



Ottawa, Tuesday, December 23, 2003

Inquiry No. NQ-2003-001

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

**CERTAIN STRUCTURAL TUBING ORIGINATING IN OR EXPORTED FROM
THE REPUBLIC OF KOREA, THE REPUBLIC OF SOUTH AFRICA AND THE
REPUBLIC OF TURKEY**

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 structural tubing known as hollow structural sections (HSS) made of carbon and alloy steel, welded, in sizes up to and including 16.0 inches (406.4 mm) in outside diameter (O.D.) for round products and up to and including 48.0 inches (1,219.2 mm) in periphery for rectangular and square products, commonly but not exclusively made to ASTM A500, ASTM A513, CSA G.40.21-87-50W and comparable specifications, originating in or exported from the Republic of Korea, the Republic of South Africa and the Republic of Turkey, has caused injury or retardation or is threatening to cause injury to the domestic industry.

This inquiry is made pursuant to a preliminary determination made by the Commissioner of the Canada Customs and Revenue Agency received by the Canadian International Trade Tribunal on August 25, 2003, and of a final determination by the Commissioner of the Canada Customs and Revenue Agency issued on November 17, 2003, that the aforementioned goods have been dumped.

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.

Ellen Fry
Ellen Fry
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Zdenek Kvarda
Zdenek Kvarda
Member

Michel P. Granger
Michel P. Granger
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	November 24 to 26, 2003
Date of Finding:	December 23, 2003
 Tribunal Members:	 Ellen Fry, Presiding Member Pierre Gosselin, Member Zdenek Kvarda, Member
 Director of Research:	 Selik Shainfarber
 Research Officers:	 John Gibberd Don Shires
 Economist:	 Geneviève Chaloux
 Statisticians:	 Julie Charlebois Marie-Josée Monette Rhonda Heintzman
 Counsel for the Tribunal:	 John Dodsworth
 Assistant Registrar:	 Gillian E. Burnett
 Registrar Officer:	 Karine Turgeon
 Participants:	 Lawrence L. Herman Craig S. Logie David Eveline for Atlas Tube Inc. Copperweld Corporation Novamerican Steel Inc. Welded Tube of Canada (Domestic Producers) Donald J. Goodwin Evgeny Pavlenko for Barloworld Robor (Proprietary) Limited Yigit Guler Göktas, A.S. Joe Barazin Intermetalink Corp.

Atilla Bastirmaci
Veysel Parlak
Embassy of the Republic of Turkey

Aydogan Tapsin
MMZ Onur Boru Profil San. ve Tic.

(Importers/Exporters/Others)



Ottawa, Wednesday, January 7, 2004

Inquiry No. NQ-2003-001

**CERTAIN STRUCTURAL TUBING ORIGINATING IN OR EXPORTED FROM
THE REPUBLIC OF KOREA, THE REPUBLIC OF SOUTH AFRICA AND THE
REPUBLIC OF TURKEY**

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:	November 24 to 26, 2003
Date of Finding:	December 23, 2003
Date of Reasons:	January 7, 2004
Tribunal Members:	Ellen Fry, Presiding Member Pierre Gosselin, Member Zdenek Kvarda, Member
Director of Research:	Selik Shainfarber
Research Officers:	John Gibberd Don Shires
Economist:	Geneviève Chaloux
Statisticians:	Julie Charlebois Marie-Josée Monette Rhonda Heintzman
Counsel for the Tribunal:	John Dodsworth
Assistant Registrar:	Gillian E. Burnett
Registrar Officer:	Karine Turgeon

Participants:

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Craig S. Logie
David Eveline
for Atlas Tube Inc.
Copperweld Corporation
Novamerican Steel Inc.
Welded Tube of Canada

(Domestic Producers)

Donald J. Goodwin
Evgeny Pavlenko
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Yigit Guler
Göktas, A.S.

Joe Barazin
Intermetalink Corp.

Atilla Bastirmaci
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Embassy of the Republic of Turkey

Aydogan Tapsin
MMZ Onur Boru Profil San. ve Tic.

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

R.S. (Butch) Mandel
Executive Vice-President
Welded Tube of Canada

John McKinnon
Director of Operations
Copperweld Corporation

Curtis Pope
Chief Financial Officer
Atlas Tube Inc.

Jean-Louis Morisset
General Manager
Aciers Transbec

Scott Jones
Novamerican Steel Inc.

Barry Zekelman
Vice-President
Atlas Tube Inc.

T.D. (Terry) Barrett
Director of Sales, Structural Tubing
Copperweld Corporation

Lothar Zluhan
Exports Director
Barloworld Robor Hot Rolled Products

Alan Oswald
Financial Director
Barloworld Robor (Pty) Ltd.

Lou Germano
Vice-President, Purchasing
Marmon/Keystone Canada Inc.

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Ottawa, Wednesday, January 7, 2004

Inquiry No. NQ-2003-001

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

**CERTAIN STRUCTURAL TUBING ORIGINATING IN OR EXPORTED FROM
THE REPUBLIC OF KOREA, THE REPUBLIC OF SOUTH AFRICA AND THE
REPUBLIC OF TURKEY**

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

STATEMENT OF REASONS

BACKGROUND

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry to determine whether the dumping of structural tubing known as hollow structural sections (HSS) made of carbon and alloy steel, welded, in sizes up to and including 16.0 inches (406.4 mm) in outside diameter (O.D.) for round products and up to and including 48.0 inches (1,219.2 mm) in periphery for rectangular and square products, commonly but not exclusively made to ASTM A500, ASTM A513, CSA G.40.21-87-50W and comparable specifications, originating in or exported from the Republic of Korea (Korea), the Republic of South Africa (South Africa) and the Republic of Turkey (Turkey), has caused injury or retardation or is threatening to cause injury to the domestic industry.

On May 21, 2003, the Commissioner of the Canada Customs and Revenue Agency (the Commissioner), following a complaint filed by Atlas Tube Inc. (Atlas), Copperweld Corporation (Copperweld) and Welded Tube of Canada (Welded Tube), initiated an investigation to determine whether imports of the subject goods were being dumped. On May 22, 2003, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether 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. During the preliminary injury inquiry, Novamerican Steel Inc. (Novamerican) joined the three other producers in support of the complaint. On July 21, 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.

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

On August 25, 2003, the Tribunal received notice that the Commissioner had made 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 his preliminary investigation, that the goods had been dumped, that the margins of dumping were not insignificant and that the volume of dumped goods was not negligible.²

On August 26, 2003, the Tribunal issued a notice of commencement of inquiry.³ 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 November 17, 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.⁴

Public and *in camera* hearings (collectively, the hearing) were held in Ottawa, Ontario, from November 24 to 26, 2003. Atlas, Copperweld, Novamerican and Welded Tube made submissions and were represented by counsel at the hearing. Aciers Transbec (Transbec) made a submission and testified in support of the domestic producers. Barloworld Robor (Proprietary) Limited (Barloworld), a foreign manufacturer, also made a submission and was represented by counsel at the hearing. At the Tribunal's request, witnesses from Marmon/Keystone Canada Inc. and Russel Metals Inc. (Russel) also appeared and 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 December 23, 2003.

RESULTS OF THE COMMISSIONER'S INVESTIGATION

The Commissioner's dumping investigation covered imports of certain HSS originating in or exported from the three subject countries that were released into Canada during the period of investigation from April 1, 2002, to March 31, 2003. The Canada Customs and Revenue Agency (CCRA) found that 67.9 percent of the volume of the subject goods imported from Turkey during the period of investigation was dumped at a weighted average margin of 17.5 percent,⁵ expressed as a percentage of the export price. The CCRA also found that 100 percent of the volume of the subject goods imported from South Africa was

2. Canada Customs and Revenue Agency, *Preliminary Determination of Dumping and Statement of Reasons*, 9 September 2003, Tribunal Exhibit NQ-2003-001-01A, Administrative Record, Vol. 1 at 29.

