



Ottawa, Wednesday, July 16, 2003

**Inquiry No. NQ-2002-004**

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

**CERTAIN CARBON STEEL PIPE NIPPLES, THREADED COUPLINGS AND  
ADAPTOR FITTINGS, IN NOMINAL DIAMETERS UP TO AND INCLUDING  
6 INCHES OR THE METRIC EQUIVALENTS, ORIGINATING IN OR  
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

**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 certain carbon steel pipe nipples, threaded couplings and adaptor fittings, in nominal diameters up to and including 6 inches or the metric equivalents, originating in or exported from the People's Republic of China, 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 March 18, 2003, and of a final determination dated June 16, 2003, that the aforementioned goods have been dumped and that the margins of dumping of these goods were 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 caused injury to the domestic industry.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Zdenek Kvarda  
Zdenek Kvarda  
Member

Ellen Fry  
Ellen Fry  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: June 17 to 20, 2003  
Date of Finding: July 16, 2003

Tribunal Members: Pierre Gosselin, Presiding Member  
Zdenek Kvarda, Member  
Ellen Fry, Member

Director of Research: Selik Shainfarber

Research Officer: Don Shires

Economist: Ihn Ho Uhm

Statisticians: Julie Charlebois  
Marie-Josée Monette  
Rhonda Heintzman

Counsel for the Tribunal: Reagan Walker  
Roger Nassrallah

Assistant Registrar: Gillian E. Burnett

Registrar Officer: Karine Turgeon

**Participants:**

for Victoria Bazan  
Canvil, A Division of Mueller Canada, Ltd.

**(Domestic Producer)**

for Paul M. Lalonde  
Jennifer R. Abriel  
Eric J. Jiang  
Beijing Beier Plumbing Manufacturing Ltd.

for Dean A. Peroff  
Robert R. Amsterdam  
Peter A. Magnus  
Larry Andrade  
BMI Canada Inc.  
Boshart Industries Inc.  
Noble Trade Inc.

for Michael Kaylor  
John L. Schultz Ltd.

for Ray Nassiri  
C-B Supplies Limited

**(Importers/Exporters/Others)**



Ottawa, Thursday, July 31, 2003

**Inquiry No. NQ-2002-004**

**CERTAIN CARBON STEEL PIPE NIPPLES, THREADED COUPLINGS AND  
ADAPTOR FITTINGS, IN NOMINAL DIAMETERS UP TO AND INCLUDING  
6 INCHES OR THE METRIC EQUIVALENTS, ORIGINATING IN OR  
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

**DECISION**

The Canadian International Trade Tribunal hereby finds that the dumping in Canada of the  
aforementioned goods has caused injury to the domestic industry.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	June 17 to 20, 2003
Date of Finding:	July 16, 2003
Date of Reasons:	July 31, 2003
Tribunal Members:	Pierre Gosselin, Presiding Member Zdenek Kvarda, Member Ellen Fry, Member
Director of Research:	Selik Shainfarber
Lead Researcher:	Don Shires
Research Officer:	Martin Giroux
Economist:	Ihn Ho Uhm
Statisticians:	Julie Charlebois Marie-Josée Monette Rhonda Heintzman
Counsel for the Tribunal:	Reagan Walker Roger Nassrallah
Assistant Registrar:	Gillian E. Burnett
Registrar Officer:	Karine Turgeon

**Participants:**

Victoria Bazan  
for Canvil, A Division of Mueller Canada, Ltd.

**(Domestic Producer)**

Paul M. Lalonde  
Jennifer R. Abriel  
Eric J. Jiang  
for Beijing Beier Plumbing Manufacturing Ltd.

Dean A. Peroff  
Robert R. Amsterdam  
Peter A. Magnus  
Larry Andrade  
for BMI Canada Inc.  
Boshart Industries Inc.  
Noble Trade Inc.

Michael Kaylor  
for John L. Schultz Ltd.

Ray Nassiri  
for C-B Supplies Limited

**(Importers/Exporters/Others)****Witnesses:**

Brent Widdifield  
General Manager  
Canvil, A Division of Mueller Canada, Ltd.

Bob Evans  
Southwest Regional Manager  
Wolseley Plumbing Group

Kathryn Bannister  
Controller  
Canvil, A Division of Mueller Canada, Ltd.

Chris Meier  
Plant Manager  
CapProducts of Canada, Ltd.

Michel Bond  
Vice-President  
BMI Canada Inc.

Gary Boshart  
Vice-President  
Boshart Industries Inc.

Brahm Swirsky  
Vice-President — Procurement  
Noble Trade Inc.

John K. Schultz  
President  
John L. Schultz Ltd.

Jerome S. Zwicker  
President, CEO  
Thorndale International Inc.

Kevin O'Reilly  
Director, National Procurement — Distribution  
Emco Limited

Don Kenesky  
Buyer  
Home Hardware Stores Ltd.

Address all communications to:

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



Ottawa, Thursday, July 31, 2003

**Inquiry No. NQ-2002-004**

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

**CERTAIN CARBON STEEL PIPE NIPPLES, THREADED COUPLINGS AND  
ADAPTOR FITTINGS, IN NOMINAL DIAMETERS UP TO AND INCLUDING  
6 INCHES OR THE METRIC EQUIVALENTS, ORIGINATING IN OR  
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member  
ZDENEK KVARDA, Member  
ELLEN FRY, Member

**STATEMENT OF REASONS**

**BACKGROUND**

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,<sup>1</sup> has conducted an inquiry to determine whether the dumping in Canada of certain carbon steel pipe nipples, threaded couplings and adaptor fittings, in nominal diameters up to and including 6 inches or the metric equivalents (certain pipe fittings), originating in or exported from the People's Republic of China (China) (the subject goods), has caused injury or retardation or is threatening to cause injury to the domestic industry.

On December 18, 2002, the Commissioner of the Canada Customs and Revenue Agency (the Commissioner), following a complaint filed by Canvil, A Division of Mueller Canada, Ltd. (Canvil), initiated an investigation to determine whether imports of the subject goods were being dumped. On December 19, 2002, 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 there was evidence that 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, 2003, 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.

On March 18, 2003, the Commissioner issued a preliminary determination of dumping with respect to the subject goods. In the statement of reasons for the preliminary determination of dumping, the Commissioner indicated that he was satisfied, as a result of this preliminary investigation, that these goods

---

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

had been dumped, that the margins of dumping were not insignificant and that the volume of dumped goods was not negligible.<sup>2</sup>

On March 19, 2003, the Tribunal issued a notice of commencement of inquiry.<sup>3</sup> As part of the inquiry, the Tribunal sent questionnaires to domestic producers, 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.

On June 16, 2003, the Commissioner issued a final determination of dumping with respect to the subject goods. In the statement of reasons for the final determination of dumping, the Commissioner indicated that he was satisfied that the subject goods had been dumped and that the margins of dumping were not insignificant.<sup>4</sup>

Public and *in camera* hearings (collectively, the hearing) were held in Ottawa, Ontario, from June 17 to 20, 2003. Canvil, a domestic producer, made submissions and was represented by counsel at the hearing. BMI Canada Inc. (BMI), Boshart Industries Inc. (Boshart), Noble Trade Inc. (Noble), John L. Schultz Ltd. (Schultz) and Beijing Beier Plumbing Manufacturing Ltd. (BBPM) also made submissions and were represented by counsel at the hearing. The Tribunal also heard testimony from a witness from another domestic producer, CapProducts of Canada Ltd. (CapProducts), who was subpoenaed by the Tribunal. At the Tribunal's request, witnesses from Thorndale International Inc. (Thorndale), Emco Limited (Emco) and Home Hardware Stores Ltd. (Home Hardware) also testified at the hearing.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, the requests for information and replies thereto, the witness statements and all exhibits filed by the parties throughout the inquiry, as well as 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 confidential information.

The Tribunal issued its finding on July 16, 2003.

## RESULTS OF THE COMMISSIONER'S INVESTIGATION

The Commissioner's dumping investigation covered imports of certain pipe fittings originating in or exported from China that were released into Canada during the period of investigation from January 1 to September 30, 2002.

In its investigation, the Canada Customs and Revenue Agency (CCRA) was unable to analyse the extent of the Chinese government's control over the export trade or domestic pricing of certain pipe fittings. Therefore, the CCRA could not determine whether the pipe fitting industry in China was operating under competitive market conditions. Consequently, the CCRA relied on the best information available to determine normal values.

---

2. Canada Customs and Revenue Agency, *Preliminary Determination of Dumping and Statement of Reasons*, 2 April 2003, Tribunal Exhibit NQ-2002-004-01, Administrative Record, Vol. 1 at 21.

3. C. Gaz. 2003.I.901.

4. Canada Customs and Revenue Agency, *Final Determination of Dumping and Statement of Reasons*, 27 June 2003, Tribunal Exhibit NQ-2002-004-04A, Administrative Record, Vol. 1 at 101.43, 101.57.

The CCRA found that 100 percent of the volume of the subject goods imported during the period of investigation was dumped. The weighted average margins of dumping for pipe nipples, threaded couplings and adaptor fittings were 150 percent, 50 percent and 74 percent, respectively, when expressed as a percentage of the export price. The weighted average margin of dumping for these three product categories combined was 147 percent, when expressed as a percentage of the export price. The CCRA found these margins of dumping not to be insignificant pursuant to subsection 2(1) of *SIMA*.

