Member
Director of Research:	Réal Roy
Lead Researcher:	Simon Glance
Researcher:	Po-Yee Lee
Director of Economics:	Dennis Featherstone
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	Jon R. Johnson Cyndee B. Todgham Cherniak
for	Co-Steel Inc.
	Ronald C. Cheng Paul D. Conlin
for	Ispat Sidbec Inc.

(Parties Supporting the Domestic Producer)

Witnesses:

Donald K. Belch Director – Government Relations Stelco Inc.	Peter M. Ouellette Vice-President Marketing & Sales AltaSteel Ltd.
Mike E. Burnet Sales Manager Stelco McMaster Ltée	Éric Bernier President Armatures Bois-Francs Inc.
Nestor Puchalski General Manager A & H Steel Ltd.	Gary J. Vaughan General Manager Co-Steel Concrete Products
Sam Costa President C & T Reinforcing Steel Co. (1987) Ltd.	Larry Cohen President Salit Steel, Division of Myer Salit Ltd.
Steve Cohen Vice-President Salit Steel, Division of Myer Salit Ltd.	Paul Rouleau Commercial Director Bars and Shapes Ispat Sidbec Inc.

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, June 15, 2001

Inquiry No. NQ-2000-007

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

CERTAIN CONCRETE REINFORCING BAR ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF INDONESIA, JAPAN, THE REPUBLIC OF LATVIA, THE REPUBLIC OF MOLDOVA, THE REPUBLIC OF POLAND, CHINESE TAIPEI AND UKRAINE

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
RICHARD LAFONTAINE, Member
JAMES A. OGILVY, 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 into whether the dumping of hot-rolled deformed carbon or low alloy steel concrete reinforcing bar in straight lengths or coils (hereinafter rebar), originating in or exported from the Republic of Indonesia (Indonesia), Japan, the Republic of Latvia (Latvia), the Republic of Moldova (Moldova), the Republic of Poland (Poland), Chinese Taipei and Ukraine, has caused injury or retardation or is threatening to cause injury to the domestic industry.

On November 3, 2000, following a properly documented complaint filed by Stelco Inc. (Stelco) of Hamilton, Ontario, on behalf of AltaSteel Ltd. (AltaSteel) of Edmonton, Alberta, and Stelco McMaster Ltée (Stelco McMaster) of Contrecoeur, Quebec, both manufacturing units of Stelco, the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) initiated an investigation into whether imports of rebar were being dumped. On November 6, 2000, 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 had caused injury or retardation or was threatening to cause injury. On January 2, 2001, pursuant to subsection 37.1(1) of SIMA, the Tribunal determined that the evidence disclosed a reasonable indication that the dumping of rebar had caused injury to the domestic industry.

On February 1, 2001, the Commissioner issued a preliminary determination of dumping.

On February 2, 2001, the Tribunal issued a notice of commencement of inquiry.[2] As part of the inquiry, the Tribunal sent questionnaires to Canadian manufacturers, importers, purchasers and foreign manufacturers/exporters of rebar. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

1. R.S.C. 1985, c. S-15 [hereinafter SIMA].
2. C. Gaz. 2001.I.355.

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The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires; all briefs, 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 undertaking with the Tribunal in respect of the use, disclosure, reproduction, protection and storage of confidential information on the record of the proceedings, as well as the disposal of such confidential information at the end of the proceedings or in the event of a change of counsel.

On May 2, 2001, the Commissioner issued a final determination of dumping respecting rebar imported into Canada from Indonesia, Japan, Latvia, Moldova, Poland, Chinese Taipei and Ukraine.

Public and in camera hearings were held in Ottawa, Ontario, from May 1 to 3, 2001. Five of the eight domestic producers of rebar were represented by counsel at the hearing. Three fabricators, testifying separately for the domestic producers, made submissions and gave evidence at the hearing. Witnesses from Salit Steel, Division of Myer Salit Ltd., (Salit Steel) also appeared under subpoena.

No submissions were received from importers, foreign manufacturers or exporters. None of these parties participated in the hearing.[3]

RESULTS OF THE COMMISSIONER'S INVESTIGATION

The Commissioner's investigation into this matter covered all imports of the subject goods exported from or originating in the subject countries and shipped to Canada during the period of investigation (POI) from October 1, 1999, to May 31, 2000.

Based on the results of the investigation, the Commissioner found that the subject goods had been dumped and that the margin of dumping was not insignificant. Accordingly, on May 2, 2001, the Commissioner made a final determination of dumping pursuant to paragraph 41(1)(*a*) of SIMA.

The investigation revealed that almost 100 percent of the subject goods that entered Canada during the POI were dumped by weighted average margins ranging from 3.9 to 40.9 percent. The following table shows the weighted average margins of dumping, by country and exporter, expressed as a percentage of the normal value.

3. On April 9, 2001, counsel for Krivoi Rog Mining & Metallurgical Integrated Works (Krivorozhstal), which manufactures rebar in Ukraine, advised the Tribunal that his client was withdrawing from further participation in the inquiry. The Ambassador of Latvia in Canada also withdrew from further participation in the inquiry on April 17, 2001.

TABLE 1
Estimated Margins of Dumping by Country-Exporter

(October 1, 1999, to May 31, 2000)

Country-Exporter	Quantity of Goods Dumped (%)	Margin of Dumping Range[1] (%)	Weighted Average Margin of Dumping[2] (%)
Indonesia - All Exporters	100	40.9	40.9
Japan - Mitsuboshi Metal	100	33.6 to 40.9	37.3
Japan - Other Exporters	100	40.9	40.9
Japan - Country Total	100		39.9
Latvia[3] - Liepajas Metalurgs	79.4	2.6 to 9.4	3.9
Moldova[3] - Moldova Steel Works	100	40.9	40.9
Poland-All Exporters	100	40.9	40.9
Chinese Taipei - All Exporters	100	40.9	40.9
Ukraine[3] - Krivorozhstal	100	13.0 to 22.0	15.7
All Other Exporters of the Subject Goods	100	40.9	40.9

Notes:

1. Expressed as a percentage of the normal value for the dumped goods only.
2. Expressed as a percentage of the total normal value for all imported goods (dumped and non-dumped).
3. There was only one exporter for each of Latvia, Moldova and Ukraine. Therefore, the specific exporter totals are also the specific country totals.

Source: Canada Customs and Revenue Agency, *Final Determination of Dumping and Statement of Reasons*, May 2, 2001, Tribunal Exhibit NQ-2000-007-04, Administrative Record, Vol. 1 at 56.28.

PRODUCT

Product Definition and Description

The product that is the subject of the Tribunal's inquiry is defined as:

hot-rolled deformed carbon or low alloy steel concrete reinforcing bar in straight lengths or coils, including all hot-rolled deformed bar, rolled from billet steel, rail steel, axle steel or low alloy steel.

Excluded from this inquiry are:

plain round bar, rebar that has been further worked or fabricated (other than cut) and coated rebar.

The Canadian standards for rebar are set out in the National Standard of Canada CAN/CSA-G30.18-M92 for Billet-Steel Bars for Concrete Reinforcement (the National Standard).

In Canada, rebar comes in the following sizes or bar designation numbers, with the corresponding diameter in millimetres in brackets: 10 (11.3), 15 (16.0), 20 (19.5), 25 (25.2), 30 (29.9), 35 (35.7), 45 (43.7) and 55 (56.4). Rebar sizes are commonly referred to by the bar designation number combined with the letter "M." Thus, 10M rebar has a bar designation number of 10 and a diameter of 11.3 millimetres.