3. C. Gaz. 2003.I.2735.

4. Canada Customs and Revenue Agency, *Final Determination of Dumping and Statement of Reasons*, 2 December 2003, Tribunal Exhibit NQ-2003-001-04A, Administrative Record, Vol. 1 at 71.26.

5. This figure includes goods that originated in Turkey but were exported from a non-subject country.

dumped at a weighted average margin of 55.4 percent,⁶ expressed as a percentage of the export price. The CCRA did not receive any submissions from exporters in Korea and, therefore, the margin of dumping was determined to be 89 percent, expressed as a percentage of the export price, which was the highest margin of dumping found for the other exporters that co-operated.

For the combined subject countries, 90.2 percent of the subject goods were found to be dumped at a weighted average margin of 57.7 percent, expressed as a percentage of the export price.

PRODUCT

Description

For the purposes of the CCRA's investigation, the subject goods were defined as "structural tubing known as hollow structural sections (HSS) made of carbon and alloy steel, welded, in sizes up to and including 16.0 inches (406.4 mm) in outside diameter (O.D.) for round products and up to and including 48.0 inches [(1,219.2 mm)] in periphery for rectangular and square products, commonly but not exclusively made to ASTM A500, ASTM A513, CSA G.40.21-87-50W and comparable specifications, originating in or exported from the Republic of Korea, South Africa and Turkey."⁷

The goods are used in general construction for structural elements in buildings and bridges, as protective structures on heavy equipment and for other purposes such as highway railings and barriers and outdoor lighting. The goods may also be applied to non-structural uses in manufactured products, such as agricultural implements, trailers and racking and storage systems.

The subject goods are not used for such things as automotive tubing for exhaust systems, bumpers and the like, which are typically made from tubing produced to specialized automotive specifications.

Production Process

HSS production involves the transformation of commercial grade hot-rolled sheet or strip into round, rectangular or square sections. The production process begins with the hot-rolled coil being slit into strips of the appropriate width for the production of tubes of a given circumference. The strip is then passed through a series of rolls that gradually bend it into a round tube. This tube is electric resistance welded (ERW) and excess metal is removed from the weld on the outside surface of the tube. If the purchaser requests it, excess metal is also removed from the weld on the inside surface. The tube is then cooled and processed through a set of sizing/shaping rolls in order to cold-form it into a round, square or rectangular section. Finally, tubes are cut to length, bundled and tagged.

6. This figure includes goods that originated in South Africa but were exported from a non-subject country.

7. The complainants submitted that the product definition does not include HSS in galvanized formats or HSS coated with aluminium matte or other metals. They also submitted that the definition does include HSS that is merely primed, painted, or pickled and oiled because these processes do not change the essential nature of the HSS. The Tribunal notes that no evidence or argument contrary to this position was submitted in the inquiry and that these matters are not explicitly addressed in the CCRA's preliminary determination or final determination.

IMPORTERS AND EXPORTERS

The CCRA identified 14 importers of the subject goods during its period of investigation. In addition to sending questionnaires to these importers, the Tribunal also sent questionnaires to 31 other potential importers of the subject goods originating in non-subject countries, for a total of 45 importers. The responses to the Tribunal's questionnaire indicated that Thyssenkrupp Materials CA, Ltd.,⁸ Acier Leroux Inc., Intermetalink Corp., R & R Trading Co. Ltd., Marubeni-Itochu Steel Canada Inc. and Uniwell International Enterprises 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 20 companies that exported the subject goods to Canada during the period of investigation. The Tribunal sent a foreign producers' questionnaire to these 20 exporters and to five other potential exporters of the subject goods. Only three foreign producers submitted responses, namely, MMZ Onur Boru Profil San. ve Tic. of Turkey, Goktas A.S. of Turkey and Barloworld Robor (Pty) Ltd. of South Africa.

DISTRIBUTION

Domestic producers sell HSS to steel service centres and fabricators. The vast majority of domestic sales of HSS are to steel service centres. Producers market HSS through inside and outside sales forces that contact their respective customers on a regular basis.

Imports are also generally marketed and distributed by steel service centres. In some cases, steel service centres directly import the goods that they then distribute. In other cases, they purchase the goods from agents or brokers, and they then re-sell the goods to their customers.

The larger HSS steel service centres include Crawford Metals, Russel and Leroux Steel, which was acquired by Russel in July of 2003.

DOMESTIC PRODUCERS

There are eight domestic producers of HSS. Atlas of Harrow, Ontario, Copperweld of Brampton, Ontario, and Welded Tube of Concord, Ontario, are the three domestic producers that filed the complaint with the CCRA. Novamerican of Montréal, Quebec, joined the complaint during the preliminary injury inquiry. The industry also includes: Bull Moose Tube Limited, which has production facilities in Burlington, Ontario; IPSCO Inc., which has production facilities in Western Canada; Prudential Steel Ltd., which has production facilities in Calgary, Alberta; and Bolton Steel Tube Co. Ltd, which has production facilities in Ontario.

8. Thyssenkrupp Materials CA, Ltd. was also conducting business as Global Steel Services during the Tribunal's period of inquiry from January 1, 2000, to June 30, 2003.

POSITIONS OF PARTIES

Domestic Producers⁹

The domestic producers submitted that the subject goods caused material injury to the domestic industry during the period of inquiry and that they also threaten to cause material injury.

They argued that the subject goods were imported into Canada in large volumes and at low prices and that they were the direct cause of injury to the domestic industry that began in the last quarter of 2002 and escalated in the first quarter of 2003. They noted that the Canadian market for HSS declined between the first half and second half of 2002. However, during this period, sales of imports of the subject goods increased from 1,400 tonnes in the first half of 2002 to 21,200 tonnes in the second half of 2002. In a declining market, imports of the subject goods increased due to price undercutting, causing a considerable decline in the volume of domestic shipments.

According to the domestic producers, although the domestic market declined in the first half of 2003 compared to the first half of 2002, the volume of the subject goods remained steady at the expense of the domestic industry. The producers noted that there was a steep decline in prices of HSS in the domestic market starting in the fourth quarter of 2002 and continuing through the first half of 2003. According to their submission, these price declines were directly related to the increase in volumes of the subject goods over the same period. In support of their position, the producers submitted numerous field reports, statistical evidence and injury allegations to show that the subject goods caused the domestic producers to lose sales or lower prices.

The producers contended that they experienced income declines and substantial net losses as a result of the dumping. They pointed to evidence of the relationship between the rising volume of imports and the declines in the industry's net commercial selling price, gross margin and net income in late 2002, which continued into the first half of 2003. They submitted that, in the period from January to June 2003, the industry lost, in aggregate, over \$3 million on sales of HSS compared to a positive operating income of \$7.2 million in the first half of 2002. The producers also referred to the negative impact that the dumped subject goods had on employment.

The producers noted that the margins of dumping set out in the CCRA's final determination are substantial. They also indicated that there are 25 mills in the subject countries, which represent substantial production capacity that will pose a threat of injury to Canadian production if there is no injury finding.

The producers also noted that the South African producer, Barloworld, had argued that some of its exports to Canada were of a grade of HSS, namely, grade A, that was different from the HSS grade C that was produced by the domestic mills. According to the producers, the grade A issue was a "red herring". It was clear from the CCRA's final determination that all grades of HSS, including grade A, were considered subject goods and that grade A was dumped. They argued further that Barloworld had introduced no documentary evidence that would support the testimony of its witness that ASTM A500 grade A differs from ASTM A500 grade C in terms of weight, gauge or thickness. They also referred to the testimony of several other witnesses who stated that there was no demand in the Canadian market for ASTM A500

9. As used here, domestic producers refers to the four domestic producers that formed a "coalition" for the purpose of the proceedings against the dumped subject goods. These four producers are: Atlas, Copperweld, Welded Tube and Novamerican.

grade A. Further, Barloworld sold the grade A as a package to a trading company, and there is no documentary evidence of a price differential between grade A and grade C.