## **PRODUCT**

### **Product Definition and Description**

The subject goods are defined as certain carbon steel pipe nipples, threaded couplings and adaptor fittings, in nominal diameters up to and including 6 inches or the metric equivalents, originating in or exported from China. The subject goods do not include carbon steel seamless pipe nipples manufactured for high-pressure applications.

### **Production Process**

#### Pipe Nipples

Pipe nipples are manufactured from lengths of steel pipe. The pipe, after being graded according to heat codes, is positioned on cut-off tables, where it is “saw”-cut or “wheel”-cut to specified lengths. Then, appropriate end configurations are machined at each end of the cut pipe. The most common operation is to thread the exterior surface of both ends. The threading operation is achieved on one of three configurations of threading machines, depending on the diameter and length of the pipe. The pipe nipple is then cleaned and a surface coating is applied. This requires going through a “finishing line” process where the product is cleaned in an alkaline solution, then rinsed and coated with oil, or phosphated or electrogalvanized. From there, the product goes to packing, where it is labelled, painted, bar-coded or stamped prior to being packaged.

#### Threaded Couplings

Threaded couplings are manufactured from tubular steel. The tube is first processed through the cut-off machine, where it is both cut to length and sized internally by reaming. The next operation is called the chamfering process, where the coupling blank is machined to length and has a chamfer machined into the inside edge of the coupling blank. In this operation, the outside edge of the coupling is also deburred and stamped with the country of origin and the manufacturer’s emblem. The internal portion of the coupling is threaded on both ends by a process referred to as either straight tapping or taper tapping. The threaded couplings are then cleaned and a surface coating is applied, through the same process as for pipe nipples. From there, the product goes to packing, where it is labelled, painted, bar-coded or stamped prior to being packaged.

#### Adaptor Fittings

Adaptor fittings are made from lengths of steel pipe. After the grading process, the pipe is cut utilizing the same processes as for pipe nipples. In the next step, the pipe undergoes a cold-forming operation which involves being pressed through a forming die under high pressure. The next operation is to machine the ends. The normal configuration is to have the large end threaded and the small end serrated.



The fittings are then cleaned in a solution, and a surface coating of oil or phosphate is applied, or the fitting may be electrogalvanized using the same processes as for pipe nipples. From there, the product goes to packing, where it is labelled, painted, bar-coded or stamped prior to being packaged.

## **Product Uses**

Certain pipe fittings are used in a number of mechanical and building applications. They perform a common function, which is to connect two pieces of pipe or other material that direct the flow of liquids or gases.

### Pipe Nipples

Pipe nipples are used in the plumbing and heating industry and normally direct the flow of liquid or gaseous media. They are also used in various industrial applications in mining, refineries, resource mills and oil exploration. Electrical conduit nipples are used in the building industry to protect electric wiring between electrical devices. A Pipe nipple is the connector between the end of the pipe and the equipment or device to which the pipe is attached.

### Threaded Couplings

Threaded couplings are used for joining lengths of threaded pipe (either welded or seamless) in a variety of domestic and industrial applications. A coupling is required at the end of the pipe in order to attach the pipe nipple, which is connected to the equipment. The electrical conduit couplings are used to connect lengths of electrical conduit or to connect electrical fittings to the conduit.

### Adaptor Fittings

Adaptor fittings consist of combination nipples, hose menders, male adaptors and insert couplings. Combination nipples are used to connect standard pipe to rubber hose, while hose menders are used to join lengths of rubber hose or to repair a damaged rubber hose. Male adaptors are used to connect standard steel pipe to plastic tubing and insert couplings are used to join two pieces of plastic pipe or to repair a damaged pipe. Adaptor fittings are normally used in industrial applications, agricultural irrigation and domestic wells.

## **DOMESTIC PRODUCERS**

There are two domestic producers of certain pipe fittings, namely, Canvil and CapProducts.

Canvil is a division of Mueller Canada, Ltd., which, in turn, is a division of Mueller Co., in the United States. Canvil produces pipe nipples, threaded couplings and adaptor fittings at its plant in Simcoe, Ontario. In addition to certain pipe fittings, Canvil manufactures seamless pipe nipples and forged steel fittings. Canvil employs approximately 160 people, and it has sales centres in Edmonton, Alberta, and Montréal, Quebec.

CapProducts is the Canadian division of CapProducts, Ltd., which is owned by the Harsco Group, located in Camp Hill, Pennsylvania.<sup>5</sup> CapProducts produces pipe nipples and adaptor fittings at its plant in

---

5. The Harsco Group acquired the assets of CapProducts, Ltd. on July 1, 2002.

Vanastra, Ontario.<sup>6</sup> In addition to certain pipe fittings, CapProducts manufactures seamless nipples, stainless nipples and small forged steel fittings. CapProducts has an internal sales force that markets its products throughout Canada.

## IMPORTERS AND EXPORTERS

The CCRA initially identified 12 importers of the subject goods during its period of investigation. Following further research by Tribunal staff, 6 additional potential importers of the subject goods were identified, and a total of 18 importers were surveyed by the Tribunal. The responses to the Tribunal's questionnaires indicated that BMI, Boshart, C-B Supplies Limited, SCE Development (Canada) Co. Ltd., Schultz and Versa Fittings & Mfg. Inc. were the most significant importers of the subject goods. Together, these companies accounted for over 90 percent of imports of the subject goods during the Tribunal's period of inquiry.

The CCRA identified six Chinese producers and two Chinese trading companies that exported the subject goods to Canada during the period of investigation. The Tribunal sent foreign producers' questionnaires to the six apparent producers of the subject goods in China. Only BBPM submitted a response to the Tribunal's questionnaire.<sup>7</sup>

## MARKETING AND DISTRIBUTION

The market for certain pipe fittings comprises three main trade levels: (a) master distributors; (b) wholesalers; and (c) retailers.<sup>8</sup> Master distributors are wholesalers that purchase certain pipe fittings from producers or that import certain pipe fittings directly. They distribute them to other trade levels through their facilities and, in some cases, they may arrange to have the goods delivered directly to their customers' premises. Master distributors may also package and bar-code the products, although this function is usually performed by the manufacturer. Wholesalers do not generally import directly. They buy certain pipe fittings from the domestic producers or from the master distributors and sell primarily to contractors. Retailers also generally buy certain pipe fittings from the domestic producers or from the master distributors and sell primarily to consumers.

## POSITIONS OF PARTIES

### Party in Favour of an Injury Finding

#### Canvil

With respect to the issue of classes of goods, Canvil argued that this inquiry involves a single class of goods. To support this position, Canvil contended that certain pipe fittings all share the following similar methods of manufacture: they are made of pipe that is cut in lengths and threaded in some form; their purpose is to connect two pieces of pipe or other media; and they are used in combination, as was demonstrated by the physical exhibits that it submitted.

---

6. According to the evidence, CapProducts recently ceased production of threaded couplings. Its primary business is pipe nipples. *Transcript of Public Hearing*, Vol. 2, 18 July 2003 at 207.

7. BBPM was also the only Chinese producer that responded to the CCRA's request for information during its dumping investigation.

8. These distribution channels are described further in the section pertaining to injury.

Canvil submitted that the Canadian market for certain pipe fittings grew by nearly 20 percent over the period of inquiry and that, over the same period, the market share accounted for by sales from domestic production declined, while the market share accounted for by sales of the subject goods increased. Canvil also submitted that a review of its financial performance indicates a decline in volumes of sales and a drastic decline in gross margins and operating incomes.

Canvil contended that it has suffered price erosion in that it has had to increase its discounts and rebates in order to preserve market share. It also contended that it has suffered price suppression in that it has experienced increased costs, which it has been unable to offset by increasing its prices. In this context, Canvil indicated that the data that it submitted highlight the increasing spread between unit net sales and costs. Furthermore, it contended that its actual invoices for certain pipe fittings, which it submitted, represent the best evidence possible of its increased costs.

In reply to BMI, Boshart and Noble's argument that costs relating to like goods that are domestically produced versus the other domestically produced goods are inconsistent, Canvil argued that the two groups of goods are not manufactured using the same raw material and involve different methods of manufacture with different levels of labour.

With respect to causation, Canvil stated that between 2000 and 2002, imports from China increased from a little over 2 million units to over 10 million units. Canvil further submitted that prices of certain pipe fittings in the Canadian market have been driven by the landed values of the subject goods. Moreover, Canvil argued that the resale price of the subject goods did not simply pick up where the resale price of imports of certain pipe fittings from Mexico left off and noted that the testimony of the witness from CapProducts supported this position.

Canvil also stated that the average landed values of the subject goods declined over the Tribunal's period of inquiry and that they were significantly below average domestic selling values. In this connection, Canvil submitted that these landed values are what Canvil and CapProducts face when they try to sell to master distributors that import the subject goods. Further, the low prices of the landed imports trickle down to other trade levels.

With respect to the pricing of the benchmark products, Canvil submitted that the difficulty in this case is that there are hundreds of different pipe fittings sold in the market, which means that the Tribunal's benchmark products are not very representative.