The National Standard identifies two grades of rebar, namely, regular ("R") and weldable ("W"). "R" grades are intended for general applications, while "W" grades are used where welding, bending or ductility is of special concern.

The National Standard also identifies yield strength levels of 300, 400 and 500 megapascals (MPa). The grade and yield strength of rebar are identified by combining the yield strength level with the grade. Thus, "400R" is regular rebar with a yield strength level of 400 MPa, and "500W" is weldable rebar with a yield strength level of 500 MPa.

The standard lengths of rebar are 6 metres (20 feet), 12 metres (40 feet) and 18 metres (60 feet), although it can be cut and sold in other lengths, as specified by customers.

Production Process

For the most part, in Canada, rebar is produced using ferrous scrap metal as the principal raw material. The scrap metal is melted in an electric arc furnace and is further processed in a ladle arc-refining unit. The molten steel is then continuously cast into rectangular billets of steel that are cut to length. When the plant is ready to produce rebar, the billets are reheated and then rolled into various sizes of rebar, which is cut to various lengths depending on the customers' requirements. Certain sizes are also produced in coil form.

Rebar is rolled with deformations on the bar, which provide gripping power so that concrete adheres to the bar and provide reinforcing value to the concrete. The deformations must conform to the requirements set out in the National Standard.

Product Application

Rebar is used almost exclusively in the construction industry to provide structural reinforcement to concrete structures. The residential construction market primarily uses rebar in smaller sizes, while the heavy construction and fabrication markets use most of the larger sizes of rebar.

DOMESTIC PRODUCERS

There are eight Canadian producers of rebar.

Stelco

Stelco is one of Canada's largest integrated steel producers. It produces rebar at two wholly owned subsidiaries, AltaSteel and Stelco McMaster. It also produces rebar on a limited basis at its Hilton Works facility in Hamilton, Ontario.

AltaSteel began operations in the early 1950s as Premier Steel Mill Ltd. (Premier Steel). In 1962, Stelco purchased 100 percent of Premier Steel. From 1962 to 1992, Stelco operated the facility as a division. In 1992, the facility was incorporated in Alberta as a wholly owned subsidiary known as AltaSteel.

Rebar was one of Premier Steel's first products. As a division of Stelco, AltaSteel's product line has grown to include flats, rounds, squares, grinding rod and rebar. AltaSteel is capable of producing rebar in regular and weldable grades for all diameters.

Stelco McMaster, located in Contrecoeur, Quebec, has been in operation and producing rebar since 1963. Other than rebar, the company produces merchant quality flats and rounds, special railway sections for clips and anchors, round edge automotive leaf spring bars and billets.

Co-Steel Inc.

Co-Steel Inc. (Co-Steel), of Toronto, Ontario, was incorporated in 1970, at which time the Lake Ontario Steel Company Limited, incorporated in 1964, became a subsidiary of Co-Steel. In 1985, Co-Steel and Lake Ontario Steel Company Limited amalgamated.

Co-Steel is one of the world's largest mini-mill steel producers and scrap processors. Its mini-mill operations consist of Co-Steel Lasco, Whitby, Ontario; Co-Steel Sayreville, Sayreville, New Jersey; Co-Steel Raritan, Perth Amboy, New Jersey; and Gallatin Steel Company, Gallatin County, Kentucky, Co-Steel's 50 percent owned flat-rolled steel joint venture. Co-Steel processes and trades in steel scrap for its own use and for sale to third parties through North American-based Co-Steel Recycling and U.K.-based Mayer Parry Recycling Ltd. It manufactures a range of ferrous and non-ferrous materials for the construction, automotive, appliance and manufacturing sectors. It produces rebar, including coil, as well as other bars, rods, wire, structural shapes and flat-rolled steel products.

Co-Steel Lasco, a division of Co-Steel, operates the Co-Steel Lasco Facility in Whitby, Ontario.

Ispat Sidbec Inc.

Ispat Sidbec Inc. (Ispat Sidbec), of Montréal, Quebec, was incorporated in 1928 and was purchased by Ispat International N.V. in 1994. Ispat Sidbec is divided into five strategic business units: primary products, wire rods, bars and shapes, flat-rolled products and tubes.

The bars and shapes business unit produces straight bars in rounds and flats at its plant in Longueuil, Quebec. Billets are supplied by the primary products business unit in Contrecoeur, Quebec. The Contrecoeur facility also produces rebar in coils.

Gerdau Courtice Steel Inc.

Courtice Steel began operations in Bowmanville, Ontario, in 1976, as a rolling mill. In 1980, the company began construction of a meltshop in Cambridge, Ontario, to produce its own raw stock for the rolling mill. The Bowmanville rolling mill was replaced by a new rolling mill at the Cambridge facility in 1986. A new electric arc furnace was added two years later to meet the increased billet requirements of the new rolling mill.

Gerdau Courtice Steel Inc. (Gerdau Courtice), of Cambridge, Ontario, was incorporated on January 9, 1998. The company is wholly owned by Gerdau Steel Inc., a Canadian holding company. Gerdau Steel Inc. is related to various corporations making up Grupo Gerdau, a Brazilian steel manufacturer.

The products produced by Gerdau Courtice include flats, rounds, squares, channels, angles and rebar. Rebar is a product that has been a part of Gerdau Gourtice's production since the company started operations.

Gerdau MRM Steel Inc.

Gerdau MRM Steel Inc. (Gerdeau MRM) of Selkirk, Manitoba, is wholly owned by Gerdau MRM Holdings Inc. of Brazil. Gerdeau MRM first began producing steel in 1906. Gerdau MRM has been producing rebar for over 75 years.

Mandak Metal Processors, of Selkirk, Manitoba, is wholly owned by Gerdau MRM, while Bradley Steel of Winnipeg, Manitoba, and Canadian Guide Rail Corporation of Birds Hill, Manitoba, are partly owned by the company. Gerdau MRM is a sister company of Gerdau Courtice.

Slater Steel Inc.

Slater Steel Inc. (Slater Steel) of North York, Ontario, has been a manufacturer of rebar for over 50 years, except for the period between 1992 and 1995. The name Slater Steel Industries Limited was established in 1961 when N Slater Company Ltd. acquired Burlington Steel, which had been formed in 1911.

EXPORTERS

Responses to the Tribunal's foreign manufacturers'/exporters' questionnaire were received from PT Jakarta Prima Steel Industries (PT Jakarta) of Indonesia; Asahi Industries Co. Ltd. (Asahi) of Tokyo, Japan; Mitsuboshi Metal Industries Co. Ltd. (Mitsuboshi) of Niigata, Japan; and Krivorozhstal of Ukraine.

PT Jakarta stated that it ceased rebar production in 1994. It owns a steel melting facility for producing steel billets, but does not have a rolling mill for producing rebar. The company had never exported products to Canada.

Asahi was established in 1935. It began steel production in 1960 and rebar production in 1971. Asahi reported that it does export rebar, although not to Canada. Asahi's export prices are determined in negotiations with international trading companies.

Mitsuboshi was established in 1869 and started rolling rebar in 1951. Rebar is its only product line. For the period from 1998 to 2000, Mitsuboshi's total export sales, representing less than 10 percent of its total sales, were principally to Canada.