Finally, the producers contended that there was no evidence to support Barloworld's assertion that its products were responsibly marketed in Canada. In their submission, the evidence suggests, in fact, that Barloworld had no idea at what price its product was going to be sold in the Canadian market.

Barloworld

Barloworld argued that imports of the subject goods from South Africa have not caused injury to the domestic industry. It submitted that the present case was different from other steel cases. For example, unlike other steel cases, there was no evidence to suggest that there was excess global capacity in HSS or that traders were marketing boatloads of HSS that were on the water or engaging in "off-the-dock" sales. Further, in contrast to other steel cases, the global HSS industry is comparatively healthy and enjoys an increasing demand for its product.

Barloworld stated that 50 percent of its exports to Canada were ASTM A500 grade A, a grade of HSS that, it claimed, is not offered by the domestic industry. It alleged that grade A is a lighter gauge than both grade C and CSA grade 350W and is, therefore, less expensive. Barloworld argued that these goods were shipped to Canada from South Africa on a regular schedule and were not substitutable for Canadian products nor did they compete with them. They offered an opportunity for the Canadian buyer of the goods to expand its business by selling a product that was not supplied by Canadian producers.

Barloworld argued that it marketed its HSS responsibly by selling them to only one customer in Canada. In support of its position, Barloworld pointed to the evidence of a Tribunal witness who indicated that the arrival of South African goods had had no impact on his business. Further, the price at which Barloworld sold its HSS, in the first half of 2002, was higher than the prevailing price in the domestic market at the time the sale price was negotiated. Consequently, Barloworld argued that this sale did not have a price-suppressing effect in the Canadian market.

Further, Barloworld argued that, over the period of inquiry, the domestic industry was very healthy, realizing increased profits in 2002 and increasing its sale price per tonne. The financial losses that occurred in 2003 were not the result of the subject goods, but instead resulted from the increasing cost of hot-rolled coil, the key material input used in the production of HSS. According to Barloworld, rising hot-rolled coil prices resulted in increasing prices of HSS. In turn, this resulted in reduced sales by producers, as purchasers began selling their inventories of lower-cost HSS, which they had built up in the first half of 2002 in anticipation of rising HSS prices.

Finally, Barloworld argued that imports of the subject goods from South Africa should not be cumulated with those of Korea and Turkey, since they did not compete with each other in the domestic market.

ANALYSIS

In the present case, the Tribunal is required to make inquiry, pursuant to subsection 42(1) of *SIMA*, as to whether the dumping 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". "Domestic industry", in turn, is described, in part, as "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”.

The Tribunal must, therefore, first determine what constitutes “like goods”. It will then determine what constitutes the “domestic industry” for the purposes of its injury analysis. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping of the subject goods from all the subject countries in this inquiry, in accordance with subsection 42(3) of *SIMA*.

The Tribunal will then determine whether the dumping of the subject goods caused material injury to the domestic industry. In the event that the Tribunal does not make a finding of injury, it would then determine whether the dumping is threatening to cause material injury to the domestic industry. In conducting its analyses, the Tribunal will also examine other factors to ensure that it does not attribute to the dumping any injury caused by other factors.

Like Goods and Classes of Goods

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

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

The Tribunal notes that the subject goods are described by the CCRA as “structural tubing known as hollow structural sections (HSS) made of carbon and alloy steel, welded, . . . commonly but not exclusively made to ASTM A500, ASTM A513, CSA G.40.21-87-50W and comparable specifications, originating in or exported from the Republic of Korea, South Africa and Turkey.”

In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods, the method of their manufacture, marketing, and whether the goods fulfil the same customer needs (including end use, quality, performance characteristics and substitutability).

The Tribunal notes that HSS produced in both Canada and the subject countries are produced to common international standards that specify their chemical, tensile and other properties. In North America, the common standard for HSS is the American Society for Testing and Materials (ASTM A500) that describes several grades of HSS, including ASTM 500 grades A, B and C. While the ASTM 500 specifications for each grade are generally different, they are described within ranges that may overlap. For example, certain chemical, tensile and other properties of grade C may include and exceed those of grade B. In Canada, grade C is the predominant grade along with a more stringent Canadian version of grade C, namely, Canadian Standards Association (CSA) G.40.21-87-50W.

While grade C and the CSA grade represent the vast majority of domestic production of HSS, both grade B and, in small quantities, grade A are also produced.¹⁰ During the period of the Tribunal’s inquiry, the majority of the subject goods were also grade C or the CSA grade, with grade B¹¹ and some grade A¹²

10. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 46-47, 52-53; Tribunal Exhibit NQ-2003-001-RI-04A (protected), Administrative Record, Vol. 10 at 2.

11. Tribunal Exhibit NQ-2003-001-19.10 (protected), Administrative Record, Vol. 6 at 6.

12. Foreign Manufacturer’s Exhibit E-01 at para. 9, Administrative Record, Vol. 13.

also being imported. As far as grades B and C and the CSA grade are concerned, the evidence indicates that the subject goods and domestically produced HSS are substitutable and directly compete for sales in the domestic market. The Tribunal therefore finds that these domestically produced HSS of the same description as the subject goods closely resemble and are like goods to the subject goods.

The Tribunal notes that the ASTM 500 grade A imports alluded to above were shipped to Canada by Barloworld, a South African producer of HSS. Barloworld argued that grade A was different from, and did not compete with, the HSS produced by domestic mills. However, Barloworld provided no evidence regarding the particular specifications of the grade A goods that it shipped to Canada, nor did it indicate what market applications they supplied.

The Tribunal notes that, in its preliminary and final determinations of dumping, the CCRA made no reference to any distinction between dumped grade A or grade C HSS.¹³ Moreover, there is no evidence on the record that suggests that the grade A HSS filled any special or unique need in the Canadian market. On the contrary, witnesses from steel service centres testified, as did industry witnesses, that there was no market demand in Canada for this particular grade.¹⁴ Indeed, a Canadian steel service centre that purchased this particular grade of HSS gave no indication in its response to the Tribunal's questionnaire on market characteristics that it was not interchangeable or did not compete with domestic product.¹⁵ On the contrary, the evidence indicates that grades A, B and C are interchangeable in many applications and that they compete with each other in the market.¹⁶ Accordingly, the Tribunal finds that the South African grade A HSS competes with domestic HSS and that domestic goods closely resemble and are like goods to the grade A South African product.

The Tribunal notes that, at the preliminary injury determination stage of this inquiry, the issue arose as to whether like goods include seamless HSS. The Tribunal finds that seamless HSS are not like goods. According to the evidence, welded and seamless HSS are manufactured in different ways, and there is no seamless HSS production in Canada.¹⁷

Finally, the Tribunal notes that the product definition of the subject goods indicates that HSS may be produced to the ASTM A513 specification. Since the A513 specification describes the properties commonly applicable to mechanical tubing, prior to the hearing, the Tribunal was asked to rule on a motion from counsel as to whether mechanical tubing was "like goods" in this case. The Tribunal considered that, since the product description referred to "hollow **structural** sections (HSS) made of carbon and alloy steel" [emphasis added], it was clear that only HSS made to the ASTM A513 specification which can also be considered to be "structural" HSS would satisfy the definition of the subject goods.

In the Tribunal's opinion, simply because structural tubing, on rare occasions, also meets the A513 mechanical specification, this does not make structural and mechanical tubing like goods. According to the evidence, mechanical tubing comprises a business line different from that of structural tubing.

13. Tribunal Exhibit NQ-2003-001-02 (protected), Administrative Record, Vol. 2 at 9; Tribunal Exhibit NQ-2003-001-05 (protected), Administrative Record, Vol. 2 at 9.8-9.10.

14. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 151-53, 178-79, 181; *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 207, 309-10, 325.

15. Tribunal Exhibit NQ-2003-001-27.01A, Administrative Record, Vol. 5.3 at 68.

16. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 151-53, 178-79.

17. Tribunal Exhibit NQ-2003-001-44, Administrative Record, Vol. 1 at 114-15; Manufacturer's Exhibit A-01 at 4, Administrative Record, Vol. 11.

Although either mechanical or structural tubing may be used in some applications, in most applications, they are not interchangeable; where structural tubing is required, mechanical tubing cannot be used and vice versa. Moreover, structural tubing typically possesses tensile (i.e. load bearing) strength that mechanical tubing does not have.¹⁸ In addition, structural tubing is typically made from black hot-rolled coil, whereas mechanical tubing is generally made from cold-rolled coil.¹⁹ Therefore, the Tribunal finds that mechanical tubing is not like goods.

In sum, for the purposes of this inquiry, the Tribunal finds that domestically produced HSS, of the same description as the subject goods, constitutes like goods to the subject goods.

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.

The Tribunal notes that there are eight domestic producers of HSS. These include four small producers and the four major domestic producers that were represented during the Tribunal’s inquiry, namely, Atlas, Copperweld, Welded Tube and Novamerican. According to the evidence, the combined production of the four major domestic producers comprised over 90 percent of total domestic production during the Tribunal’s period of inquiry. The Tribunal considers that the eight producers together, which constitute domestic production as a whole of the like goods, constitute the domestic industry for the purpose of the Tribunal’s injury analysis.

Cumulation

According to subsection 42(3) of *SIMA*, the Tribunal shall, when conducting an inquiry under subsection 42(1), make an assessment of the cumulative effect of the dumping or subsidizing of the goods that are imported into Canada from more than one country if the following conditions are met:

- (a) the margin of dumping or the amount of the subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and
- (b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and
 - (i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or
 - (ii) like goods of domestic producers.

18. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 33-39; Manufacturer’s Exhibit A-01 at 6, Administrative Record, Vol. 11.

19. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 33, 45.

Taking into consideration the relevant provisions of *SIMA* and based on the Commissioner's final determination of dumping and subsidizing, the Tribunal finds that the margins of dumping in relation to the goods from each of the subject countries are not insignificant. Furthermore, the Tribunal finds that the volume of dumped goods from each of the three subject countries is not negligible.²⁰

In determining whether it would be appropriate to make an assessment of the cumulative effect of the subject goods from Korea, Turkey and South Africa on the domestic industry, the Tribunal must consider the conditions of competition in the Canadian marketplace between these three countries, as well as between the subject goods and like goods. In making this assessment, the Tribunal typically considers the following factors:²¹ the degree to which the subject goods from each subject country are "fungible" with the subject goods from the other subject countries; whether the subject goods from only one subject country are present in a specific geographical market; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and those of the other subject countries, and the availability of like goods supplied by the domestic industry. The Tribunal will assess the appropriateness of cumulating in considering all these factors together.

If the Tribunal concludes, based on this assessment, that it would not be appropriate to cumulate the subject goods from a specific subject country with the subject goods from the other subject countries, then the Tribunal is required to conduct a separate injury analysis with respect to the subject goods from that country. However, based on its assessment of the conditions of competition, if the Tribunal finds that it would be appropriate to cumulate, the Tribunal will conduct its injury assessment on the combined effects of the subject goods from the three subject countries, as required by subsection 42(3) of *SIMA*.

The Tribunal will now address the relevant factors in this case.

Fungibility of the Subject Goods

The Merriam-Webster online dictionary defines "fungible", among other things, as "being of such a nature that one part or quantity may be replaced by another equal part or quantity in the satisfaction of an obligation". With this definition in mind, the Tribunal notes that subject goods that are fungible will compete with each other in the domestic market, without significant distinction, making it difficult if not impossible to assess the effect that those goods have on the like goods separately. However, differences in the physical characteristics of the subject goods from one subject country may distinguish them from the other subject goods in the way in which they compete in the domestic market. For example, the subject goods from one subject country that are of a different quality from the other subject goods may compete in a different market segment, affecting the price that they command in the domestic market.

In the foregoing context, The Tribunal notes that Barloworld argues that the goods that it exported from South Africa should not be cumulated with the subject goods from the other subject countries because one of the grades that it exported to Canada, ASTM 500 grade A, is different from the other grades that are predominantly sold by the domestic producers and the other subject countries.

20. Pursuant to subsection 2(1) of *SIMA*, the volume of dumped goods of a country is negligible if it comprises less than 3 percent of the total volume of imports from all sources. In this case, the volume of the subject goods from each of the three subject countries substantially exceeds this threshold.

21. *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip, Statement of Reasons* (4 September 2001), NQ-2001-001 (CITT) at 16.

As discussed under “Like Goods and Classes of Goods”, the Tribunal finds that ASTM A500, grade A, closely resembles and is “like goods” to domestic HSS. Also, the evidence does not indicate that the subject goods from South Africa do not closely resemble the subject goods from Korea and Turkey. As discussed previously, the Tribunal accepts that specific grades within the A500 specification compete with each other and that there is no separate market for grade A in Canada.

Further, the evidence shows that, during the period of inquiry, the subject goods from South Africa competed directly with the subject goods from the other subject countries at specific accounts, as well as with the like goods.²² Moreover, specific evidence from purchasers of HSS in Canada indicated no differences between the subject goods.²³ In addition, the evidence shows that domestic producers are capable of producing grade A, if there is a demand for it, and one of the domestic producers, in fact, produced a small quantity of grade A during the Tribunal’s period of inquiry.²⁴

The Tribunal notes that the exports from South Africa were comprised of a “package” of different HSS sizes, divided more or less equally between ASTM A500 grade A and grade C. In the Tribunal’s opinion, this package, as a whole, was fungible with domestic goods and goods from the other subject countries and any differences that may exist between grades of HSS do not constitute grounds for decumulation in this case.

Geographical Markets

Given that, in a large country like Canada, there may be geographical impediments to trade, it may prove possible to distinguish the effects of the subject goods from different subject countries based on differences in their geographical distribution. However, in this case, there is no evidence to support the decumulation of the subject countries because of geographical factors. According to the evidence, the subject goods from South Africa competed directly with the subject goods from Turkey in Quebec and Ontario, as well as with the Korean subject goods in Western Canada.²⁵ The evidence also shows that the domestic industry, as a whole, sells HSS from coast to coast to both regional and national distributors.

Channels of Distribution

In assessing the conditions of competition, the Tribunal also considers whether the subject goods from a subject country are marketed or sold through distribution channels that are distinct from the manner in which the other subject or domestic goods are sold within Canada. In this connection, Barloworld argued that South African HSS should be decumulated because South Africa marketed its HSS exports responsibly

22. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 50-51, 91-93; *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 201-202; *Transcript of In Camera Hearing*, Vol. 1, 24 November 2003 at 75-77, 86-88, 91-92; *Transcript of In Camera Hearing*, Vol. 2, 25 November 2003 at 103-104, 111-13.

23. Tribunal Exhibit NQ-2003-001-07 (protected), Administrative Record, Vol. 2.1 at 84.

24. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 182-83, 178-79, 151-54; Tribunal Exhibit NQ-2003-001-RI-04A (protected), Administrative Record, Vol. 10 at 2.