With respect to non-dumping factors, notably allegations of poor quality, Canvil submitted that an overwhelming number of questionnaire respondents indicated that the domestic products are comparable to or better than the Chinese products. With respect to BMI, Boshart and Noble's allegations regarding problems with lead times and fill rates, Canvil argued that their testimony does not cover the period of investigation. Regarding BMI and Boshart's allegation that Canvil has concentrated on the large wholesale sector and ignored other trade levels, Canvil pointed out that the small wholesale sector represents a very significant portion of Canvil's sales of certain pipe fittings. In general, Canvil submitted that the non-dumping factors identified by the parties opposed to an injury finding either are not proven or do not explain Canvil's injury.

With respect to threat of injury, Canvil submits that the Chinese exporters' participation in the Canadian market can be described as aggressive. In support of this position, Canvil highlighted the rapid and sharp rate of entry of the subject goods into the Canadian market, their level of market penetration and

their low and declining prices. As to the Chinese exporters' freely disposable capacity and the exporter information in general, Canvil noted that only one exporter submitted a response to the Tribunal's questionnaire, which resulted in little information being made available for the purposes of the inquiry.

### **Parties Opposed to an Injury Finding**

#### BMI, Boshart and Noble

BMI, Boshart and Noble argued that the evidence submitted by CapProducts was so insufficient and unreliable that there is no evidentiary basis upon which the Tribunal can find any material injury or causation with respect to CapProducts. The information provided by CapProducts should not be given any weight or credence. In this connection, BMI, Boshart and Noble noted the contrast between Canvil's level of participation and that of CapProducts. Furthermore, BMI, Boshart and Noble noted that CapProducts' questionnaire response included only limited information, that the witness from CapProducts appeared under subpoena and that, as plant superintendent, he had no knowledge of sales activities in the marketplace.

With respect to Canvil's case on injury, BMI, Boshart and Noble submitted that Canvil did not suffer any material injury in the past and that, even if it had, there was no causal link between any injury and the subject goods. BMI, Boshart and Noble submitted that the wholesale sector is divided into two main sectors, specifically, the large wholesale sector and the small wholesale sector, and that each sector is quite distinct and has different dynamics.

Moreover, BMI, Boshart and Noble submitted that there are two different approaches to distribution and marketing. In this connection, they submitted that Canvil had an "old school" approach, which is incoherent and inefficient. In contrast, the "new school" approach of the master distributors involves distribution specialization and value-added services to support the particular needs of the small wholesale market. For example, master distributors offer services such as bar-coding and user-oriented pallet configuration that Canvil is unwilling to perform.

BMI, Boshart and Noble also submitted that a distinction must be made between two different price levels, namely, the import price level and the resale price level. They argued that, in terms of the resale price level, reasonably high gross margins are being realized by those involved in the sale of the subject goods, that there is price stability in the marketplace and that the master distributors have shown price discipline.

BMI, Boshart and Noble contended that a distinction ought to be drawn between the different foreign sources of supply, in particular, Mexico and China. In this context, they noted that lower-priced goods from Mexico were in the market for over 12 years prior to the beginning of the Tribunal's period of inquiry and that there is evidence that they are returning.

BMI, Boshart and Noble concluded that, taking into account the different market segments in which domestic and imported certain pipe fittings compete, the different price levels and the two different sources of imports, there was no past injury.

In support of their case, BMI, Boshart and Noble provided the Tribunal with several analyses that addressed their various arguments, including the results of a survey of supply sources used by small wholesalers and an examination of prices and gross margins relating to BMI and Boshart's sales of selected products. BMI, Boshart and Noble further alleged that Canvil's financial statements indicated serious

variance issues that suggested that its problems relating to factory inefficiencies or unexpected events had nothing to do with dumping.

With respect to the threat of injury, BMI, Boshart and Noble argued that Canvil submitted virtually no evidence on future injury. In their view, the market history over the last three years is the most reliable indicator as to where things are going in the imminent future. They noted that Article 3.7 of the World Trade Organization *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*<sup>9</sup> requires that a determination of threat of injury be based on facts and not merely on allegation, conjecture or remote possibility and that the threat must be clearly foreseen and imminent. BMI, Boshart and Noble argued that this standard has not been met.

In the joint public statement of evidence filed on behalf of BMI and Boshart, Boshart also requested an exclusion for all the subject goods destined for the retail market.

Beijing Beier Plumbing Manufacturing Ltd.

BBPM submitted that the Tribunal has the discretion to find that separate classes of goods exist and to make distinct findings of injury and threat of injury for each of those classes. It argued that, in this case, there were three classes, since pipe nipples, threaded couplings and adaptor fittings each had fundamentally different physical characteristics, end uses, manufacturing processes and margins of dumping.

BBPM submitted that, prior to the period of inquiry, the Canadian market was stable and that Canvil had allowed problems to develop with some of its important clientele because it had become too complacent. Furthermore, BBPM submitted that Canvil did not keep up with the developments that were going on in the pipe fitting industry, namely, the emergence of the master distributors.

BBPM urged the Tribunal to be mindful of Canada's commitments pursuant to Article 3.5 of the *Anti-dumping Agreement*, especially in regard to evaluating factors causing injury that must not be attributed to the dumped imports. In this context, BBPM submitted that Canvil's problem in controlling its costs of production should be considered a non-dumping factor. Another non-dumping factor that the Tribunal should consider is the apparent incoherence of the corporate strategy that exists in the Canvil family of companies.

With respect to market characteristics, BBPM noted that some of the testimony provided during the hearing indicated that price is not the only driver of purchasing decisions, especially for smaller companies. In its view, these types of companies are concerned about non-price services such as the availability of a wide range of product lines in a supplier's "basket of goods" and prompt 24-hour delivery.

With respect to future injury, BBPM submitted that, in light of Article 3.7 of the *Anti-dumping Agreement*, the requirements for a finding of threat of injury do not exist. In support of this argument, BBPM submitted that the master distributors are not price disruptive and that there is no indication that they are going to increase their market share in the future. Moreover, it contended that, as the cost of pipe in China has started to increase, this will lead to an increase in the export price of the subject goods.

---

9. 15 April 1994, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/english/docs_e/legal_e/final_e.htm)> [*Anti-dumping Agreement*].

### Schultz

Schultz argued that there are three classes of goods in this case. Each class has a distinct function in the marketplace and is physically different. In its view, based on the evidence, the injury analysis would be fatally flawed if the Tribunal were to find that only one class of like goods existed.

Schultz contended that the marketplace is essentially divided into two segments, namely, the retail customers and the professional market, with the professional market being serviced by the distributors and, in part, the master distributors. Schultz submitted that the large retailers require that pipe nipples in small lengths be shrink-wrapped and bar-coded to facilitate control over their inventories and rapid check-out for consumers. Some large retail customers also require that deliveries be made to individual retail outlets. Schultz argued that Canvil either cannot or is not willing to perform these functions. In this context, Schultz asserted that it had not encountered any competitive activities from Canvil at any of its large retail customers.

Schultz requested that the Tribunal grant an exclusion for small lengths of pipe nipples, shrink-wrapped and bar-coded, in lengths from close to 12 inches, for sale exclusively to the large retail trade level. At its retail accounts, Schultz had not encountered any offerings of a similar product by Canvil. Insofar as the wholesale/distributor trade level was concerned, Schultz also requested that all pipe nipples in lengths from 18 inches to 72 inches be excluded, since these products are not supplied by Canvil.

## ANALYSIS

### Like Goods

With respect to “like goods”, Canvil submitted that there is one class of like goods because both Canadian and Chinese pipe nipples, threaded couplings and adaptor fittings are made primarily of the same input material (i.e. steel pipe), undergo the same manufacturing process, have the same functional end uses (i.e. to connect two pieces of pipe or other media used to direct the flow of liquid or gaseous substances) and have similar distribution channels, namely, plumbing and electrical master distributors, distributors and retailers. Canvil also relied on the decision by the Binational Panel under Article 1904 of the *United States-Canada Free Trade Agreement* regarding *Certain Solder Joint Pipe Fittings (Binational Panel)*.<sup>10</sup>

BBPM argued that there are three classes of like goods, based on the fact that they have different physical characteristics, end uses, manufacturing processes and margins of dumping. Schultz also argued that there are three classes on the basis of different physical characteristics, function and end uses.

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.

In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods (such as appearance), their method of manufacture, their market characteristics (such as substitutability, pricing and distribution) and whether the goods fulfil the same

---

10. (13 February 1995), CDA-93-1904-11 (Ch. 19 Panel).

customer needs. Furthermore, the Tribunal notes that, in *Solder Joint Pipe Fittings (Binational Panel)*, it was stated in part:

This need for considering all factors is especially important in this case, in which the definition of like goods is shaped, to some extent, by administrative feasibility. With products such as fittings, there are a large number of distinctions that could be drawn. The Tribunal noted six subgroups within the pressure class and five within the drainage class. And it would be impractical to require the Tribunal to define many hundreds of different specific product categories on the grounds, for example, that tees and elbows do not compete with each other.<sup>11</sup>

In the Tribunal's opinion, this case is supportive of a broad rather than a narrow approach to the application of the statutory definition of "like goods". In light of this jurisprudence, the Tribunal is of the view that, in this case, much the same as in *Solder Joint Pipe Fittings (Binational Panel)*, there is the possibility of a large number of individual subgroups of like goods. This makes administrative feasibility a matter that the Tribunal should take into account.

