



Ottawa, Thursday, September 5, 1991

Inquiry No.: NQ-91-001

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

**CERTAIN STAINLESS STEEL WELDED PIPE
ORIGINATING IN OR EXPORTED FROM TAIWAN**

FINDING

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry following the issuance by the Deputy Minister of National Revenue for Customs and Excise of a preliminary determination of dumping dated May 8, 1991, and of a final determination of dumping dated August 2, 1991, respecting the importation into Canada of stainless steel welded pipe originating in or exported from Taiwan, in nominal pipe sizes ranging from 1/8 in. to 6 in. inclusive and with wall thicknesses varying from 0.060 in. to 0.315 in. (1.525 mm to 8.000 mm) inclusive, manufactured to specification A-312 prescribed by the American Society for Testing and Materials (ASTM), specification SA-312 prescribed by the American Society of Mechanical Engineers (ASME), or equivalent specifications.

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 from Taiwan has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Charles A. Gracey
Charles A. Gracey
Member

Robert J. Martin
Robert J. Martin
Secretary

The statement of reasons will be issued within 15 days.

Inquiry No.: NQ-91-001

Place of Hearing: Ottawa, Ontario
Dates of Hearing: August 6 and 7, 1991
Date of Finding: September 5, 1991
Tribunal Members: Kathleen E. Macmillan, Presiding Member
Michèle Blouin, Member
Charles A. Gracey, Member
Director of Research: Réal Roy
Research Officer: Rose Ritcey
Statistical Officer: Sonia McEachern
Counsel for the Tribunal: Brenda C. Swick-Martin
Registration and Distribution Clerk: Pierrette Hébert
Participants:
for Lawrence L. Herman
Associated Tube Industries
A Division of Samuel Manu-Tech Inc.
(Complainant)
Donald J. Goodwin,
Peter W. Collins and
Paul K. Lepsoe
for Jaung Yuann Enterprise Co., Ltd.
(Exporter)



Ottawa, Friday, September 20, 1991

Inquiry No.: NQ-91-001

**CERTAIN STAINLESS STEEL WELDED PIPE
ORIGINATING IN OR EXPORTED FROM TAIWAN**

Special Import Measures Act - Whether the dumping of the above-mentioned goods has caused, is causing or is likely to cause material injury, or has caused or is causing retardation to the production in Canada of like goods.

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods originating in or exported from Taiwan has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: August 6 and 7, 1991

Date of Finding: September 5, 1991
Date of Reasons: September 20, 1991

Tribunal Members: Kathleen E. Macmillan, Presiding Member
Michèle Blouin, Member
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Director of Research: Réal Roy
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Registration and Distribution
Clerk: Pierrette Hébert

Participants: Lawrence L. Herman
for Associated Tube Industries
A Division of Samuel Manu-Tech Inc.

(Complainant)

Donald J. Goodwin,
Peter W. Collins and
Paul K. Lepsoe
for Jaung Yuann Enterprise Co., Ltd.

(Exporter)

Witnesses:

R. Scott Sweatman
Vice-President and General Manager
Associated Tube Industries
A Division of Samuel Manu-Tech Inc.

Mark L. Winkler
Controller
Associated Tube Industries
A Division of Samuel Manu-Tech Inc.

Graham J. Bassett
Marketing Manager
Fluids Handling Products
Atlas Alloys
A Division of Rio Algom Limited

Sylvia Taylor
Manager
Pipe and Tube
BHP Trading Canada Ltd.

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Ottawa, Friday, September 20, 1991

Inquiry No.: NQ-91-001

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

**CERTAIN STAINLESS STEEL WELDED PIPE
ORIGINATING IN OR EXPORTED FROM TAIWAN**

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member
MICHÈLE BLOUIN, Member
CHARLES A. GRACEY, Member

STATEMENT OF REASONS

SUMMARY

The purpose of this inquiry is to determine whether the dumping of certain stainless steel welded pipe originating in or exported from Taiwan has caused, is causing or is likely to cause material injury to the production in Canada of like goods.

Counsel for Associated Tube Industries, A Division of Samuel Manu-Tech Inc. (ATI), the sole complainant and the dominant Canadian producer of the subject goods, alleged that the dumping of stainless steel welded pipe from Taiwan has had a direct and decisive downward impact on domestic prices. As a result, ATI has suffered material injury in the form of substantial revenue, profitability, production and employment losses. Counsel further submitted that, in light of the dramatic increase in imports from Taiwan during the inquiry period and the sizable capacity of Taiwanese producers, there is a likelihood of injury.

According to counsel for Jaung Yuann Enterprise Co., Ltd. (JYE), a Taiwanese producer of the subject goods, any injury being suffered by ATI is not attributable to the dumping of pipe by JYE. That is, ATI's pipe prices would remain uncompetitive even with a finding in place. Counsel characterized JYE as a responsible marketer that sold its products in Canada to only one distributor.

In the opinion of the Canadian International Trade Tribunal (the Tribunal), the marked deterioration in key performance indicators over the inquiry period, including profitability, production, employment and market share, demonstrates the magnitude of the material injury incurred by ATI. Stainless steel welded pipe is a commodity product for which price is the primary purchase criterion. Accordingly, dumped imports from Taiwan were able to dramatically increase their share of the domestic market during the inquiry period, virtually all at the expense of Canadian producers. The significant

inroads by Taiwanese pipe have had a strong price-suppressive effect in the domestic market. The causal link is clearly demonstrated by numerous documented cases of lost sales and price erosion involving ATI's principal customers, as well as by the series of decreases in the company's published price lists and by changes to its discount policy. Based on the foregoing, the Tribunal finds that the dumping of stainless steel welded pipe from Taiwan has caused and is causing material injury to ATI.