25. *Transcript of In Camera Hearing*, Vol. 1, 24 November 2003 at 84-87; Manufacturer’s Exhibit D-02 (protected), Tab 2 at 1-2, Administrative Record, Vol. 12; *Transcript of In Camera Hearing*, Vol. 1, 24 November 2003 at 18-19, 98-99; Tribunal Exhibit NQ-2003-001-10.02 (protected), Administrative Record, Vol. 4 at 271-72; Tribunal Exhibit NQ-2003-001-19.30C (protected), Administrative Record, Vol. 6 at 193.61; Tribunal Exhibit NQ-2003-001-19.29B (protected), Administrative Record, Vol. 6 at 193.13; Tribunal Exhibit NQ-2003-001-19.30B (protected), Administrative Record, Vol. 6 at 193.48; Tribunal Exhibit NQ-2003-001-19.10A (protected), Administrative Record, Vol. 6 at 11.

by selling to only one customer by way of back-to-back sales in Canada. In support of its position, Barloworld pointed to the evidence of a Tribunal witness who indicated that the arrival of South African goods had had no effect on his business.²⁶

In the Tribunal's opinion, the preponderance of the evidence does not support the proposition that the subject goods from South Africa were marketed in a unique way. Although Barloworld sold its HSS exports to Canada to one international trader of steel products, the evidence shows that this trader sold and/or offered South African HSS to more than one customer in Canada.²⁷ In fact, one witness testified that the South African goods were made generally available in the Canadian market.²⁸ The evidence also shows that, although Barloworld may have wanted its product to have a limited distribution in Canada, it had no contractual way of requiring this.²⁹ Indeed, after its product arrived in Canada, Barloworld had no real knowledge of how its product would be sold or marketed by the trader in Canada.³⁰ Moreover, the evidence shows that the purchasers of South African HSS were also customers of the domestic industry. Therefore, the Tribunal finds no basis for decumulation on the grounds of special or unique marketing considerations.

Timing of Sales

In considering the timing of sales of the subject goods during the period of inquiry, as compared to the sales of the other subject goods, the Tribunal accepts that such differences in timing could distinguish those subject goods from the other subject goods in the manner in which they impact the domestic industry. In this regard, Barloworld argues that it negotiated the price for its HSS exports to Canada in the first half of 2002. At that time, that price was higher than the prevailing price in the domestic market. Consequently, Barloworld argued, when its exports actually arrived in Canada later in the year, they did not have a disruptive effect in the Canadian market.

The Tribunal notes that, although the contract for the sale of the subject goods from South Africa was negotiated in the first half of 2002, the goods were not shipped and did not arrive in Canada until the second half of 2002. By the time of their arrival, HSS imports from Turkey and Korea³¹ were also arriving in substantial volumes. Moreover, on arrival, the subject goods from all three countries were priced at well below domestic market prices, as will be discussed later in the section on injury.

Therefore, given the above evidence, and in light of its assessment of the specific factors, the Tribunal is satisfied that, taking into account the conditions of competition, it is appropriate to make an assessment of the cumulative effect of the dumped subject goods from all the subject countries.

26. *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 331.

27. *Transcript of In Camera Hearing*, Vol. 2, 25 November 2003 at 103-104, 111-13.

28. *Ibid.* at 111-13.

29. *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 237-38, 277-78, 283-84.

30. *Ibid.* at 237-38; Tribunal Exhibit NQ-2003-001-07 (protected), Administrative Record, Vol. 2.1 at 99, 101; Manufacturer's Exhibit D-02 (protected), tab 2 at 1-2, Administrative Record, Vol. 12.

31. Imports from Korea were also present in Canada in the first half of the year when the South African contract was negotiated.

Injury³²

Subsection 37.1(1) of the *Special Import Measures Regulations*³³ 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.

Effects of the Volume of Dumped Goods

In this first section, the Tribunal will examine the effects of the volume of dumped goods on domestic production and sales, as well as any other factors that may have affected the volume of domestic production and sales that cannot be attributed to dumped imports.

The data collected by the Tribunal in this case cover a three-and-a-half-year period from January 2000 to June 2003. According to these data, over the first two-and-a-half years of the Tribunal's period of inquiry, that is, from 2000 to mid-2002, the domestic HSS market was supplied predominantly by the domestic mills, primarily from their domestic production and, to a much lesser extent, from their own imports from the United States. Imports from offshore played a very small role during this period, holding about 1 percent of the HSS market. The 1 percent was comprised almost entirely of imports from Korea that supplied Western Canada. There were no subject imports from South Africa or Turkey from 2000 to mid-2002. Central and Eastern Canada were supplied almost entirely by domestic production and imports from the United States.

However, from mid-2002 and continuing for the next 12 months to mid-2003, the situation regarding the subject goods changed quickly and dramatically. During this period, HSS imports from Korea doubled in volume, while imports from South Africa and Turkey entered the market for the first time and rose to volumes that surpassed those from Korea. All told, over the 12-month period, some 43,000 tonnes of the subject goods entered Canada, and their collective market share surged from 1 percent to 9 percent.³⁴

32. The Tribunal notes that all the data in this section include, at a minimum, data covering the four major domestic producers that participated in the inquiry, namely, Atlas, Copperweld, Novamerican and Welded Tube. As noted elsewhere, these four producers comprise in excess of 90 percent of total domestic HSS production. In addition to these four, the data on market shares and sales include the other four producers that comprise the domestic industry. The aggregate yearly and half-yearly financial data include the four major producers plus two other producers. The two producers for which financial data were not available comprised less than 1 percent of total domestic production from 2000 to 2002. Accordingly, all data referred to in this section as pertaining to the industry or to domestic producers are reasonably representative of the entire industry.

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

34. Tribunal Exhibit NQ-2003-001-06A, Administrative Record, Vol. 1.1 at 223, 225.

This surge in the subject goods is even more significant when examined on the basis of the monthly import arrival data reported by Statistics Canada and submitted by the domestic industry.³⁵ According to these data, between mid-2002 and mid-2003, imports of the subject goods were often in excess of 3,000 to 4,000 tonnes a month, rising steadily from the summer of 2002 to December 2002/January 2003, when they peaked at a level of over 10,000 tonnes. This rate of imports represented, in several months, more than 20 percent of domestic producers' monthly HSS shipments. At their winter peak, the subject goods represented over 30 percent of the domestic producers' monthly shipments.³⁶ One industry witness described the effect of the rapid penetration of the subject goods in such a short period of time as "one of the most dramatic occurrences in the Canadian HSS market in the last decade".³⁷

The Tribunal notes that, according to the evidence, market demand was relatively soft from mid-2002 to mid-2003,³⁸ especially in December and January when the industry normally experiences a modest seasonal slowdown.³⁹ This slowdown, and especially the seasonal slowdown, coincided with the surge in imports, exacerbating their effect on the market. Indeed, according to several witnesses, by winter 2002-2003, the market became totally destabilized in the face of the surge of the dumped subject goods.⁴⁰

It is clear to the Tribunal that the gain in market share by the subject goods came at the expense of the domestic industry. First, according to the evidence, almost all the subject goods were sold to or imported by steel service centres.⁴¹ This is the distribution channel used by the industry for the vast majority of its sales.⁴² Moreover, certain steel service centres that were among the primary buyers of the subject goods were also the principal customers of the domestic mills.⁴³

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35. Manufacturer's Exhibit A-07, Tab 2 at 3, Administrative Record, Vol. 11. Although the Statistics Canada data may contain some non-subject goods in addition to subject goods, the data reported are generally consistent with the results of the questionnaire surveys conducted by the Tribunal, as well as the evidence of witnesses at the hearing. Accordingly, the Tribunal considers the Statistics Canada information to be a reasonable proxy for the subject goods.
 36. Manufacturer's Exhibit A-07, Tab 2 at 8, Administrative Record, Vol. 11.
 37. Manufacturer's Exhibit C-02 (protected) at 4, Administrative Record, Vol. 12.
 38. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 137.
 39. *Ibid.* at 108; *Transcript of In Camera Hearing*, Vol. 2, 25 November 2003 at 46, 47; *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 216.
 40. Manufacturer's Exhibit D-01 at 5, Administrative Record, Vol. 11; Manufacturer's Exhibit A-05 at 3, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 10-20, 48-49, 83-84, 108-109, 114-15, 146, 175, 177-78; *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 208-209, 331; *Transcript of In Camera Hearing*, Vol. 1, 24 November 2003 at 65, 67-68, 110.
 41. *Transcript of In Camera Hearing*, Vol. 1, 24 November 2003 at 4-5, 83; *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 193, 197, 205, 222-24, 328.
 42. Manufacturer's Exhibit A-01 at 9, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 13-14, 125-26.
 43. *Transcript of In Camera Hearing*, Vol. 1, 24 November 2003 at 82-84; Manufacturer's Exhibit A-04 (protected) at 6-9, Tab 2 at 4, 5, Administrative Record, Vol. 12; Manufacturer's Exhibit B-02 (protected) at 14-15, Tab 1 at 9, Tab 2 at 8, Administrative Record, Vol. 12; Manufacturer's Exhibit C-02 (protected) at 10-11, Tab 1 at 4, Administrative Record, Vol. 12; Manufacturer's Exhibit D-02 (protected) at 9-13, Tab 1 at 9, Administrative Record, Vol. 12.