Section 42 of *SIMA* allows the Tribunal to find a single class of "like goods" if, upon conducting a proper analysis of the relevant factors, it determines that each of the domestically produced goods closely resembles all three classes of subject goods, as determined by the Commissioner. The Tribunal is of the view that, in practical terms, the physical origins, characteristics and customer needs regarding like goods makes them more suitable to be considered a single class rather than three classes of goods, notwithstanding that there may not be full substitutability between all the potential subgroups of like goods, in terms of end use, in much the same way as there was not absolute substitutability in *Solder Joint Pipe Fittings (Binational Panel)*. The Tribunal notes that each domestic product is not directly substitutable for all three classes of subject goods. However, the similarities outlined below outweigh this factor and, as mentioned in *Solder Joint Pipe Fittings (Binational Panel)*, complete substitutability is not always a condition precedent to determining that domestic production constitutes one class of "like goods".

In this context, the Tribunal finds that each of the three domestically produced goods (i.e. pipe nipples, threaded couplings and adaptor fittings) have similar physical characteristics, are produced using a similar input material and are produced employing similar manufacturing processes to all three classes of subject goods. Furthermore, the Tribunal finds that each of the three domestically produced goods has similar marketing methods and distribution channels to those of all three classes of subject goods. Moreover, each has similar end uses to and is sold to similar customers as all three classes of subject goods.<sup>12</sup>

Based on the foregoing findings, the Tribunal is of the view that domestically produced pipe nipples closely resemble all three classes of subject goods, that domestically produced threaded couplings closely resemble all three classes of subject goods and that domestically produced adaptor fittings closely resemble all three classes of subject goods. On the same basis, the Tribunal also finds that the three types of domestically produced goods closely resemble each other. In light of this analysis, although the Tribunal finds that the domestically produced pipe nipples, threaded couplings and adaptor fittings are not identical in all respects to the subject goods, the Tribunal finds that the domestically produced goods constitute one class

---

11. *Solder Joint Pipe Fittings (Binational Panel)* at 11-12.

12. Each of the three domestically produced goods is made from carbon steel pipe, which is cut to the appropriate length, then threaded and/or serrated as required. The finished products are sold to master distributors, wholesalers and retailers. These goods are each used as devices to connect pipes or to connect pipes to machines, as well as to connect pipes to hoses for the purpose of transferring gases or liquids.

of like goods for purposes of its injury analysis, because each of the three types of domestically produced goods closely resembles all three classes of subject goods.

With respect to Schultz's argument that there are three classes of like goods, which it supports using the decision of the Federal Court of Canada (the Court) in *Sarco Canada Limited v. Anti-dumping Tribunal*,<sup>13</sup> the Tribunal notes that the Court, in *Sarco*, accepted the Anti-dumping Tribunal's approach to the analysis of like goods, where the Anti-dumping Tribunal stated that:

The problem is not without difficulty, but on consideration the Tribunal has reached the conclusion *that it must reject the narrow approach to the interpretation of the section of the Act under study*. It appears to the Tribunal that the question of *whether goods are "like" is to be determined by market considerations*. Do they compete directly with one another? Are the same consumers being sought? *Do they have the same end-use functionally? Do they fulfill the same need?* Can they be substituted one for the other? While in some cases, dissimilarity in the physical appearance of goods, which are functionally alike, can be such as to create entirely different markets; that is not the case here.<sup>14</sup> [Emphasis added]

Furthermore, Schultz tried to find support for its position by relying on the Tribunal's decision in *Waterproof Footwear*,<sup>15</sup> where the Tribunal stated in part:

[T]he Tribunal finds that all the waterproof footwear that is described by the Commissioner is made of substantially the same materials and components and has essentially the same fundamental end use, *namely, protection of the foot against inclement weather*.<sup>16</sup> [Emphasis added]

In the Tribunal's opinion, the cases cited by Schultz support the approach applied by the Tribunal with respect to its like goods analysis.

### Domestic Industry

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

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

In this context, the Tribunal notes that Canvil's production of like goods comprises over 60 percent of the total domestic production of like goods.<sup>17</sup> Therefore, in accordance with the definition in *SIMA*, the Tribunal is satisfied that Canvil produces a major proportion of the domestic production of like goods and, therefore, constitutes the domestic industry for purposes of section 42. The Tribunal has, however, taken

---

13. [1979] 1 F.C. 247 (F.C.) [*Sarco*].

14. *Ibid.* at 251-52.

15. *Waterproof Footwear and Bottoms of Plastic or Rubber* (8 December 2000), NQ-2000-004 (CITT).

16. *Ibid.* at 8.

17. Tribunal Exhibit NQ-2002-004-07.04 (protected), Administrative Record, Vol. 2.1A at 71.



into account the evidence provided by the other domestic producer, CapProducts,<sup>18</sup> where appropriate throughout its analysis.<sup>19</sup>

## Injury

Section 42 of *SIMA* requires the Tribunal to inquire into whether the dumping in Canada of the subject goods has caused injury or retardation or is threatening to cause injury. Injury is defined in subsection 2(1) as “material injury to a domestic industry”.

Subsection 37.1(1) of the *Special Import Measures Regulations*<sup>20</sup> 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, their effect on prices in the domestic market for like goods and the impact of the dumped goods on the domestic industry, including actual or potential declines in domestic sales, market share, profits and financial performance. Subsection 37.1(3) also requires the Tribunal to 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.

## Volume of Dumped Goods

Between 2000 and 2002, there was a significant increase in the volume of imports of the subject goods from China. More particularly, the volume of imports from China increased more than five-fold, rising from 2 million units in 2000 to 10.7 million units in 2002.<sup>21</sup> Imports from China rose by a further 17 percent in the first quarter of 2003 over the same quarter the previous year. The surge in imports from China over the Tribunal’s period of inquiry completely displaced imports from non-subject countries.<sup>22</sup> These imports from non-subject countries, which, in 2000, originated predominantly in Mexico, declined from millions of units at the beginning of the period of inquiry to less than 200,000 units in 2002, before falling to zero in the first quarter of 2003.<sup>23</sup>

During the period from 2000 to 2002, the apparent market increased by about 19 percent.<sup>24</sup> Over this period, the market share accounted for by imports of the subject goods from China increased four-fold,

---

18. CapProducts was not able to provide detailed financial information because it was acquired, in 2002, by U.S. interests, and the former company records, including financial records, were apparently not transferred to the new owners. As a consequence, CapProducts has not been included in the domestic industry by the Tribunal. However, the Tribunal notes that the testimony provided by the current plant manager of CapProducts, who has been a senior company official under both the former and new owners, makes it abundantly clear that CapProducts’ business was also adversely affected by dumped imports from China throughout the period of inquiry (see *Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 214, 218, 236, 237).

19. The CCRA indicated, in its final determination of dumping, that there are three domestic producers, including TCG Pipe Services Ltd. (TCG). According to the information before the Tribunal, however, TCG is not a producer of like goods (Tribunal Exhibit NQ-2002-004-09.01, Administrative Record, Vol. 3 at 92).

20. S.O.R./84-927.

21. Tribunal Exhibit NQ-2002-004-06.04C, Administrative Record, Vol. 1.1A at 153.

22. *Ibid.* Non-subject country imports, as used here, refer to imports from countries other than the United States. Over the period of inquiry, all imports from the United States were comprised of transfers to domestic producers from related companies in the United States.

23. Tribunal Exhibit NQ-2002-004-07.04C (protected), Administrative Record, Vol. 2.1A at 162.

24. *Ibid.* at 164.

while the share of the market held by Canvil, as well as CapProducts, declined substantially.<sup>25</sup> In effect, the rise in imports from China not only displaced large volumes of domestic sales and all sales of non-subject country imports but also captured all the growth in the domestic market. In the first quarter of 2003, compared to the first quarter of 2002, the market share held by imports from China reached its peak level, as sales by Canvil, as well as by CapProducts, continued to decline and imports from China continued to grow substantially.<sup>26</sup>

The Tribunal notes that, despite the surge in imports from China, parties opposed to an injury finding have argued, among other things, that these imports did not cause injury to Canvil. In their view, competition between Canvil's product and imports from China was "negligible", as goods made by Canvil and imported goods supplied different segments of the market. Specifically, they contended that Canvil's principal customers are the large national wholesalers, while Chinese products supply primarily the master distributors and small general and specialty wholesalers and retailers.<sup>27</sup>

The Tribunal does not accept the proposition that there is little competition between the goods from China and Canvil's like goods. First, the evidence shows that, during the period of inquiry and up to the present, Canvil sold or pursued direct sales to all segments of the market, including master distributors and regional and small wholesalers and retailers.<sup>28</sup> While Canvil's sales to certain customers clearly declined over the period of inquiry, the evidence does not indicate that these declines reflect decisions by Canvil to concentrate its sales in certain market segments over others. On the contrary, the evidence shows that Canvil has tried, and continues to try, to expand its customer base. For example, as recently as December 2002, Canvil made a sales presentation, as it has done annually in the past, to the Octo Buying Group, which represents many wholesalers, including small general and specialty wholesalers and retailers.<sup>29</sup> Canvil also regularly makes presentations to Canaplus, another large buying group whose members include large numbers of small and specialty wholesalers.<sup>30</sup>

Further, the Tribunal notes that the customer base in Canada for Canvil's pipe fittings is much broader than its list of direct accounts might reveal. This is because, when Canvil sells pipe fittings to a customer at one trade level, those pipe fittings may, in turn, be sold by that customer to other trade levels. For example, one of Canvil's largest direct customers is a master distributor, Mueller Flow Control (Mueller), whose own direct customer base includes large and small wholesalers and retailers. When selling Canvil's products, Mueller's marketing activities expand the Canadian customer base for Canvil's products,

---

25. *Ibid.* at 165.