Krivorozhstal commenced production of rebar in 1999. In the following year, the company reached 100 percent of its production capacity and is the only rebar manufacturer in Ukraine. Krivorozhstal sells rebar to international trading firms and does not market directly to customers in Canada.

IMPORTERS

Importers of rebar are, for the most part, resellers of steel products such as trading companies and brokers. The largest importers of rebar include: Novosteel of Switzerland, and Barzelex of Montréal, Quebec, which is wholly owned by Novosteel; Birmingham Steel Corp. of the United States; Ferrostaal Metals of Germany; Mitsubishi International Steel, Inc. of Japan; Duferco Steel Inc. of Switzerland; and Thyssen Canada Ltd. of Mississauga, Ontario. Cumulatively, these importers accounted for approximately 82 percent of the total rebar imports in 2000. Generally, they sell to the same type of customers as the domestic mills, that is, fabricators and steel service centres. Very little rebar is imported directly by fabricators or steel service centres in Canada.

MARKETING AND DISTRIBUTION

Domestic Product

The Canadian producers sell rebar directly either to fabricators or to steel service centres. The vast majority of sales are made to fabricators. The fabricators cut, bend and install rebar in structures at the construction sites. Steel service centres distribute rebar to construction companies and building supply dealers. The Canadian mills sell to their customers either on a freight prepaid (delivered) basis or FOB the Canadian mill, whichever the customer prefers. The Canadian mills market their products, including rebar, through sales forces that contact their respective customers on a regular basis.

Imported Product

Importers of rebar sell their products in a variety of ways. Some importers utilize sales agents or a dedicated sales force to contact customers. Others respond to customer enquiries and source product when they receive a request or learn of a quantity of rebar available and seek orders from customers for that quantity of rebar. Some importers stated that they ship directly to their customers from the source mill, while others sell FOB the unloading dock in Canada.

POSITION OF PARTIES

Parties in Favour of an Injury Finding

Stelco

Stelco submitted that the dumping of reinforcing bar from the subject countries has caused and is threatening to cause injury to the production in Canada of like goods. Stelco referred the Tribunal to subsection 37.1(1) of the *Special Import Measures Regulations*[4] which lists the factors that the Tribunal must consider in assessing whether the domestic industry has suffered injury. In this regard, Stelco stated its position that the Tribunal has evidence, in this case, regarding each one of these factors.

In particular, Stelco argued that material injury has occurred in the form of: (1) suppressed and eroded prices; (2) declines in net revenues; (3) reduced gross margins, operating profit and net income; (4) loss of market share; and (5) lost sales. Further, Stelco argued that the dumping threatens future injury and retardation of its production of like goods.

Stelco submitted that the data indicate that the subject goods went from being negligible in 1997 to having a market share in 2000 of 37 percent. There was a corresponding drop in the market share of the domestic producers, such that the subject goods constituted a larger share of the domestic market than did the domestic shipments. Stelco further submitted that the prices of like goods declined at the same time that sales from imports were undercutting those prices. Serious price undercutting began to affect Stelco companies in the second and third quarters of 2000. According to its industry reports, Stelco argued that these price declines were caused by the availability of the subject goods from the subject countries in the domestic market, at prices below those of the like goods. In terms of financial performance, Stelco submitted that its gross margins and net income declined substantially over 1998-2000, both as reported by each individual manufacturing unit and on a consolidated basis.

4. S.O.R./84-927 [hereinafter SIM Regulations].

Stelco argued that capacity utilization as a percentage of total plant capacity declined in 2000. Furthermore, the negative impact on prices and revenues caused by the dumping from the subject countries has placed in jeopardy a planned expansion project that was announced in June 2000 and has, therefore, retarded production.

Stelco also argued that the continued importation of the subject goods from the subject countries at dumped prices constitutes a threat of injury. The subject countries have substantial rebar production capacity and have shown a propensity to dump. Further, there is an ongoing injury inquiry in the United States regarding five of the subject countries. If the U.S. inquiry results in a final determination of material injury, goods from these sources will be diverted to Canada, exacerbating the injury experienced by the domestic industry.

Stelco requested that the Tribunal make a finding of "massive importation" pursuant to paragraph 42(1)(*b*) of SIMA and order that retroactive anti-dumping duties be applied in the event that the Tribunal finds that the subject goods have caused injury or are threatening to cause injury.

Co-Steel

Co-Steel argued that it suffered material injury in the form of lost market share, price suppression and erosion, lost sales, reduced gross margins and lost capacity utilization.

Co-Steel argued that the deterioration in the company's performance with respect to its production of rebar since 1997 is directly attributable to competition from imports of the subject goods. Imports of rebar after 1997 first resulted in Co-Steel losing market share. However, given the importance of rebar to Co-Steel's total operations, it decided to regain market share by lowering its prices, but to an unprofitable level. The expected relief from import pressures stemming from the Tribunal's finding in NQ-99-002[5] did not materialize, as importers switched to new sources of rebar. The loss of business resulting from the dumped imports affected Co-Steel to the point that it suspended production of rebar later that year.

In terms of price suppression and erosion, Co-Steel argued that it was forced to withdraw its price lists, given the rapid deterioration in prices resulting from the dumped imports of rebar, and that it was unable to obtain the traditional industry premium for rebar of certain dimensions and of certain grades.

Co-Steel argued that the injury that it has suffered has been caused by the dumping of the subject goods, not the labour disruptions that it experienced in late 2000, energy price increases or the price of scrap. Further, Co-Steel argued that the domestic industry had the capacity to satisfy domestic demand for rebar and that, in any case, the ability of the domestic industry to meet total demand in the domestic market for the subject goods was not a pre-condition of an injury finding pursuant to SIMA.

In terms of threat of injury, Co-Steel referred to ongoing dumping cases in the United States with respect to rebar imported from some of the subject countries before the Tribunal and argued that diversion will result if an injury finding is made in those U.S. cases.

Co-Steel argued in favour of a finding of massive importation pursuant to paragraph 42(1)(*b*) of SIMA.

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5. *Certain Concrete Reinforcing Bar (final injury inquiry)* (12 January 2000) [hereinafter *Rebar I*].

Ispat Sidbec

Ispat Sidbec indicated that the domestic industry's market share decreased from 55 percent in 1999 to 35 percent in 2000, at a time in which the size of the Canadian market increased 12 percent. The market share of the subject countries increased substantially during this same period.

Ispat Sidbec argued that the decline in import selling prices caused the loss of volume and market share experienced by the domestic industry, first becoming noticeable at the beginning of 2000. Ispat Sidbec's initial reaction was to attempt to maintain prices, particularly given that the Tribunal had made its finding in *Rebar I*. However, this strategy resulted in lost sales volumes that, in turn, led Ispat Sidbec to reduce prices, with the consequent reduction in its income. According to Ispat Sidbec, the presence of the subject goods in the market caused pricing to go lower than it might otherwise have gone and resulted in injury to the domestic industry.

Ispat Sidbec further argued that the injury suffered by the domestic industry includes the impact that the dumping had on the domestic industry's ability to continue to finance necessary capital maintenance and improvements. Capital maintenance and improvements, which are dependent on the level of pre-tax profit, are essential for a domestic steel producer. However, the domestic industry has experienced a net loss and, therefore, its ability to finance these expenditures was curtailed.