Furthermore, the Tribunal notes that the nine points of market share held by the three subject countries in 2003 correspond to the nine points of market share lost by the domestic industry between the first half of 2002 and the first half of 2003.⁴⁴ In addition, the monthly Statistics Canada data show a relatively close correlation between the arrival of the subject goods and the reduced shipments by the producers in the 12-month period commencing in mid-2002.⁴⁵ This reduction in domestic producers' shipments is also reflected in the information provided by certain producers, which shows substantial declines in their sales to key customers over the 12-month period compared to historical sales patterns.⁴⁶ This evidence is further supported by numerous injury allegations that the producers have submitted to illustrate sales lost to imports at specific accounts.⁴⁷

The Tribunal notes that the industry lost sales not only because some of its customers decided to buy imports in lieu of domestic goods but also because many buyers chose to simply stop, delay or reduce their purchases of HSS. According to several witnesses, it was common knowledge in the market, by mid-2002, that significant volumes of the low-priced subject goods had arrived or were about to arrive in Canada. Steel service centres and other buyers anticipated that HSS prices would fall and, consequently, they began to alter their buying patterns to ensure that they would not get caught with too much inventory which could fall in value in tandem with HSS prices.⁴⁸

The Tribunal notes that the HSS produced by domestic mills competes directly with the subject goods. Over 80 percent of all respondents to the Tribunal's questionnaires on market characteristics reported that domestic goods and the subject goods were fully physically interchangeable.⁴⁹ Respondents also reported that domestically supplied HSS has certain advantages over the subject goods in terms of conditions of sale, such as delivery times, reliability of supply and year-round availability.⁵⁰ However, according to several witnesses, once the subject goods arrive in Canada, these advantages disappear, and the domestic goods and the subject goods are fully substitutable.⁵¹ As discussed earlier, no respondents to the Tribunal's questionnaires on market characteristics, which include the major purchasers of the subject goods and like goods in Canada, provided any evidence to indicate that the above considerations did not apply to all grades of HSS, including grade A. In short, in the Tribunal's opinion, there are no grade, quality or product uniqueness issues that explain the surge in the subject goods.

The Tribunal notes that not all the decline in domestic HSS shipments that occurred between mid-2002 and mid-2003 can be attributed to the subject goods. Part of the decline may have been due simply to a modest slowdown in market demand. Another part of the decline may be attributable to the fact that at least one of the industry's important customers apparently stocked up on HSS in the first half of 2002

44. Tribunal Exhibit NQ-2003-001-06, Administrative Record, Vol. 1.1 at 32. It is noted that the market share of non-subject imports remained at about 12 percent between 2002 and 2003.

45. Manufacturer's Exhibit A-07, Tab 2 at 8, Administrative Record, Vol. 11.

46. Manufacturer's Exhibit A-04 (protected), Tab 2 at 4, 5, Administrative Record, Vol. 12; Manufacturer's Exhibit B-02 (protected), Tab 1 at 9, Administrative Record, Vol. 12; Manufacturer's Exhibit C-02 (protected), Tab 1 at 4, Administrative Record, Vol. 12; Manufacturer's Exhibit D-02 (protected), Tab 1 at 9, Administrative Record, Vol. 12.

47. Tribunal Exhibit NQ-2003-001-07 (protected), Administrative Record, Vol. 2.1 at 98-101.

48. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 10-13.

49. Tribunal Exhibit NQ-2003-001-06, Administrative Record, Vol. 1.1 at 84.

50. *Ibid.* at 86-88.

51. Manufacturer's Exhibit A-03 at 2, Administrative Record, Vol. 11; Manufacturer's Exhibit C-01 at 1-2, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 132.

in anticipation of rising HSS prices in the second half of 2002.⁵² Since prices did rise substantially in the second half of 2002, customers that stocked up or bought forward could have met some of their second-half requirements by drawing on their first-half purchases rather than having to go to the market to buy the higher-priced HSS which was then being supplied by domestic mills.

Nevertheless, in the Tribunal's opinion, none of these other factors, either singly or together, are sufficient to explain the nature and extent of the market disruption that occurred from mid-2002 to mid-2003. In the Tribunal's view, the only explanation that is consistent with the preponderance of the evidence in this case is that the subject goods caused the disruption. It is clear that different domestic mills felt the full effect of these imports at somewhat different points in time,⁵³ as did different buyers, such as Transbec and Russel.⁵⁴ However, according to the evidence, over the 12-month period, all significant market players were eventually affected by these imports.

In sum, the Tribunal finds that, over the last year of the period of inquiry, there was a surge in the volume of imports of the subject goods. In the Tribunal's view, the subject goods competed with the like goods of the producers and caused a significant decline in domestic production and sales.

Effects of Dumped Goods on Prices

The Tribunal will now examine the effect of the dumped subject goods on domestic prices. The Tribunal will also determine if there are any other factors that may have adversely affected domestic prices that should not be attributed to the dumped subject goods.

The Tribunal notes that HSS prices are highly sensitive to movements in the price of hot-rolled steel sheet (HR). This is because, typically, about 80 percent of the cost of producing HSS is comprised of the cost of the HR that goes into the production of HSS.⁵⁵ Accordingly, HSS prices will generally tend to rise and fall in relation to movements in the price of HR. However, this relationship is complicated by the fact that costs of HR may be incurred several months before the HSS is produced and sold.⁵⁶ This means that the relationship will vary from company to company depending, among other things, on their stocks of HR and their "rolling cycles", i.e. the frequency with which their HR is transformed into HSS.⁵⁷

According to the evidence, in the first half of 2002, a shortage of HR began to emerge in North America.⁵⁸ Witnesses testified that this shortage was related to a number of unusual developments in the North American steel industry, such as the implementation of a U.S. global steel safeguard action in March

52. *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 346.

53. Manufacturer's Exhibit A-04 (protected), Tab 1 at 1, Administrative Record, Vol. 12; Manufacturer's Exhibit B-02 (protected), Tab 1 at 1, Administrative Record, Vol. 12; Manufacturer's Exhibit C-02 (protected), Tab 1 at 1, Administrative Record, Vol. 12; Manufacturer's Exhibit D-02 (protected), Tab 1 at 1, Administrative Record, Vol. 12.

54. *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 192-94, 203-205, 215-17, 331; *Transcript of In Camera Hearing*, Vol. 2, 25 November 2003 at 107-109; Manufacturer's Exhibit A-06 (protected) at 4, Administrative Record, Vol. 12.

55. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 130-31.

56. *Ibid.* at 66, 96.

57. *Ibid.* at 121, 174; *Transcript of In Camera Hearing*, Vol. 1, 24 November 2003 at 57.

58. *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 302.