26. *Ibid.*

27. While the trade levels mentioned here were alluded to by all participants in the Tribunal's proceedings, there is no precise definition for any of these trade levels. Indeed, in practice, it may be difficult to distinguish between, for example, a large wholesaler and a large master distributor. However, this difficulty is not critical to the analysis in this section.

28. *Transcript of Public Hearing*, Vol. 1, 17 June 2003 at 12-14; Manufacturer's Exhibit A-04 (protected) at 30, Administrative Record, Vol. 12; Tribunal Exhibit NQ-2002-004-RI-01A (protected), Administrative Record, Vol. 10 at 5; *Transcript of Public Hearing*, Vol. 1, 17 June 2003 at 128; *Transcript of Public Hearing*, Vol. 3, 19 June 2003 at 423, 437.

29. Manufacturer's Exhibit A-10 at 1, 2, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 344.

30. *Ibid.*

beyond Canvil's own direct accounts.<sup>31</sup> Similarly, Canvil's sales to large national wholesalers, such as Emco and Wolseley Plumbing Group, may be channelled through other trade levels, again expanding the breadth and diversity of the customer base for Canvil's goods.<sup>32</sup>

All told, the evidence shows that Canvil has a diverse direct customer base, which currently amounts to over 134 accounts across Canada.<sup>33</sup> When the sale of Canvil pipe fittings by these 134 accounts to their own customers is considered, it becomes readily apparent that Canvil's pipe fittings are distributed widely in Canada and are available in all market segments.

The Tribunal notes that BMI supported its contention that Canvil is not a major supplier to small wholesalers by reporting the results of an informal telephone survey that it conducted, in which Canvil was identified as a primary or secondary supplier by only 43 of 129 respondents.<sup>34</sup> In the Tribunal's view, these results do not contradict the above evidence regarding the breadth and scope of Canvil's sales and marketing efforts. On the contrary, they confirm that Canvil has a direct presence in the small wholesaler segment.

The Tribunal notes that the evidence shows that pipe fittings are essentially a commodity product,<sup>35</sup> that the Chinese and domestic products are generally of comparable quality<sup>36</sup> and that domestic and imported pipe fittings are physically fully interchangeable.<sup>37</sup> In the Tribunal's opinion, for all practical purposes, the imported and domestic products are virtually indistinguishable. As a result, different distributors try to differentiate themselves in the minds of potential customers on the basis of service, packaging, product range, etc. However, regardless of the distributor, it is fundamentally the same product that is being sold for the same end-use applications. In this sense, every imported Chinese pipe fitting that is sold or offered for sale ultimately competes directly with domestically produced pipe fittings, in the Tribunal's opinion.

In sum, the Tribunal finds that Canvil's goods are marketed to customers at all trade levels and that it is firmly committed to this business and marketing model.<sup>38</sup> The Tribunal also finds that, over the period of inquiry, there was a substantial increase in the volume of imports of the subject goods. In the Tribunal's view, the subject goods competed with Canvil's goods and displaced its sales at all trade levels, as well as sales by CapProducts and suppliers from non-subject countries, to a significant degree.

### **Effect of the Dumped Goods on Prices**

The Tribunal notes that this section examines the average value of pipe fittings as a single class, as well as, where appropriate, the prices of the specific types of fittings that make up this class, namely, pipe nipples, adaptor fittings and threaded couplings. The Tribunal also notes that the values for pipe fittings closely track the values for pipe nipples. This is because, during the period of inquiry, over 90 percent of the

---

31. According to the evidence, Canvil avoids selling to the customers of its customers and, hence, customer overlap, if any, is minimal (*Transcript of In Camera Hearing*, Vol. 2, 18 June 2003 at 93, 94).

32. *Transcript of Public Hearing*, Vol. 3, 19 June 2003 at 401.

33. *Transcript of Public Hearing*, Vol. 1, 17 June 2003 at 128.

34. *Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 272.

35. *Transcript of Public Hearing*, Vol. 1, 17 June 2003 at 140.

36. *Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 267, 268; *Transcript of Public Hearing*, Vol. 1, 17 June 2003 at 139; *Transcript of Public Hearing*, Vol. 3, 19 June 2003 at 427.

37. Tribunal Exhibit NQ-2002-004-06.04A, Administrative Record, Vol. 1.1A at 140.

38. *Transcript of In Camera Hearing*, Vol. 1, 17 June 2003 at 35, 36, 38-40.

total volume of imports of pipe fittings from China<sup>39</sup> were pipe nipples and about 70 percent of domestic production of pipe fittings were pipe nipples.<sup>40</sup>

In 2001, when the volume of imports of the subject goods recorded their largest increase during the period of inquiry, rising by 268 percent over the previous year, the average landed unit value of these imports declined substantially, falling by around 13 percent compared to the average landed unit value in 2000. Although the landed unit value of the subject goods increased somewhat in 2002 compared to 2001, it declined again in the first quarter of 2003 and remained below the level at which the subject goods first entered the market in 2000.<sup>41</sup>

According to the Tribunal's statistical data, at their entry point in 2000, the average landed value of imports of the subject goods was more than 20 percent below Canvil's average selling value.<sup>42</sup> By the first quarter of 2003, that price gap had increased to more than 40 percent, as Canvil's selling prices moved up over the period, while the landed prices of imports from China fell.

Looking to average resale prices of imports from China,<sup>43</sup> the Tribunal notes that initially, in 2000, the average resale price of the subject goods was marginally lower than Canvil's average selling price. Thereafter, however, as with the above comparison on landed import values, the average resale prices of imports from China fell as Canvil's average selling values rose. As a result, in the period after 2000, average resale prices of imports from China ranged from 10 to 30 percent below Canvil's average selling prices for pipe fittings.<sup>44</sup>

In addition to the above aggregate data, the Tribunal also gathered more specific data on average selling prices for two specific pipe nipple products.<sup>45</sup> The price trends for these products generally followed the same pattern as the average prices for sales of all pipe fittings. Domestic prices rose somewhat over the period of inquiry, while prices of imports from China declined in 2001 compared to 2000 and remained at or below domestic prices through the balance of the period of inquiry.<sup>46</sup> Data were also collected on the selling

---

39. Tribunal Exhibit NQ-2002-004-06.01A, Administrative Record, Vol. 1.1 at 104.21; *supra* note 21.

40. About 50 percent of Canvil's production and almost 100 percent of CapProducts' production comprise pipe nipples (*Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 207).

41. Tribunal Exhibit NQ-2002-004-06.01B, Administrative Record, Vol. 1.1A at 159.

42. Tribunal Exhibit NQ-2002-004-07.01C (protected), Administrative Record, Vol. 2.1A at 168, 169.

43. Average Chinese resale prices are the weighted average unit values of Chinese goods that are sold in the Canadian market.

44. *Supra* note 42 at 169. The Tribunal notes that this pattern of underpricing by China was even more significant for CapProducts than for Canvil.

45. For example, black standard pipe nipple 1/2 in. x 2 in. and 1 in. x 2 in. Specific product information was also requested in the Tribunal's questionnaires regarding threaded couplings and adaptor fittings. The data on couplings are very limited and do not allow for any trends to be discerned for specific products, although prices of imports from China were considerably lower than Canvil's prices in the one-time period reported. Chinese adaptor fittings represented less than 4 percent of the total volume of imports of the subject goods. While the average value of Chinese adaptor fittings was generally lower than Canvil's average value during the period of inquiry, the prices of the specific Chinese adaptor products examined were higher than Canvil's prices (Tribunal Exhibit NQ-2002-004-07.02A (protected), Administrative Record, Vol. 2.1 at 100, 101; *supra* note 42 at 20, 21, 162; Tribunal Exhibit NQ-2002-004-07.03C (protected), Administrative Record, Vol. 2.1A at 62.40).

46. Tribunal Exhibit NQ-2002-004-07 (protected), Administrative Record, Vol. 2.1 at 22.

prices for the two pipe nipple products at certain accounts. Here again, the figures show that the lowest selling prices to these accounts were, with a few exceptions, for the imports of the subject goods.<sup>47</sup>

In addition to the foregoing quantitative information on prices, the Tribunal gathered qualitative information from purchasers in its questionnaires on the price and non-price factors that affected their choice of suppliers of pipe fittings. According to this information, the four most important factors affecting choice of suppliers were product quality, consistency, technical specifications and price, in descending order of importance. The majority of purchasers considered the subject goods and domestic goods to be “comparable” on the three non-price factors.<sup>48</sup> However, over 80 percent of purchasers indicated that, on price, the subject goods had the advantage over domestic goods.<sup>49</sup> In the Tribunal’s opinion, if the non-price factors are generally equal, then price clearly becomes the deciding factor in purchasers’ buying decisions.