Ispat Sidbec argued in favour of a finding of massive importation pursuant to paragraph 42(1)(*b*) of SIMA.

Parties Opposing an Injury Finding and/or Parties Requesting Exclusions

No parties who opposed the injury finding either filed submissions or appeared at the hearing.

ANALYSIS

Pursuant to section 42 of SIMA, the Tribunal is required to "make inquiry . . . as to whether the dumping or subsidizing of the goods [to which the preliminary determination applies] . . . 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." "Injury" and "threat of injury" are distinct findings, such that the Tribunal does not need to make a finding relating to "threat of injury" under subsection 43(1) unless it first makes a finding of no injury.

Like Goods

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.

While rebar comes in a variety of sizes and can be either regular or of a weldable variety, the evidence indicates that rebar is a commodity-type product that is used to reinforce concrete. Further, the evidence indicates that imported rebar is interchangeable with domestically produced rebar. The Tribunal finds that domestically produced rebar is similar to the subject goods in terms of physical characteristics, has the same end uses and is substitutable.

Consequently, for the purposes of this inquiry, the Tribunal finds that rebar produced by the domestic industry, defined in the same manner as the subject goods, constitutes like goods to the rebar imported from the subject countries.

Domestic Industry

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

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

In assessing injury, the Tribunal must be satisfied that the domestic industry constitutes a major proportion of the total domestic production of like goods. The domestic producer, Stelco, filed the complaint on behalf of its wholly owned manufacturing units, Hilton Works, AltaSteel and Stelco McMaster. The other rebar producers in Canada, Co-Steel, Gerdau Courtice, Gerdau MRM, Ispat Sidbec and Slater Steel, expressed their support for Stelco's complaint to the CCRA. Stelco, Ispat Sidbec and Co-Steel made submissions to the Tribunal alleging injury due to dumping and participated in the Tribunal's hearing.

Consequently, the Tribunal finds that these companies, which account for 100 percent of the domestic production of like goods, constitute the domestic industry for the purposes of this inquiry.

Cumulation

According to subsection 42(3) of SIMA, the Tribunal shall make an assessment of the cumulative effect of the dumping of goods to which a preliminary determination applies that are imported into Canada from more than one country if the margin of dumping of the goods from each country is not insignificant and the volume of the goods from each country is not negligible. The terms "insignificant" and "negligible" are defined in subsection 2(1). In addition, the Tribunal must determine if an assessment of the cumulative effect of the dumping is appropriate, taking into account the conditions of competition between the dumped goods themselves from the various countries or between the dumped goods and domestically produced like goods.

In this inquiry, the weighted average margins of dumping of rebar imported from each of the subject countries, as determined by the Commissioner, are not insignificant. To assess whether the volume of dumped imports from a country is negligible, the Tribunal looked at the import activity during the CCRA's POI. The Tribunal used the information provided by the CCRA concerning the volume of imports from the subject countries, but relied on its own information concerning the volume of imports of goods of the same description as the subject goods from non-subject countries. The Tribunal then assessed negligibility by establishing, for each subject country, its proportion of dumped goods compared with the total volume of imports from all sources during that period. On this basis, the Tribunal determines that the volume of dumped goods from each of the subject countries was not negligible.

The Tribunal collected information on various factors of competition. The results do not suggest that there are any significant differences in the conditions of competition among the subject goods from different subject countries or with respect to domestic like goods. The Tribunal is of the view that imports of rebar are

fungible among themselves and with the like goods. They are produced to similar specifications and compete with one another.

The Tribunal notes evidence on the record[6] that indicates that the subject goods from certain subject countries are imported solely into Western Canada, whereas the subject goods from the other subject countries are imported entirely into Eastern Canada. However, the Tribunal concludes that cumulation is appropriate, taking into account the conditions of competition between the subject goods imported from each subject country and with goods imported from any other subject country. The evidence indicates that importers of the subject goods are highly responsive to market demands and that there exists interprovincial trade in domestically produced rebar. As such, the Tribunal is of the view that any geographical impediments to trade that may exist in the Canadian market are not so significant as to prevent competition between the subject goods from any subject country and with goods imported from any other subject country.

In light of the foregoing, the Tribunal considers it appropriate to make an assessment of the cumulative effect on the domestic industry of the dumped imports of rebar from the subject countries.

Injury

Subsection 37.1(1) of the SIM Regulations prescribes certain factors that the Tribunal may consider in determining whether the dumping of goods has caused material injury to the domestic industry. These factors include the volume of dumped goods and their effect on prices in the domestic market for like goods and the consequent impact of these imports on a number of relevant economic factors and indices that have a bearing on the state of the domestic industry. In this case, the economic factors include actual or potential declines in domestic sales, market share, prices and financial performance. Subsection 37.1(3) of the SIM Regulations also requires that the Tribunal assess whether a causal relationship exists between the dumping and the injury and consider other factors, not related to the dumping, to ensure that any injury caused by those other factors is not attributed to the dumped imports. However, before examining issues of causation, the overall state of the market and the industry will be considered.

State of the Market and Industry

The Tribunal examined the developments in the market for rebar in Canada during its period of inquiry. Table 2 provides a summary of certain key economic indicators considered by the Tribunal.

The Tribunal observed that the macro indicators show that the Canadian market increased by over 35 percent between 1998 and 2000, from approximately 600,000 tonnes to over 811,000 tonnes. While the overall market grew in this period, the share of the market accounted for by sales from domestic production declined significantly. In 1998, the domestic producers' share of the apparent market was 53 percent. In 1999, domestic producers gained 2 percentage points of market share, which then declined in 2000 by 18 percentage points to 35 percent, a decline of over 104,000 tonnes.

Over the same period, imports from the subject countries increased their share of the market from 1 percent in 1998 to 37 percent in 2000, accounting for approximately 57 percent of total imports. Non-subject countries lost market share, declining from 46 percent in 1998 to 28 percent in 2000.

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6. Manufacturer's Exhibit A-01C, Tab 14, Administrative Record, Vol. 11. Import data suggest that the subject goods from Indonesia, Japan, Poland and Chinese Taipei are imported almost exclusively into British Columbia, while the subject goods from Latvia, Moldova and Ukraine are imported primarily into Ontario and Quebec.

The domestic producers' average price for sales from domestic production declined steadily between 1998 and 2000. At the beginning of the period, the domestic producers' average selling price was $501 per tonne. In 1999, their selling prices declined to $446 per tonne and fell further in 2000 to $441 per tonne. The average price of imports from the subject countries declined from $443 per tonne in 1998 to $414 in 1999, and then to $397 in 2000. Non-subject country average selling prices declined from $489 per tonne in 1998 to $426 per tonne in 1999, and then increased to $446 per tonne in 2000.