2002, as well as a number of Chapter 11 bankruptcy filings by U.S. steel producers.⁵⁹ In any event, through the first half of 2002, HR prices in Canada rose sharply and rapidly.⁶⁰ According to one witness, HR prices continued to rise in the second half of the year, peaking late in the summer of 2002, before levelling off and then beginning to decline towards the end of the year.⁶¹

As explained above, the sharp rise in HR prices that started in the first half of 2002 invariably worked its way into a correspondingly sharp rise in HSS prices. More particularly, from the first half to the second half of 2002, the average unit value of domestic sales rose from \$702 to \$867 per tonne, an increase of almost 25 percent.⁶² The price levels reached by the domestic industry in the second half of 2002 represent the highest levels reported by the industry over the Tribunal's three-and-a-half year period of inquiry.

However, the pace and extent of the HR and related HSS price rises in North America were not matched in other parts of the world. As a consequence, throughout 2002, a growing spread began to develop between HR/HSS prices in North America and those in Europe and Asia.⁶³ According to a number of witnesses, the rising HSS prices in Canada and the growing spreads between the domestic prices and those prevailing in other parts of the world caused some Canadian purchasers of HSS to begin looking for foreign sources of supply.⁶⁴

As detailed in the previous section, the subject goods began arriving in Canada in substantial volumes in the second half of 2002. These arrivals hit the market roughly at the time that domestic mill prices were peaking. The price effects of these imports were exacerbated by the fact that they arrived in boatload quantities and, on at least one occasion, were concentrated in certain size ranges.⁶⁵ According to the evidence, the average unit price at which the subject goods were sold to steel service centres was dramatically below domestic selling prices.⁶⁶ More particularly, according to the data gathered by the

59. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 22; *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 334-35.

60. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 96.

61. *Ibid.* at 63.

62. Tribunal Exhibit NQ-2003-001-06A, Administrative Record, Vol. 1.1 at 233.

63. Foreign Manufacturer's Exhibit E-01 at para. 6, Administrative Record, Vol. 13.

64. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 112-13; *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 303-304, 337-38.

65. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 11, 140; *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 199, 211-12; *Transcript of In Camera Hearing*, Vol. 1, 24 November 2003 at 75, 93-94.

66. As noted earlier, almost all the subject goods were sold to or imported by steel service centres, and the vast majority of domestic sales were to steel service centres.

Tribunal, the average unit selling price of the subject goods, in the second half of 2002, was \$675 per tonne, almost \$200 per tonne below the average unit value of domestic sales during this period.⁶⁷

Other comparative pricing information on the record corroborates the existence of large price spreads between the domestic goods and the subject goods. This includes pricing data collected by the Tribunal on certain benchmark products, as well as information from Statistics Canada on HSS monthly import values from the subject countries.⁶⁸ The figures provided during the hearing by Barloworld on its F.O.B. ex-South Africa selling price to its Canadian customer, adjusted for the costs of bringing the goods to Canada, are generally consistent with the above information on the average unit selling prices of the subject goods.⁶⁹

As noted earlier, knowledge of the pending and actual arrival of the subject goods in the second half of 2002 was widely known in the marketplace. As one witness testified, the day after import permits are issued, such events become generally known in the marketplace.⁷⁰ According to the evidence, as the subject goods began to penetrate the Canadian market in increasing quantities throughout the second half of 2002, the industry's customers began to complain about their inability to sell the domestic product in competition with the subject goods. The magnitude of this problem is well illustrated by the witness from Transbec, a buying group that purchases HSS on behalf of nine steel service centres in Quebec and three in Ontario. According to this witness, these steel service centres were faced with the impossible prospect of trying to sell domestic product at \$900 per tonne when competing steel service centres were selling the subject goods at \$650 per tonne.⁷¹

In the face of such underpricing and calls for assistance from its customers, the industry had little choice but to lower its prices. Although the precise timing of these reductions varied from producer to producer, the evidence indicates that domestic mills began to lower their prices in the last quarter of 2002, with reductions accelerating throughout the quarter and continuing through the first half of 2003. All told, in about six to eight months, domestic mill prices declined, on average, by over 10 percent, or \$100 per tonne, to \$767 per tonne in the first half of 2003.⁷² In the case of some individual producers, the reductions were closer to 20 percent over this relatively short period.⁷³

67. Tribunal Exhibit NQ-2003-001-06A, Administrative Record, Vol. 1.1 at 233. The Tribunal notes that some of the subject goods from South Africa were apparently purchased some time in the first half of 2002, at the then prevailing prices, which were appreciably lower than the prices that prevailed at the time of their arrival in Canada in the second half of 2002, as a result of the run-up in prices that occurred. It is possible that this also applies to some of the shipments of subject goods from Korea and Turkey that arrived in Canada in the second half of 2002. In the Tribunal's opinion, even if these goods were purchased without any intention of undercutting prices in Canada, this does not alter the fact that, when they arrived, they were found to be dumped by a considerable margin. Moreover, according to the evidence, the subject goods contributed to the overall destabilization of prices and consequent injury to the domestic industry.

68. The Statistics Canada data represent import values for duty, not selling prices. However, it is apparent that they reflect potential selling prices that would be well below prevailing domestic mill prices. Manufacturer's Exhibit A-07, Tab 2 at 18, Administrative Record, Vol. 11.

69. *Transcript of In Camera Hearing*, Vol. 2, 25 November 2003 at 126.

70. *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 340-41.

71. *Ibid.* at 198.

72. Tribunal Exhibit NQ-2003-001-06A, Administrative Record, Vol. 1.1 at 233.

73. Manufacturer's Exhibit A-06 (protected) at 5, Tab 1 at 2, 7, Administrative Record, Vol. 12.

As domestic mills lowered their prices to allow their customers to compete with the subject goods, the prices of the subject goods fell even further. Specifically, the average unit selling prices of the subject imports fell by about 9 percent, or \$56 per tonne, to \$619 per tonne in the first half of 2003⁷⁴ from \$675 in the second half of 2002. Although average spreads between prices of the domestic goods and the subject goods narrowed somewhat, they still remained large by any measure. According to Transbec, despite the frequent price reductions that it requested and received from the domestic mills over this period, the ongoing spreads presented continuing competitive difficulties for its members.⁷⁵

The Tribunal notes that the above pricing information is globally consistent with the testimony of the industry witnesses as well as the Tribunal witnesses representing steel service centres. In the Tribunal's opinion, this testimony demonstrates that the low prices of the subject goods undercut and destabilized prices in the market.

The Tribunal notes that respondents to its questionnaire on market characteristics indicated that, in order to switch to imports from domestic sources, they would need to see price spreads of about 10 to 20 percent.⁷⁶ One of the witnesses from a steel service centre confirmed that spreads of a similar magnitude would be required before he would consider switching to imports.⁷⁷ In the Tribunal's opinion, these are very large price spreads for domestic and imported HSS, given that the goods from both sources are fundamentally fungible and physically interchangeable. It seems to reveal a relatively strong purchaser preference for domestic supply, but only within certain price limits. The evidence submitted in this case shows that these limits were breached some time in 2002 and 2003 and that this brought about a surge of imports of the subject goods that the CCRA has established were dumped at a weighted average margin of dumping of almost 58 percent for the three subject countries combined.⁷⁸

The Tribunal notes that not all the price declines that occurred can be attributed to the dumped subject goods. The market slowdown and declining HR costs may well have caused some of the decline. However, here again, the Tribunal finds that the preponderance of the evidence indicates that prices would not have declined as steeply and rapidly as they did, were it not for the dumped subject goods.

In sum, the Tribunal finds that the prices of the dumped subject goods have undercut and suppressed the prices of the like goods produced and sold by the domestic industry. The Tribunal also finds that price is the main driving factor behind the surge in imports from the three subject countries.

IMPACT ON THE DOMESTIC INDUSTRY

In this section, the Tribunal will examine the effect that surging volumes of the dumped subject goods, which were sold at well below domestic prices, had on the domestic industry's performance. In addition, the Tribunal will examine the effect that any other non-dumping factors may have had on the domestic industry.