The Tribunal’s witnesses, namely, witnesses from Thorndale, Emco and Home Hardware, gave testimony that is substantially consistent with the qualitative and quantitative information gathered through the Tribunal’s questionnaires. In terms of quality, these witnesses confirmed that Canvil’s products were comparable to or better than imports from China.<sup>50</sup> As for price, this was one reason why Home Hardware chose to source directly from China<sup>51</sup> and why it plans to switch away from China to other low-cost sources if prices of imports from China rise because of this anti-dumping action.<sup>52</sup> Emco also clearly stated that there was a price differential between the subject imports and domestic goods,<sup>53</sup> although, in its case, this had not affected its sourcing decisions because pipe fittings were such a small part of its overall business.

According to the witness from Thorndale, the company had been a large importer of pipe nipples from Mexico in the 1990s up until the arrival of the imports from China in 2000. Prior to the arrival of imports from China, Thorndale had competed with the domestic producers in a stable market. He testified that, in some cases, Thorndale’s prices were slightly lower than Canvil’s prices, but they were frequently the same for particular pipe nipple products.<sup>54</sup> However, in 2000, imports from China entered the Canadian market at prices that were 40 to 50 percent below Thorndale’s landed cost for its imports from Mexico.<sup>55</sup> Thorndale testified that the magnitude of the price undercutting by imports from China upon their entry in the Canadian market in 2000 drove it out of the market and that it decided to exit the pipe nipple business in 2000.<sup>56</sup>

The Tribunal notes that Canvil presented evidence that indicates that its combined value of discounts and rebates, as a percentage of sales revenue, doubled between 2000 and the first quarter of 2003.<sup>57</sup> In the fall of 2002, Canvil announced a 7 percent surcharge to offset rising costs,<sup>58</sup> which it could

---

47. *Ibid.* at 24, 25.

48. Tribunal Exhibit NQ-2002-004-06-04A, Administrative Record, Vol. 1.1A at 142.

49. *Ibid.* at 144.

50. *Transcript of Public Hearing*, Vol. 3, 19 June 2003 at 386, 403, 404, 437.

51. *Transcript of Public Hearing*, Vol. 3, 19 June 2003 at 437.

52. Tribunal Exhibit NQ-2002-004-28.02, Administrative Record, Vol. 5.4 at 47.

53. However, for Emco, this was not enough to make it switch from domestic pipe fittings to imports, because pipe nipples represent a minuscule part of its business (*Transcript of Public Hearing*, Vol. 3, 19 June 2003 at 403).

54. *Transcript of Public Hearing*, Vol. 3, 19 June 2003 at 389.

55. *Ibid.* at 388.

56. *Ibid.* at 375.

57. Manufacturer’s Exhibit A-06 (protected) at 45, Administrative Record, Vol. 12.

58. Manufacturer’s Exhibit A-08 (protected) at 57, 83, Administrative Record, Vol. 12.

not implement because of prices of the subject goods. In fact, one of Canvil's most important long-time customers, a large national distributor, informed it that the surcharge might cause it to switch to imports if implemented.<sup>59</sup> Canvil also provided evidence to illustrate the price undercutting by imports of the subject goods at specific accounts that switched to imports.<sup>60</sup> The specific evidence covers price suppression and undercutting at all trade levels, including master distributors, large and small wholesalers and retailers. The Tribunal finds that the substance of the evidence provided by Canvil is convincing overall.<sup>61</sup> What the evidence indicates about the undercutting and suppressing effect of prices of the subject goods is consistent with the evidence of the Tribunal's witnesses, as well as the testimony of the witness from the other domestic producer, CapProducts.<sup>62</sup>

The Tribunal notes that two of the major importers of the subject goods in this case, BMI and Boshart, do not deny that the landed values of imports from China are below average domestic selling prices. However, they contend that, for the purpose of analyzing the effect of prices of imports from China in Canada, the relevant prices are resale prices, not landed values.<sup>63</sup> In this context, they asserted that, in 2000-2001, when they began importing from China, the prices at which they sold the subject goods to their customers, i.e. their resale prices, remained more or less the same as they had been prior to 2000-2001. Although their costs went down because the price of imports from China was lower than that of their previous import sources, such as Mexico, they did not pass the difference on to their customers. Rather, they kept the difference and, thereby, increased their margins. This reflected their business policy of "buying low and selling high".<sup>64</sup> They argued that, since the resale price of the subject goods was the same as the price of other imported goods with which the industry had already been competing for several years prior to the arrival of imports from China, these resale prices could not have caused injury.

The Tribunal does not accept the proposition that resale values, not landed values, are the only relevant prices for evaluating the effect of dumped imports of the subject goods. Both values are relevant, since the domestic industry sells to all trade levels. In fact, according to the evidence, master distributors, which are the major importers, used to be major customers of the domestic industry.<sup>65</sup> The price comparisons that master distributors (and others) make when they decide between buying foreign or domestic pipe fittings is based on the landed value of imports.<sup>66</sup> Indeed, the witness for BMI testified that, if Canvil were to offer him the same price as his Chinese suppliers, he would try to work harder to be a master distributor for Canvil.<sup>67</sup> The witness from Home Hardware also testified that the imports of the subject goods are attractive because they result in a larger margin, which allows Home Hardware to cover other

---

59. *Ibid.* at 57.

60. Manufacturer's Exhibit A-08 (protected) at 56-58 and Attachments 4-6 and 8 (protected), Administrative Record, Vol. 12.

61. There were some questions raised concerning the details provided by Canvil pertaining to certain allegations relating to lost sales at Noble. However, even if the specifics of these allegations are incorrect (and the Tribunal makes no finding on this), the essential point of the allegations, namely, that Noble's sourcing decisions are driven by price, are reflected in Noble's response to the Tribunal's purchasers questionnaire on market characteristics (Tribunal Exhibit NQ-2002-004-21.10, Administrative Record, Vol. 5.2 at 177) and in testimony before the Tribunal (*Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 351).

62. *Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 209, 210, 230.

63. *Ibid.* at 270, 271.

64. *Ibid.* at 271.

65. *Supra* note 58 at 55, 56; Manufacturer's Exhibit A-04 (protected) at 30, Administrative Record, Vol. 12.

66. *Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 309, 310.

67. *Ibid.* at 315, 316.

costs and remit any remaining balance as dividends to its members at year end.<sup>68</sup> On the basis of the evidence, the Tribunal is of the opinion that the wide spread, over the period of inquiry, between domestic selling prices and the landed (as well as resale) values of dumped imports from China, strongly encouraged Canadian buyers to select China over all other domestic and foreign sources of pipe fittings.<sup>69</sup>

Moreover, in the Tribunal's opinion, if the effects of the dumping allowed the gross margins of importers/distributors such as BMI and Boshart to increase, this also provides them with a competitive advantage due to dumping. This is because the funds from higher gross margins can be used to finance and improve a variety of ancillary business activities, such as marketing, packaging, delivery and distribution, that can help them to win business from their competitors. Indeed, BMI and Boshart have both asserted that their strengths in these areas have helped them to increase their businesses.

Finally, with respect to evidence submitted by BMI and Boshart to show that their resale pricing did not change over the period of inquiry,<sup>70</sup> the Tribunal notes that BMI and Boshart represented less than 40 percent of total imports of the subject goods over the period of inquiry.<sup>71</sup> Even if their resale prices before and after the entry of imports from China were flat, as they claim,<sup>72</sup> there is no evidence to suggest that this was also true for other importers. On the contrary, the statistical data collected by the Tribunal show that the average resale price for total imports of the subject goods declined over the period of inquiry,<sup>73</sup> implying substantial declines in the resale prices of importers that chose not to be parties to the proceedings.

The Tribunal notes that BMI and Boshart also argued that, while price is a consideration, it is not the most important consideration in their buying decisions. In this connection, they provided evidence chronicling a long list of problems that they have encountered in the past with Canvil concerning service, marketing, distribution, quality, reliability, delivery lead times, fill rates, bar-coding, palletising and packaging.<sup>74</sup> Noble also reported experiencing some of these problems.<sup>75</sup>

The Tribunal notes that Canvil has indicated that it has attempted to address these problems to the best of its ability.<sup>76</sup> According to Canvil, it is prepared to meet special customer needs, for example, on

---

68. *Transcript of In Camera Hearing*, Vol. 3, 19 June 2003 at 183, 184.

69. Tribunal Exhibit NQ-2002-004-07.02C (protected), Administrative Record, Vol. 2.1 at 173 (threaded couplings); Tribunal Exhibit NQ-2002-004-07.03C (protected), Administrative Record, Vol. 2.1A at 62.40 (adaptor fittings).

70. Importers' Exhibits C-03, C-05, F-06 and F-08, Administrative Record, Vol. 13.

71. Tribunal Exhibit NQ-2002-004-07.01A (protected), Administrative Record, Vol. 2.1 at 80.2; responses to Tribunal questionnaires.