TABLE 2
Key Market and Industry Performance Indicators

	1998	1999	2000
Domestic Production (tonnes)	326,020	395,206	291,153
Apparent Imports (tonnes)			
Subject Countries	10,994	65,779	299,664
Non-subject Countries	275,016	255,200	227,888
Apparent Market (tonnes)	599,075	725,478	811,229
Market Share (%)			
Sales from Domestic Production	53	55	35
Sales from Imports			
Subject Countries	1	10	37
Non-subject Countries	46	35	28
Pricing Data ($/tonne)			
Sales from Domestic Production	501	446	441
Sales from Imports			
Subject Countries	443	414	397
Non-subject Countries	489	426	446
Financial (domestic sales)			
Net Income ($000)	7,386	(2,886)	(6,091)
Net Income (%)	5	(2)	(5)
Net Income per Unit ($/tonne)	23	(7)	(21)
Practical Plant Capacity (tonnes)			
Utilization for Rebar (%)	12	14	11
Utilization for Other Products (%)	76	78	79
Total Utilization (%)	89	92	89

Source: *Public Pre-hearing Staff Report*, Tribunal Exhibit NQ-2000-007-6A, Administrative Record, Vol. 1.1 at 180.

Looking in more detail at rebar price movements in Canada over the period of inquiry, the evidence shows that the average selling prices of imports from the subject countries were, in almost all cases, below those of the domestic producers[7] and were leading the domestic industry's prices down. Prices of imported rebar from the subject countries started to decline in the first half of 2000, while average prices for domestically produced rebar only began to decline in the second half of 2000.[8]

7. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2000-007-07A (protected), Administrative Record, Vol. 2.1 at 191 and 196-209.
8. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2000-007-07A (protected), Administrative Record, Vol. 2.1 at 191.

Turning to the domestic industry's financial performance, the industry's loss of volume and declining prices for rebar led to deteriorating financial performance in terms of both gross margins and net income between 1998 and 2000. The gross margin, expressed as a percentage of net sales, fell from 13 percent in 1998 to 8 percent in 1999 and to 4 percent of sales value in 2000. Net income from sales of rebar, in 1998, decreased from a profit of $7.4 million or 5 percent, expressed as a percentage of sales revenues, to a loss of 2 percent in 1999 and a loss of $6.1 million, or a loss of 5 percent, in 2000.

In summary, it is clear from the evidence that the domestic producers have suffered a significant deterioration in performance in the form of reduced production and sales, loss of market share, price erosion and reduced profits. The Tribunal must now determine whether the dumping has caused all or a part of this deterioration and, if so, whether the effects of the dumping, in and of themselves, constitute injury.

Injury and Causality

The domestic industry's case was that, following the initiation of an anti-dumping investigation and subsequent finding of injury by the Tribunal in *Rebar I*, it expected to realize improved pricing and increased sales volumes in the Canadian market.[9] However, importers rapidly switched sources of supply from the named countries covered by *Rebar I* to the seven countries in question in this inquiry. Consequently, new price lists published by the domestic producers in the second half of 1999 and the first half of 2000 were not accepted in the market.[10] As the volume of rebar imports from the subject countries grew in 2000, prices began to fall below the injurious prices found in *Rebar I*.

As indicated above, the Canadian market for rebar grew by 35 percent over the Tribunal's period of inquiry. The evidence and testimony presented in this case indicate that imported rebar from the subject countries began to be a factor in the Canadian market in late 1999 and early 2000.[11] As the subject imports began entering the Canadian market on almost a monthly basis in substantial quantities beginning in the second quarter of 2000, any firming up of prices that should have resulted from the finding in *Rebar I* was lost, and price levels collapsed around the third quarter of 2000.[12] In this regard, the domestic industry presented compelling evidence that demonstrated the correlation between declining domestic selling prices and the volume and unit value of imports from the subject countries.[13] These large volumes of subject goods entering Canada at dumped prices during 2000 established imports from the subject countries as the undisputed price leaders in the market.[14]

The Tribunal also heard testimony from rebar fabricators about the events in the Canadian rebar market during the period of inquiry. Rebar fabricators testified that imports of rebar from Cuba, Korea and Turkey, which were the subject of the inquiry in *Rebar I*, had been brought into Canada by a small number of

9. *Transcript of Public Hearing*, Vol. 1, 1 May 2001, at 16.
10. *Transcript of Public Hearing*, Vol. 2, 2 May 2001, at 172, 236 and 288.
11. Manufacturer's Exhibit A-01C, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 1 May 2001, at 7, 16, 32 and 47.
12. *Ibid.* at 7, 17 and 32.
13. Manufacturer's Exhibit A-01C, Tab 3, Administrative Record, Vol. 11; Manufacturer's Exhibit B-04 (protected), Tab 4, Administrative Record, Vol. 12.1; Manufacturer's Exhibit C-04 (protected), Tab 6, Administrative Record, Vol. 12.2; Manufacturer's Exhibit D-02 (protected) at 26, Administrative Record, Vol. 12.3.
14. Manufacturer's Exhibit B-03 at 5, Administrative Record, Vol. 11.1; Manufacturer's Exhibit B-05 at 3, Administrative Record, Vol. 11.1; *Transcript of Public Hearing*, Vol. 2, 2 May 2001, at 237-38; *Transcript of In Camera Hearing*, Vol. 2, 2 May 2001, at 146.

importers and sold primarily to large fabricators.[15] In this case, imports appeared to be more pervasive with competitive pressures, inducing small, medium and large fabricators to use the subject rebar.[16] The Tribunal heard testimony that groups of small fabricators were being invited to participate in the purchase of boatloads of rebar.[17]

Rebar fabricators appearing before the Tribunal submitted that the market for rebar is very price sensitive and that the cost of rebar is, by far, the largest cost component that they must consider when bidding for contracts.[18] As one of the witnesses for Salit Steel testified: "When we make our decision, if the domestic price is maybe 5 per cent higher than imported, we would buy domestic because it is easier and their rolling schedules are more often."[19] In this regard, the Tribunal notes that the prices of the subject goods were more than 5 percent below domestic selling prices, with the gap generally closer to 10 percent during the period of inquiry.

Rebar fabricators testified that small differences in the cost of rebar can often determine the outcome of contract bidding, as contracts are often won or lost due to small differences in price.[20] Therefore, if one rebar fabricator gains an advantage over the others through lower-priced rebar, regardless of the source, the other fabricators are forced to follow suit. Once low-priced imported rebar became available in the market, they had to purchase it to remain competitive with other fabricators.[21]

The domestic producers also argued that the need for fabricators to compete for construction projects with low-priced imported rebar underlies the evidence of more than 130,000 tonnes of lost sales in 2000, alleged by the domestic industry.[22] The Tribunal heard testimony of lost sales at specific accounts, both large and small, resulting from lower-priced dumped imports.[23]

Witnesses for the domestic industry also submitted that a related effect of the dumped goods was the destruction of the traditional price structure for rebar in Canada.[24] In the past, domestic producers were able to obtain a price premium for 10M and 15M rebar due to their higher cost of production.[25] Similarly, "W" grade rebar had, in the past, been sold at a premium to "R" grade rebar. The subject imports, which, according to testimony, have been largely "W" grade, were sold at a single price regardless of grade or dimension.[26] The record shows this to be an exaggeration, since a large volume of the subject imports were

15. *Transcript of Public Hearing*, Vol. 2, 2 May 2001, at 232-34.
16. *Ibid.* at 234-35.
17. *Ibid.* at 247.
18. *Ibid.* at 132 and 236.
19. *Ibid.* at 255.
20. *Ibid.* at 132-33.
21. *Ibid.* at 236.
22. Tribunal Exhibit NQ-2000-007-10.07A (protected), Administrative Record, Vol. 4D.1 at 59-68; Tribunal Exhibit NQ-2000-007-10.05 (protected), Administrative Record, Vol. 4C at 33-41; Tribunal Exhibit NQ-2000-007-10.04 (protected), Administrative Record, Vol. 4B at 32-40; Tribunal Exhibit NQ-2000-007-10.03 (protected), Administrative Record, Vol. 4A at 57-59.
23. *Transcript of Public Hearing*, Vol. 1, 1 May 2001, at 40-41, and Vol. 2, 2 May 2001, at 174; *Transcript of In Camera Hearing* Vol. 1, 1 May 2001, at 16-17 and 19, and Vol. 2, 2 May 2001, at 92-93 and 96-103.
24. *Transcript of Public Hearing*, Vol. 1, 1 May 2001, at 22 and 66, and Vol. 2, 2 May 2001, at 152 and 166-67.
25. Manufacturer's Exhibit C-03 at 3, Administrative Record, Vol. 11.2; Manufacturer's Exhibit D-03 at 7, Administrative Record, Vol. 11.3.
26. Manufacturer's Exhibit C-03 at 3, Administrative Record, Vol. 11.2.