74. Tribunal Exhibit NQ-2003-001-06A, Administrative Record, Vol. 1.1 at 233.

75. *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 198, 212-13; *Transcript of In Camera Hearing*, Vol. 2, 25 November 2003 at 110-11.

76. Tribunal Exhibit NQ-2003-001-06, Administrative Record, Vol. 1.1 at 91.

77. *Transcript of In Camera Hearing*, Vol. 2, 25 November 2003 at 134, 135.

78. Weighted average for all three subject countries expressed as a percentage of export price, Tribunal Exhibit NQ-2003-001-04A, Administrative Record, Vol. 1 at 71.25.

The Tribunal notes that, as discussed earlier, the subject goods from South Africa and Turkey were not present in the Canadian market in 2000 and 2001, while imports from Korea were present only in small volumes. During this period, the Canadian industry operated at profitable levels.⁷⁹ The Canadian industry also operated profitably in 2002. In fact, according to the data, 2002 as a whole was the most profitable year for the industry, over the three-and-a-half-year period examined by the Tribunal. Moreover, the second half of the year was even more profitable than the first half,⁸⁰ although, as will be discussed below, signs of serious difficulties began to emerge towards the end of the year.

As already noted, 2002 was a turbulent year with significant shifts in costs and market forces that affected the industry's performance. HR costs rose in the first half of the year, HSS prices rose in the second half of the year, and the subject goods arrived in large volumes, especially in the last quarter of the year. According to the evidence, HSS prices initially rose more rapidly than costs and, consequently, the industry's margins expanded and its profitability increased.⁸¹ In addition, profits were given a boost by robust margins on current sales of low-cost inventory that had been accumulated earlier in the year.⁸² This allowed the industry to achieve solid profitability for the year. However, the yearly and half-yearly data mask the fact that, as the effect of the imports began to be increasingly felt in the last three months of 2002, the industry started to experience a reversal in performance and some of the major producers reported negative operating income.⁸³

This downward trend accelerated through the first half of 2003 and, by the second quarter of 2003, all the major producers were experiencing significant losses in net income. In the case of two producers, their performance deteriorated so severely that they were not even able to achieve positive gross margins.⁸⁴ All told, in the first half of 2003, the industry lost more than \$3 million in operating income⁸⁵ in contrast with profits of \$7 million over the first six months of 2002. These losses were the direct result of declining unit sales values that fell more rapidly than costs, thereby creating a "cost-price squeeze" on the industry.⁸⁶

The rapidity and steepness of decline in the industry's financial performance in the first half of 2003 is graphically apparent in the quarterly financial information submitted by the major producers.⁸⁷ Further, this information, when compared to the quarterly Statistics Canada data on the arrival of the subject goods, shows that there is a clear correlation between the peak period of import arrivals in December 2002 and January 2003 and the market collapse that subsequently occurred.⁸⁸

79. Tribunal Exhibit NQ-2003-001-06A, Administrative Record, Vol. 1.1 at 236.

80. *Ibid.* at 236.

81. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 100-101.

82. *Ibid.* at 102-103; *Transcript of In Camera Hearing*, Vol. 1, 24 November 2003 at 2-3.

83. Manufacturer's Exhibit A-04 (protected), Tab 1 at 1, Administrative Record, Vol. 12; Manufacturer's Exhibit B-02 (protected), Tab 1 at 1, Administrative Record, Vol. 12.

84. Manufacturer's Exhibit B-02 (protected), Tab 1 at 1, Administrative Record, Vol. 12; Manufacturer's Exhibit C-02 (protected), Tab 1 at 1, Administrative Record, Vol. 12.

85. Tribunal Exhibit NQ-2003-001-06, Administrative Record, Vol. 1.1 at 67.

86. Manufacturer's Exhibit A-01 at 43, Administrative Record, Vol. 11; Manufacturer's Exhibit B-01 at 10, Administrative Record, Vol. 11; Manufacturer's Exhibit C-01 at 9, Administrative Record, Vol. 11; Tribunal Exhibit NQ-2003-001-10.01 (protected), Administrative Record, Vol. 4 at 192; Tribunal Exhibit NQ-2003-001-09.02, Administrative Record, Vol. 3 at 164; *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 102-103, 120-21; *Transcript of In Camera Hearing*, Vol. 1, 24 November 2003 at 67-68.

87. Manufacturer's Exhibit A-07, Tab 2 at 10-11, Administrative Record, Vol. 11.

88. *Ibid.* at 13-14.

The Tribunal notes that the first half of 2003 was disastrous for the industry, not only from a “bottom-line” standpoint but also in terms of almost every other operational performance indicator. In particular, production, sales volumes, sales revenues, capacity utilization, total hours worked and employment all showed declines compared to the first half of 2002. Industry witnesses described this period as the worst they had ever experienced, and some feared for the survival of their businesses.⁸⁹ In the face of this deteriorating situation, in April 2003, the major domestic producers launched the dumping action that is the subject of this inquiry. The evidence indicates that, soon after this action was commenced, imports of the subject goods from the subject countries ceased.⁹⁰ According to several witnesses, the market has now stabilized, and HSS prices are gradually increasing.⁹¹

The Tribunal notes that not all the declines in the industry’s performance indicators can be attributed to the effect of the dumped subject goods. As already noted, there was softness in the market, which could have exerted some downward pressure on prices. HR prices also fell somewhat from late 2002 to the first half of 2003, and this could have also caused some corresponding decline in prices since, as discussed earlier, HR and HSS prices track each other, subject to time lags. However, it is evident that HSS prices fell much further than can be attributed to falling HR prices, because the normal HSS/HR spread that allows the industry to be profitable, disappeared and turned negative, in 2003, for most of the major producers.

Another factor that could have affected the industry’s performance and that warrants comment is the industry export shipments⁹² that declined in 2002 compared to previous years.⁹³ This could have had some effect on plant loading and, therefore, on unit costs of production for domestic sales, as well as on total hours worked and employment. However, this does not appear to be a significant factor because some of this export production was replaced by production of non-subject goods.⁹⁴ Moreover, export shipments by the industry actually increased slightly in the first half of 2003 compared to the same period in 2002. This suggests that exports did not significantly hamper industry performance during the period when it suffered its worst injury.

89. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 10-14; *Transcript of In Camera Hearing*, Vol. 1, 24 November 2003 at 63-64.

90. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 121-22; *Transcript of Public Hearing*, Vol. 2, 25 November 2003 at 341-42. Imports from the subject countries ceased, although imports already in Canada may have continued to be released into the market for a certain time after the initiation of the anti-dumping action in April 2003.

91. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 144-45; *Transcript of In Camera Hearing*, Vol. 1, 24 November 2003 at 48-49; *Transcript of In Camera Hearing*, Vol. 2, 25 November 2003 at 117.

92. Exports by the major domestic producers comprise about 50 percent of their total production, Tribunal Exhibit NQ-2003-001-06, Administrative Record, Vol. 1.1 at 21, 43.

93. According to the evidence, much of these declines represent a transfer of production to U.S. affiliates of the Canadian producers. Tribunal Exhibit NQ-2003-001-06A, Administrative Record, Vol. 1.1 at 229; *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 86-89, 103-105.

94. *Transcript of Public Hearing*, Vol. 1, 24 November 2003 at 89, 103-106.

In the Tribunal's opinion, the preponderance of the evidence establishes that the importation of the subject goods was the main reason the industry performed so poorly and was unable to obtain the revenues needed to recoup its costs of doing business, especially in the first half of 2003. Further, the Tribunal finds that the injury suffered was material.⁹⁵

CONCLUSION

For the foregoing reasons, the Tribunal finds that the dumping of certain HSS originating in or exported from Korea, South Africa and Turkey has caused injury to the domestic industry.

Ellen Fry
Ellen Fry
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Zdenek Kvarda
Zdenek Kvarda
Member

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