72. The Tribunal does not find that this pricing information submitted by BMI and Boshart is clear. Although the evidence indicates flat pricing on selected products, between 2000 and the first quarter of 2003, it is not apparent where these products were sourced. For example, there is nothing on the record to indicate that BMI either imported or supplied Mexican goods in 2000. Therefore, the evidence does not support any conclusions or comparisons relating to the transition of their sourcing from Mexico to China. Boshart did sell Mexican pipe fittings in 2000 and the subject goods thereafter. However, the average resale price for the imports from Mexico reported by Boshart in the Tribunal's questionnaire (Tribunal Exhibit NQ-2002-004-16.08H (protected), Administrative Record, Vol. 6 at 101.66, 101.67) is considerably higher than any of the resale prices reported in Boshart's specific evidence on this issue (Importer's Exhibit F-06, Administrative Record, Vol. 13).

73. Tribunal Exhibit NQ-2002-004-06.01A, Administrative Record, Vol. 1.1 at 104.9.

74. Importer's Exhibits F-02 and F-04, Administrative Record, Vol. 13.

75. Importer's Exhibit G-02 at 5, 6, Administrative Record, Vol. 13.

76. *Transcript of Public Hearing*, Vol. 1, 17 June 2003 at 155-158, 160.

packaging, palletising and bar-coding,<sup>77</sup> if the customer is prepared to pay the extra costs for these services.<sup>78</sup> As far as product quality is concerned, Canvil's return rates from unsatisfied customers are quite low.<sup>79</sup> On some products, such as adaptor fittings, Canvil's products are superior to the Chinese goods.<sup>80</sup> Overall, the responses to the Tribunal's questionnaires, as well as the testimony of several witnesses, indicate that, in terms of quality, as well as other non-price factors, Canvil's products are equivalent to or better than the Chinese products.<sup>81</sup> In the Tribunal's view, many of the problems identified are typical of issues that arise in the normal ebb and flow of supplier-customer business relations. The Tribunal is not convinced that the problems in this case were necessarily pervasive or exceptional.

The Tribunal notes that there is considerable evidence that importers and purchasers switched to Chinese products because of price. This includes the testimony of Home Hardware, Noble, Thorndale, BMI and Boshart, as well as the testimony of witnesses for Canvil, regarding accounts such as the Co-op fédéré.<sup>82</sup> The Tribunal believes that, while price may not be the only factor, it is the principal factor. In this connection, the evidence shows that BMI and Boshart were not aware of any quality, distribution or service problems with CapProducts. Yet, they apparently did not make any inquiries about the possibility of sourcing from this domestic producer before they switched from Canvil's products to the subject goods.<sup>83</sup> According to the witness for Boshart, there was no reason to consider CapProducts because prices of imports from China were significantly cheaper.<sup>84</sup>

Further, the evidence shows that, where Canvil's prices are cheaper than prices of imports from China, as they appear to be for adaptor fittings, Boshart readily uses Canvil as a primary supplier.<sup>85</sup> As noted previously, the witness for BMI indicated that, if the price were right, the company would be working harder to become Canvil's best master distributor. In the Tribunal's opinion, this evidence illustrates well the importance of price in the purchasing decision.

The Tribunal notes that BMI's, Boshart's and Noble's dealings with Canvil are complicated by the fact that Canvil sells to all trade levels and that its products are also supplied to the market through an affiliated distributor, Mueller. These parties indicated that they consider this distribution strategy by Canvil

---

77. The issue of bar-coding was raised primarily in the context of supplying the retail sector. The Tribunal does not consider this issue to be of pivotal importance to its injury analysis. Canvil offers bar codes to those customers that want and are willing to pay for the service (*Transcript of Public Hearing*, Vol. 1, 17 June 2003 at 102). In this context, the Tribunal notes that the retail sector comprises a small percentage (5 to 10 percent) of the overall market for pipe fittings (*Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 359), that BMI does not sell any pipe nipples with bar-coding (*Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 284) and neither does Boshart, except for one product line and this they do in-house (*Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 281, 319). Moreover, the witness from Home Hardware indicated that the company sold pipe fittings both with and without bar codes.

78. *Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 101-102.

79. Tribunal Exhibit NQ-2002-004-RI-01A (protected), Administrative Record, Vol. 10 at 6.

80. *Transcript of Public Hearing*, Vol. 1, 17 June 2003 at 183, 184.

81. *Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 293, 296, 309; *Transcript of Public Hearing*, Vol. 3, 19 June 2003 at 350, 351, 386, 403, 404, 437.

82. *Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 308; *Transcript of Public Hearing*, Vol. 3, 19 June 2003 at 376, 377, 426, 427, 437; *Transcript of In Camera Hearing*, Vol. 2, 18 June 2003 at 102; *Transcript of In Camera Hearing*, Vol. 3, 19 June 2003 at 164.

83. *Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 308, 309.

84. *Ibid.*

85. *Ibid.* at 309, 310. As noted, the quality of Chinese adaptor fittings was also a problem.



to be “incoherent”. In their view, it makes any distributor relationship between them and Canvil problematic, as Canvil is a competitor to their own pipe fitting business. Canvil indicated that its policy is to avoid knowingly competing with its customers and, to the best of its knowledge, such competition rarely happens.<sup>86</sup> The Tribunal notes that, although BMI and Boshart have indicated concern in this context about competition with Canvil, they have also argued elsewhere in their submissions that their competition with Canvil is negligible. The Tribunal also notes that the evidence did not indicate any similar concerns relating to dealings with CapProducts.

In sum, the Tribunal finds that the price of dumped imports from China has both undercut and suppressed the price of like goods by the domestic industry and that, although other factors may have made some contribution, price is the main driving factor behind the surge in imports from China.

### Impact on the Domestic Industry

The Tribunal will now address the question of how the surge in imports from China at significantly dumped prices has affected the performance of the domestic industry. In this regard, the evidence shows that Canvil’s production,<sup>87</sup> sales volumes, sales revenues and market shares<sup>88</sup> declined significantly between 2000 and 2002. Although Canvil’s production increased marginally in the first quarter of 2003 over the same period in 2002, its sales volume and market share continued to decline. Moreover, from 2000 to the first quarter of 2003, Canvil operated at low and decreasing capacity utilization levels,<sup>89</sup> although some capacity was added in the latter part of the period.<sup>90</sup>

Canvil’s income statement for domestic sales of like goods indicates that Canvil began losing money on both a net income and a gross margin basis after 2000. These losses have increased continuously and significantly through the first quarter of 2003.<sup>91</sup> Indeed, according to Canvil’s plant manager, the company is losing money on every pipe nipple and threaded coupling produced, and the return on adaptor fittings has been severely squeezed.<sup>92</sup> Canvil’s comptroller described Canvil’s deteriorating financial situation as “dangerous” and getting “worse” based on the results for the first quarter of 2003.<sup>93</sup>

The Tribunal notes that an examination of Canvil’s financial statements indicates that the primary cause of its deteriorating operating performance over the period of inquiry was rising costs rather than decreasing revenues. For example, between 2000 and 2002, Canvil’s average unit cost of goods sold rose by some 30 percent, while its average unit revenues remained more or less unchanged.<sup>94</sup> According to Canvil’s general manager, increases in pipe costs and rising energy costs were significant factors affecting total costs over the period.<sup>95</sup> To illustrate the magnitude and progression of the increase in pipe costs, Canvil submitted invoices for pipe purchases that it had made in 2001, 2002 and 2003.<sup>96</sup> All told, Canvil’s comptroller

---

86. *Transcript of Public Hearing*, Vol. 1, 17 June 2003 at 193, 194.

87. *Supra* note 17.

88. *Supra* note 23 at 164, 165.

89. Tribunal Exhibit NQ-2002-004-07.04B (protected), Administrative Record, Vol. 2.1A at 160.

90. *Ibid.*

91. Tribunal Exhibit NQ-2002-004-07.04A (protected), Administrative Record, Vol. 2.1A at 138.

92. Manufacturer’s Exhibit A-03 at 31, Administrative Record, Vol. 11.

93. Manufacturer’s Exhibit A-06 (protected) at 40, Administrative Record, Vol. 12.

94. *Ibid.* at 41.

95. Manufacturer’s Exhibit A-04 (protected) at 31, Administrative Record, Vol. 12.

96. *Ibid.* at 34-36.

estimated that such cost increases, in the face of suppressed prices and revenue, had generated losses by Canvil approaching \$3 million<sup>97</sup> over the period.

Parties opposed to an injury finding did not dispute that Canvil achieved poor operating results over the period of inquiry. Rather, they argued that Canvil's weak performance was attributable to factors other than dumping.

In this connection, they first submitted that the cost of pipe simply followed normal cyclical patterns during the period of inquiry, was not exceptionally high and, in fact, since April 2003, was falling back to lower levels. In support of this contention, they produced information from trade publications on the cost of pipe in the United States.<sup>98</sup> On this issue, the Tribunal considers Canvil's invoices on its actual purchase costs of specific grades and quantities of pipe from its Canadian supplier to be more relevant to the Tribunal's injury analysis than average prices for broad categories of pipe derived from U.S. publications. Moreover, Canvil's evidence concerning pipe costs is generally consistent with the testimony provided by CapProducts<sup>99</sup> and Emco.<sup>100</sup>

Second, BMI, Boshart and Noble raised questions about the cost allocations that Canvil made in reporting its financial results for like goods and other goods that it produces. In particular, they contended that Canvil had overallocated certain costs to like goods and underallocated costs to other goods. The Tribunal notes that, during the hearing, Canvil's comptroller provided a detailed explanation of the basis for the allocations that were made between like goods and other goods in Canvil's financial statements. This explanation revealed, among other things, that like goods went through more production processes than other goods and, therefore, consumed more overhead and labour than other goods. Accordingly, like goods warranted a higher allocation of overhead and labour costs than their ratio of production to other goods might suggest.<sup>101</sup> The Tribunal is not convinced that the allocations made by Canvil are unreasonable.