"R" grade; however, this does not alter the fact that import selling prices were below domestic selling prices and that they did not appear to differentiate between sizes or grades.

As a result, domestic producers could no longer realize the higher returns on these higher-cost products. Furthermore, in order to compete with the subject imports, some domestic producers began producing larger volumes of weldable rebar, since it is fully substitutable for "R" grade rebar and is preferred by fabricators when available at the same price, thus furthering the negative impact on profitability already experienced due to the dumped imports of rebar.[27]

Based on the foregoing evidence and testimony, the Tribunal is of the opinion that the substantial volumes and low prices of dumped rebar from the subject countries caused injury to the domestic industry in the form of lost sales, declining market share and price erosion. Furthermore, these lost sales and the price erosion account for a significant proportion of the decline in financial performance experienced by the domestic industry in 2000.

The Tribunal next reviewed the effects of other factors to ensure that it did not attribute to the dumped imports any injury caused by these other factors.

Other Factors

The Tribunal notes that, in any inquiry, there are almost always factors present other than dumping that have caused the injury suffered by the domestic producers. The Tribunal must not attribute to the dumping any injury caused by these other factors. In this case, stoppages of the production of rebar, trends in the price of steel scrap and the volume and prices of imports from non-subject countries were identified as factors that could have had an impact on the domestic industry.

Production and Work Stoppages

During the Tribunal's period of inquiry, evidence was adduced that both AltaSteel and Co-Steel had suspended production of rebar for certain periods of time in late 1999 and 2000.[28] Co-Steel also experienced a lockout from late December 2000 to mid-March 2001.

The witness for AltaSteel indicated that a portion of the suspension in production was the result of equipment failure.[29] Despite the downtime required to repair the equipment, overall production tonnage was not reduced.[30] AltaSteel's decision to suspend production in late 2000 was a consequence of selling prices falling below its cash costs.[31]

The witness for Co-Steel testified that the decision to suspend production was made in response to the low selling prices for rebar, which resulted from the inflow of dumped imports from the subject countries. At the prevailing prices, the witness submitted that the continued production of rebar would have added to the financial losses already incurred on the sale of rebar.[32] Not only was it unprofitable to produce rebar at

27. *Transcript of Public Hearing*, Vol. 2, 2 May 2001, at 202-203, and Vol. 1, 1 May 2001, at 84.
28. *Transcript of Public Hearing*, Vol. 2, 2 May 2001, at 147.
29. *Transcript of In Camera Hearing*, Vol. 1, 1 May 2001, at 35, and Vol. 2, 2 May 2001, at 88.
30. *Transcript of In Camera Hearing*, Vol. 2, 2 May 2001, at 88.
31. *Transcript of Public Hearing*, Vol. 1, 1 May 2001, at 17.
32. *Transcript of Public Hearing*, Vol. 2, 2 May 2001, at 174 and 192-93.

these prices, but a number of Co-Steel's traditional accounts had already secured their needs for rebar from imported sources.[33]

In testimony, rebar fabricators stated that, despite the suspension of production of rebar, domestically produced rebar was still readily available and that it was still possible to purchase rebar from AltaSteel and Co-Steel during these periods.[34] In the case of Co-Steel, rebar was made available through its sister plant in Sayreville, New Jersey.[35] In an effort to preserve its customer base, AltaSteel introduced rebar fabricators to Stelco McMaster as an alternative supplier during its suspension of production.[36] Notwithstanding these alternate arrangements, witnesses for the domestic industry testified that sufficient production capacity existed within the remaining domestic producers to adequately supply the Canadian market.[37]

The Tribunal is not convinced that decisions by AltaSteel and Co-Steel to suspend production or that the lockout at Co-Steel were sufficient, in and of themselves, to explain the extent of the growth of imports from the subject countries and their resulting dominance of the market in 2000. Further, it is the Tribunal's opinion that the injury to Co-Steel from the dumped imports occurred, in large part, prior to the lockout.

Scrap Steel Prices

The Tribunal explored the impact of changing scrap steel prices on the costs of production and selling prices of rebar. Witnesses for the domestic industry testified that the cost of scrap can have an effect on the cost of rebar production since the price of scrap represents a significant portion of the cost of billet production, the raw material used in the rolling of rebar.[38] However, the effect can lag as a result of existing scrap inventories[39] and, in conjunction with prevailing market conditions, scrap costs may or may not get translated into the price of rebar.[40]

In light of the foregoing, the Tribunal is not convinced that there is an immediate, direct relationship between scrap steel prices and rebar prices. While it is clear that there have been periods of low scrap prices during the Tribunal's period of inquiry, the Tribunal concludes that the price erosion suffered by the domestic producers on their sales of rebar cannot be satisfactorily explained by reduced manufacturing costs in the form of decreased scrap steel prices.

Non-subject Country Imports

The two largest sources of rebar imported from non-subject countries were the United States and Turkey. The Tribunal notes that imports from the United States accounted for 19 percent of the apparent market in 1998, then declined to 15 percent in 1999, and increased to 17 percent in 2000.[41] These imports were largely concentrated in Western Canada, where Birmingham Steel, located in Seattle, Washington, has been a long-standing market participant. Although average selling prices for rebar imported from the United States were consistently higher than the average selling prices of domestic producers over the period of

33. *Ibid.* at 174.
34. *Ibid.* at 240.
35. *Ibid.* at 175.
36. *Transcript of In Camera Hearing*, Vol. 1, 1 May 2001, at 59-60.
37. *Supra* note 32 at 146, and Vol. 1, 1 May 2001, at 9.
38. *Supra* note 32 at 186.
39. *Supra* note 32 at 144.
40. *Supra* note 32 at 186-87 and 257, and Vol. 1, 1 May 2001, at 61-62.
41. Tribunal Exhibit NQ-2000-007-06, Administrative Record, Vol. 1.1 at 29.

inquiry,[42] witnesses for the domestic industry were at a loss to explain why they were unable to sell at similar prices.[43] Nonetheless, it was their view that imports from the United States were not a source of injury to the domestic industry. Moreover, imports from the United States felt the same competitive price pressures from the subject imports and, rather than leading price movements, were forced to follow the subject import prices down.