Third, BMI, Boshart and Noble noted that Canvil's 2001 and 2002 financial statements for total company operations contained information on forecasts for standard operating costs and variances from these forecasts.<sup>102</sup> In their view, some of the indicated variances from standard costs were large and inexplicable and showed that Canvil was a mismanaged company whose costs were "out of control". The Tribunal notes that the standard costs and variances apply to Canvil's combined production of like and other goods, which limits their relevance.<sup>103</sup> This means that it could well be that some or all reported variances are the result of issues relating to the other goods that Canvil produces.<sup>104</sup> In any event, variations from standard costs are not, in and of themselves, unusual. Further, they could well be, and often are, caused by external factors beyond the control of management. For these reasons, the Tribunal is not convinced that these variances indicate a significant cause of injury to Canvil, apart from the injury caused by dumping.

---

97. *Ibid.* at 41, 42.

98. Importer's Exhibit C-09, Administrative Record, Vol. 13.

99. *Transcript of Public Hearing*, Vol. 3, 19 June 2003 at 236.

100. *Ibid.* at 412.

101. *Transcript of Public Hearing*, Vol. 1, 17 June 2003 at 26-31.

102. Tribunal Exhibit NQ-2002-004-10.02 (protected), Administrative Record, Vol. 4 at 109-111.

103. About two-thirds of Canvil's production is comprised of other goods (*supra* note 17 at 71, 127).

104. The Tribunal notes that the issue of variances was not raised with the witnesses for Canvil during the course of the hearing. Consequently, Canvil has not had the opportunity to provide an explanation.

Parties opposed to an injury finding also alleged that intra-industry competition was to blame for Canvil's poor performance during the period of inquiry. In this connection, they alluded to sales at certain accounts that Canvil had allegedly lost to CapProducts. On this matter, the Tribunal notes that both Canvil and CapProducts readily admit to engaging each other in competition in the marketplace, often for the same accounts.<sup>105</sup> According to the witness from CapProducts, from year to year, customers often switched some or all pipe fitting purchases between Canvil and CapProducts. As the two companies were similar on "manufacturing and costs", this competition was "head to head"<sup>106</sup> with alternating wins and losses for each, when both were bidding for a customer. However, according to the witness from CapProducts, whenever importers and the two domestic producers were involved in the bidding, the importers would win every time based on their price.<sup>107</sup> This is consistent with the evidence concerning import prices discussed above.

The Tribunal notes that the combined domestic sales volumes of Canvil and CapProducts declined over the period of inquiry. Clearly, any competition between the two was for a smaller and smaller piece of the pie. In addition, CapProducts appears to have had a relatively low profile in the domestic market in the past few years. One witness expressed the view that they had "fallen off the earth with respect to their sales coverage".<sup>108</sup> The evidence also shows that, following CapProducts' acquisition by U.S. interests in 2002, its domestic sales of pipe fittings have fallen substantially as a percentage of total sales because of a sharp rise in exports to the United States. In the Tribunal's opinion, this evidence further indicates that Canvil's poor performance over the period of inquiry cannot be attributed to intra-industry competition.

The Tribunal notes that Canvil is achieving poor financial results only in regard to its domestic sales of like goods. It is, and was over the period of inquiry, profitable on its export sales of like goods to the United States where, according to the evidence, prices are much better than in Canada.<sup>109</sup> Moreover, on a combined basis, all the other types of fittings and products that Canvil manufactures have been profitable at the same time as Canvil has lost money on its domestic sales of like goods. In the Tribunal's opinion, this further reinforces the view that Canvil's problems on like goods are not of its own making, but rather caused by the surge in heavily dumped imports from China since 2000.

In sum, the Tribunal concludes from the evidence provided that Canvil has underutilized its capacity, has lost production, sales volumes and market share, and has suffered suppressed revenues and substantial financial losses. While other factors may have contributed to this situation, the Tribunal considers that the dumped imports from China caused injury to Canvil that is material.<sup>110</sup>

---

105. *Transcript of Public Hearing*, Vol. 1, 17 June 2003 at 166; *Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 241.

106. *Transcript of Public Hearing*, Vol. 2, 18 June 2003 at 218.

107. *Ibid.* at 241.

108. *Ibid.* at 344.

109. On March 5, 2002, the United States imposed safeguard measures on carbon and alloy fittings from China in the form of increases in duties of 13 percent, 10 percent and 7 percent *ad valorem* in the first, second and third years of the measure, respectively.

110. The injury is material whether viewed on the basis of Canvil's production for domestic consumption or total production, in the Tribunal's opinion.

## Exclusions

It is well established that the Tribunal has the discretion to grant exclusions under subsection 43(1) of *SIMA*.<sup>111</sup> The Tribunal has granted product exclusions in circumstances when, for instance, the domestic industry does not produce the particular product.<sup>112</sup> The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods,<sup>113</sup> whether the domestic industry is an “active supplier” of the product or whether it normally produces the product.<sup>114</sup>

Both Schultz and Boshart have requested exclusions for the subject goods destined for the retail market. Specifically, Boshart has requested that the Tribunal grant an exclusion for all the subject goods destined for the retail market, whereas Schultz has requested an exclusion for pipe nipples only, in lengths from “close” to 12 inches, shrink-wrapped and bar-coded, for sale exclusively to the large retail trade level. Additionally, Schultz requested an exclusion for pipe nipples from 18 inches to 72 inches destined for the wholesale/distributor trade level.

With respect to these exclusions, both Schultz and Boshart contend that there is no competition between them and Canvil for these particular products at these particular trade levels. Their arguments are based on the allegation that Canvil does not have the ability to respond quickly to certain customers’ demands, such as 24-hour delivery, bar-coding capabilities and point-of-sale packaging, whereas they can meet these needs. In this context, the Tribunal finds that the requested exclusions are not warranted, on the basis that there is evidence on the record which indicates that Canvil has like products that compete at all trade levels. Furthermore, the Tribunal notes that there is evidence that Canvil can accommodate some or all packaging, bar-coding and delivery requirements. Lastly, the Tribunal notes that the evidence does not indicate that Canvil does not produce the specific dimensions of pipe nipples referred to in the requests for exclusion. For these reasons, the Tribunal denies the requests for exclusion in respect of the retail market by both Schultz and Boshart.

With respect to Schultz’s second request for exclusion for pipe nipples from 18 inches to 72 inches, destined for the wholesale/distributor trade level, the Tribunal finds that Schultz did not provide sufficient evidence to convince the Tribunal that Canvil does not produce and supply these particular goods at this trade level. Therefore, the Tribunal also denies this request.

Both of the above parties relied on the Tribunal’s decision in *Solder Joint Pipe Fittings*<sup>115</sup> as the legal underpinning for their requests involving the retail segment of the market, since, in that case, the Tribunal granted an exclusion for products destined for the air-conditioning and refrigeration (ACR) market. Both parties argue that the circumstances in both cases are analogous. The Tribunal notes that, in *Solder Joint Pipe Fittings (CITT)*, the Tribunal stated that the domestic industry did not claim that it was being injured by the excluded goods and that it was not clear from the evidence whether any of the domestic producers made those goods. The Tribunal, in that case, found that the excluded goods were clearly

---

111. *Certain Cold-rolled Steel* (13 July 1994), CDA-93-1904-09 (Ch. 19 Panel) at 54. See, also, *Hetex Garn A.G. v. Anti-dumping Tribunal*, [1978] 2 F.C. 507 (C.A.).

112. See, for example, *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (2 July 1999), NQ-98-004 (CITT).

113. See, for example, *Stainless Steel Round Bar* (4 September 1998), NQ-98-001 (CITT) [*Round Bar*].

114. *Round Bar*.

115. *Certain Solder Joint Pressure Pipe Fittings* (18 October 1993), NQ-93-001 (CITT) [*Solder Joint Pipe Fittings (CITT)*].

distinguishable in terms of their dimensions, as well in their special packaging and labelling for the ACR market.

With respect to both Schultz's and Boshart's exclusion requests for the retail sector of the market, the Tribunal is of the opinion that the facts in this case are distinguishable from those in *Solder Joint Pipe Fittings (CITT)*. In particular, the evidence indicates that Canvil has been injured by the imports from China at all trade levels, including at the retail market level. Furthermore, the evidence indicates that Canvil does produce goods that closely resemble the subject goods being sold to the retail market and that it has the capability to provide bar-coding, special packing and other particular services.<sup>116</sup> For these reasons, the Tribunal is of the opinion that the basis for the exclusion granted in *Solder Joint Pipe Fittings (CITT)* does not apply in this case.

## CONCLUSION

For the foregoing reasons, the Tribunal finds that the subject goods have caused material injury to the domestic industry and that no exclusions are warranted.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Zdenek Kvarda  
Zdenek Kvarda  
Member

Ellen Fry  
Ellen Fry  
Member

---

116. *Transcript of Public Argument*, 20 June 2003 at 17-18.