Imports of rebar from Turkey accounted for 18 percent of the apparent market in 1998.[44] They declined to 14 percent in 1999 and continued to decline to 10 percent of the Canadian market in 2000, subsequent to the Tribunal's finding in *Rebar I*. Notwithstanding their being subject to normal values, sales of Turkish rebar in 2000 were at prices between those of the subject imports and the domestic products.[45] In this regard, the Tribunal heard evidence that imports from Turkey have not been a "driving factor" in the marketplace in 2000; rather, it was the volume and pricing of the subject goods.[46]

On the basis of the foregoing, the Tribunal concluded that imports from the United States did not cause injury to the domestic industry. With regard to Turkish imports, their low prices simply added to the competitive pressures already exerted by imports from the subject countries, which, as previously stated, caused injury to the domestic industry.

Massive Importation

The domestic producers submitted that, in addition to the finding of material injury, the facts of this inquiry satisfy the requirements of paragraph 42(1)(*b*) of SIMA and, therefore, warrant the application of retroactive duties.

The domestic producers argued that imports of the subject goods from the subject countries constituted "a considerable importation of like goods that were dumped" and that caused injury. At the same time, the sophistication of the brokers suggests that the importers were or should have been aware that exporters of the subject goods were dumping and that the dumping would cause injury.

For the purpose of determining whether injury had been caused by the fact that "the dumped goods . . . [formed] part of a series of importations . . . that in the aggregate [were] massive", the domestic producers submitted that it would be appropriate to consider the volume of importations in the year 2000. In this regard, the domestic producers argued that the subject imports constituted 57 percent of all imports in 2000. Further, these imports captured 37 percent of the domestic market in 2000, increasing fivefold in that year as compared with 1999. This pattern of increased imports of the subject goods is found both in the aggregate, from all subject countries, and when imports from each subject country are examined. In addition, the data indicated that significant volumes of the subject goods were imported from the subject countries subsequent to the public becoming aware that the CCRA had initiated an investigation. Therefore, the domestic producers argued that the dumped goods form part of a series of importations that, in the aggregate, were massive.

In assessing whether a massive importation finding is "necessary . . . in order to prevent the recurrence of . . . injury", the domestic producers directed the Tribunal to evidence on the record indicating

42. *Ibid.* at 72.
43. *Transcript of Public Hearing*, Vol. 1, 1 May 2001, at 55 and 77-78, and Vol. 2, 2 May 2001, at 195.
44. *Supra* note 41 at 29.
45. *Supra* note 41 at 72.
46. *Transcript of Public Hearing*, Vol. 1, 1 May 2001, at 72.

that importers were practising "source switching". The domestic producers argued that importers of rebar have international connections, enabling them to buy from the cheapest source of supply. The domestic producers argued that the finding in *Rebar I* had in effect been "thwarted" by new sources of supply and that the Tribunal should find that it is necessary to assess penalties on importers to prevent the recurrence of injury to the domestic industry.

The domestic producers argued that, in determining whether a "massive" importation of dumped goods has occurred, the imports of all the subject countries may be cumulated. However, they also argued that the Tribunal may determine that a finding of massive importation pursuant to paragraph 42(1)(*b*) of SIMA is not appropriate in respect of one or more of the subject countries.

The domestic producers argued that the facts of this inquiry are different from those found in *Rebar I*, in which a finding of massive importation pursuant to paragraph 42(1)(*b*) of SIMA was requested by the domestic industry, but not made by the Tribunal. The domestic producers argued that the import volumes of subject goods have increased more dramatically in the one-year period prior to the preliminary determination than they did over the corresponding period in *Rebar I*. Further, in contrast to *Rebar I*, import volumes from the subject countries in the present inquiry were far greater than were imports from non-subject countries in that period.

The domestic producers further argued that, in declining to find massive importation in *Rebar I*, the Tribunal referred to the fact that the subject imports declined in the two quarters most proximate to the preliminary determination, as compared to the corresponding period in 1998. It also found that the subject imports did not occur in a relatively short period of time. However, the domestic producers argued that, in the present inquiry, there was a fivefold increase in subject country imports between 1999 and 2000. While there was a slight decline in the last half of 2000 as compared to the first half of 2000, the level of imports in the last half of 2000 increased when compared with the last half of 1999.

Ispat Sidbec argued that the massive importation provision is the only punitive provision in SIMA. Further, it submitted that the Tribunal has almost complete discretion in determining how to apply the provision and should exercise that discretion, for example, in choosing the time period that it feels is relevant for determining whether a massive importation has occurred. Similarly, the Tribunal has discretion in determining whether a finding is necessary in order to prevent a recurrence of injury, to examine both past and potential future "source switching" by importers. In this respect, Ispat Sidbec argued that evidence on the record indicates that importers participated in "source switching" subsequent to the Tribunal's decision in *Rebar I* and will likely do so again.

On the issue of whether the finding should be made against all or some of the dumped goods, Ispat Sidbec pointed out that the punishment[47] flowing from a finding of massive importation is established in SIMA. In the event of a finding of massive importation, duties are applied on the subject goods that have been released 90 days prior to the preliminary determination. Therefore, the degree to which an importer will be punished by a finding will flow from the degree to which the importer participated in the massive importation in that 90-day period.

Co-Steel referred to the Tribunal's decision in NQ-90-003[48] for the proposition that the provision is intended to deter "source switching". Given that, subsequent to *Rebar I*, Canadian importers "source switched", Co-Steel has not benefited from the finding of injury in that inquiry. Attempts to raise prices subsequent to *Rebar I* were not successful. Similarly, in the present inquiry, fabricators who testified before

47. *Transcript of Public Argument*, Vol. 1, 3 May 2001, at 35-36.
48. *Photo Albums (inquiry)* (2 January 1991) [hereinafter *Photo Albums*].

the Tribunal identified several new sources of the subject goods in the event of an injury finding. In addition, Co-Steel emphasized the importance of rebar production to the viability of its operations.

Section 42(1)(*b*) of the SIMA states:

> 42. (1) The Tribunal, forthwith after receipt by the Secretary pursuant to subsection 38(3) of a notice of a preliminary determination, shall make inquiry with respect to such of the following matters as is appropriate in the circumstances:
>
> (*b*) in the case of any dumped goods to which the preliminary determination applies, as to whether
>
> (i) either
>
> (A) there has occurred a considerable importation of like goods that were dumped, which dumping has caused injury or would have caused injury except for the application of anti-dumping measures, or
>
> (B) the importer of the goods was or should have been aware that the exporter was practising dumping and that the dumping would cause injury, and
>
> (ii) injury has been caused by reason of the fact that the dumped goods
>
> (A) constitute a massive importation into Canada, or
>
> (B) form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short period of time,
>
> and it appears necessary to the Tribunal that duty be assessed on the imported goods in order to prevent the recurrence of that injury.

The Tribunal notes that the provision contains three distinct parts, all of which must be satisfied in order to make a finding pursuant to this section.

The first part of the provision itself contains two alternative requirements, only one of which must be satisfied in order to move to the second part. Specifically, the Tribunal must inquire as to whether "there has occurred a considerable importation of like goods that were dumped, which dumping has caused injury or would have caused injury except for the application of anti-dumping measures". Alternatively, the Tribunal must inquire as to whether "the importer of the goods was or should have been aware that the exporter was practising dumping and that the dumping would cause injury".

The second part of the provision requires the Tribunal to inquire into whether "injury has been caused by reason of the fact that the dumped goods" either "constitute a massive importation into Canada" or "form part of a series of importations into Canada, which in the aggregate are massive and have occurred within a relatively short period of time".

The third part of the massive importation provision requires the Tribunal to consider whether it appears "necessary . . . that duty be assessed[49] on the imported goods in order to prevent the recurrence of that injury."

With respect to the first part of the provision, the Tribunal has considered the volumes of imports from the subject countries on a cumulative basis. During the POI, which was eight months in length, the

49. In the event that the Tribunal finds that these requirements have been satisfied, and pursuant to section 5 of SIMA, "retroactive" anti-dumping duties shall be collected on the subject goods released during the period of 90 days preceding the date on which the Commissioner made the preliminary determination.

volume of subject imports was approximately 193,000 tonnes. The Tribunal considers that, in an apparent annual domestic market of just over 725,000 tonnes in 1999 and 811,000 tonnes in 2000, this volume of imports from the subject countries is considerable. Furthermore, the Tribunal has already found that dumped imports from the subject countries during the POI caused injury.

Therefore, the Tribunal finds that the evidence indicates that there has been a considerable importation of the subject goods that were dumped and that the dumping has caused injury. Given this finding, the Tribunal finds it unnecessary to inquire as to whether the importer of the goods was or should have been aware that the exporter was practising dumping and that the dumping would cause injury.

Moving to the second part of the test, the Tribunal is of the view that there was no single importation of the subject goods that was massive in nature and that would have caused injury. Therefore, the Tribunal must consider whether "injury has been caused by reason of the fact that the dumped goods . . . form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short period of time".

In considering whether there has been a series of importations that, in the aggregate, are massive and have occurred within a relatively short period of time, the Tribunal must first determine the relevant time period to be considered. To determine the relevant period, the Tribunal has taken into account the nature of the subject goods and the manner in which they are traded. In this instance, the Tribunal considers a six-month period prior to the preliminary determination to constitute "a relatively short period of time" for the purpose of the "massive importation" provision. This is consistent with previous Tribunal decisions.[50]

Retroactive anti-dumping duties are to be imposed in order to remedy the possible recurrence of injury resulting from massive imports of dumped goods undermining the imposition of provisional and final anti-dumping duties. This may be the case where dumped imports have entered Canada in massive quantities prior to the preliminary determination, leading to, for example, a rapid buildup or "stockpiling" of inventories.[51] Such goods could then be sold at injurious prices subsequent to the application of provisional anti-dumping duties and, hence, lead to a recurrence of injury, thus undermining the intended remedial effect of the definitive anti-dumping duties.

A comparison of the import volumes in the six-month period prior to the preliminary determination of dumping indicates that the level of imports from the subject countries declined substantially as compared to the preceding January to July period in 2000. Specifically, the volume of subject imports from the subject countries in the six months prior to the preliminary determination of dumping was approximately 102,000 tonnes, while, for the whole of 2000, they were almost 300,000 tonnes. Furthermore, the volume of imports during the three-month period prior to the preliminary determination of dumping at almost 46,000 tonnes approximates the volume of imports of the subject goods from the subject countries during the same period in the previous year, which was just over 42,000 tonnes. This suggests to the Tribunal that the volume of imports from the subject countries over this period of time was not exceptional for this time of year.

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50. For example, *Certain Concrete Reinforcing Bar (inquiry)* (12 January 2000), NQ-99-002 and *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products (inquiry)* (2 July 1999), NQ-98-004. In NQ-98-004, the Tribunal considered that importations over the last three quarters of 1998 did not occur within a relatively short period of time, for the purposes of the massive importation provision.
51. Such a scenario is specifically envisioned by Article 10.6 of the *Agreement on Implementation of Article VI of the General Agreement of Tariffs and Trade 1994*, 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm.

The Tribunal also notes that the increase in the subject country imports in the six-month period prior to the preliminary determination, when compared with the same period in the previous year, coincided with an expanding domestic market, interruptions in domestic supply and a sharp decline in the level of imports from the countries named in *Rebar I*. As such, the Tribunal does not find that, in the present inquiry, there has occurred a series of importations of the subject goods from the subject countries that can be considered to be massive and to have occurred within a relatively short time.

Therefore, the Tribunal does not find that the requirements of the "massive importation" provision have been satisfied in the present inquiry. However, the Tribunal offers the following views regarding the submissions by the domestic producers that the purpose of the "massive importation" provision is to deter "source switching".

The domestic producers argued that, in assessing the third part of the provision, whether it appears to the Tribunal that the imposition of retroactive duties is "necessary . . . in order to prevent the recurrence of . . . injury", the Tribunal should consider the evidence on the record that indicates that importers were practising "source switching". The domestic producers argued that the Tribunal should impose retroactive duties in order to "punish" those importers that have engaged in "source switching" in the past and to deter those that might do so in the future. In support of their request for "retroactive" anti-dumping duties, the domestic producers referred to the decision in *Photo Albums*, in which a majority of the Tribunal made a finding of massive importation on the basis of evidence of "source switching".

However, the Tribunal is not convinced that the "massive importation" provision is intended to deter "source switching", nor is the Tribunal attracted to the notion that the provision is designed to be punitive, in the sense that retroactive anti-dumping duties should be imposed in the present case in order to punish importers that might have "source switched" in the past. Rather, the Tribunal is of the view that this provision is designed to remedy circumstances that involve only the imports from the subject countries.

Anti-dumping duties are prospective in nature, in the sense that they are imposed only on imports of the subject goods that occur after the preliminary determination of dumping has been made by the Commissioner. "Retroactive" duties under the massive importation provision are an exception, in that the statute provides the possibility of reaching back and applying duties to a period of 90 days before the preliminary determination to remedy circumstances involving imports from the subject countries that would prevent the domestic industry from benefiting from the finding of injury. In the Tribunal's view, as the imposition of retroactive duties constitutes an exception to the general approach of the legislation and the World Trade Organization agreements, the massive importation provision should be interpreted narrowly.

In this connection, the Tribunal rejects the reasoning of the majority of the Tribunal in *Photo Albums* regarding the purpose of the "massive importation" provision. The Tribunal notes that Member Trudeau's dissent in that decision, regarding the issue of massive importation, identified an absence of evidence of inventory "stockpiling" as a reason why this "draconian" measure should not be applied. Further, the Tribunal has not made a finding of "massive importation" since *Photo Albums*, typically identifying the absence of evidence of "inventory stockpiling" as the reason for its decision.[52]

REQUESTS FOR EXCLUSIONS

The Tribunal did not receive any requests for exclusions.

52. *Certain Concrete Reinforcing Bar (inquiry)* (12 January 2000), NQ-99-002; *Dry Pasta (inquiry)* (13 May 1996), NQ-95-003; *Certain Hot-rolled Carbon Steel Plate (inquiry)* (17 May 1994), NQ-93-004.

CONCLUSION

For the reasons stated above, the Tribunal concludes that the dumping in Canada of certain concrete reinforcing bar originating in or exported from Indonesia, Japan, Latvia, Moldova, Poland, Chinese Taipei and Ukraine has caused material injury to the domestic industry. Given that the Tribunal has found material injury, it need not determine whether there has been retardation or whether there is a threat of injury.

The Tribunal also finds that the requirements of paragraph 42(1)(*b*) of SIMA with respect to massive importation have not been met.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

James A. Ogilvy
James A. Ogilvy
Member