The Tribunal notes that the market for stainless steel welded pipe is cyclical in nature and that some decrease in activity from the peak experienced in 1988 might, therefore, have been expected during the inquiry period. However, the declines experienced by ATI are far greater than those which could reasonably be attributed to normal market forces alone.

Finally, the Tribunal also finds that there is a likelihood of injury. The productive capacity of the Taiwanese industry is very large in relation to the Canadian market. Further, during the first quarter of 1991, imports of stainless steel welded pipe from Taiwan remained at significant volumes, despite the launching of an anti-dumping investigation by Revenue Canada.

CONDUCT OF THE INQUIRY

The Tribunal, under the provisions of section 42 of the *Special Import Measures Act* (SIMA), has conducted an inquiry following the issuance by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) of a preliminary determination of dumping dated May 8, 1991, and of a final determination of dumping dated August 2, 1991, respecting the importation into Canada of certain stainless steel welded pipe originating in or exported from Taiwan.

The notices of preliminary and final determinations of dumping were published in Part I of the June 1, 1991, and August 17, 1991, editions of the Canada Gazette, respectively. The Tribunal issued a notice of commencement of inquiry on May 13, 1991, which was published in Part I of the May 25, 1991, edition of the Canada Gazette.

As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian manufacturers and importers of the subject goods, requesting production, financial, import and market information, as well as other relevant information, covering the period from January 1, 1987, to March 31, 1991. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and confidential pre-hearing staff reports.

The record of this inquiry consists of all Tribunal exhibits, including the public and confidential sections of the replies to questionnaires, exhibits filed by the parties at the hearing and the transcript of all proceedings. Public exhibits were made available to interested parties, but confidential exhibits were available to independent counsel only.

Public and *in camera* hearings were held in Ottawa, Ontario, commencing August 6, 1991. ATI was represented by counsel at the hearing, submitted evidence and made argument in support of a finding of injury. JYE was represented by counsel at the hearing, submitted evidence and made argument against a finding of injury.

A finding that the dumped goods have caused, are causing and are likely to cause material injury to the domestic production of like goods was issued by the Tribunal on September 5, 1991.

PRODUCTS

The products that are the subject of this inquiry, as set out in the final determination, are stainless steel welded pipe originating in or exported from Taiwan, in nominal pipe sizes ranging from 1/8 in. to 6 in. inclusive and with wall thicknesses varying from 0.060 in. to 0.315 in. (1.525 mm to 8.000 mm) inclusive, manufactured to specification A-312 prescribed by the American Society for Testing and Materials (ASTM), specification SA-312 prescribed by the American Society of Mechanical Engineers (ASME), or equivalent specifications. The outside diameter of the stainless steel welded pipe ranges from 0.374 in. to 6.687 in. (9.500 mm to 169.850 mm) inclusive.

In the preliminary determination, stainless steel welded pipe manufactured to ASTM specification A-778 and as-welded non-specification pipe or "A-240" pipe also met the product definition. The three specifications of stainless steel welded pipe are not substitutable in that neither A-778 nor "A-240" pipe can be used in applications calling for A-312 pipe.

Stainless steel welded pipe is produced from a variety of grades of stainless steel, which are corrosion and/or heat resistant steels. The most common grades of stainless steel used in the manufacture of welded pipe in Canada are 304, 304L, 316 and 316L, with grades 304L and 316L being low-carbon versions of 304 and 316, respectively. Much of the stainless steel welded pipe produced in Canada and internationally is dual-certified; that is, both the chemical and mechanical properties for 304 pipe are satisfied by a 304L analysis, and similarly for 316 and 316L pipe.

The A-312 standard sets out in four schedules (schedules 5, 10, 40 and 80), by nominal pipe size, the wall thicknesses and corresponding outside diameters, which complying pipe must meet. Most of the pipe consumed in Canada is either schedule 10 or schedule 40 pipe.

Welded pipe is manufactured from hot- or cold-rolled stainless steel strip or sheet, which is roll-formed either in cut lengths or on a continuous basis and then welded. The pipe is then heat-treated by passing it through an annealing furnace. Pipe is "pickled" by immersion in an acid solution to restore the corrosion-resistant properties of the stainless steel that were stressed by the rolling and welding processes.

A-312 pipe is used in the pulp and paper, petrochemical, mining and other manufacturing industries, where raw materials are processed under caustic, high-temperature conditions. In addition, A-312 pipe is used for pressure vessels and heat exchangers for thermal electricity generation.

DOMESTIC INDUSTRY

ATI is responsible for the vast majority of A-312 pipe manufactured in Canada and, accordingly, for the purposes of the present inquiry, the company is considered to represent the domestic industry. Although A-312 pipe is ATI's most important product, the company also manufactures mechanical and pressure tubing in stainless steel and

nickel alloys, as well as heating element tubing, beverage tubing and instrumentation tubing at its Markham, Ontario, plant. In addition, ATI has a fabricated tubular parts division which transforms pipe or tube into finished parts or subassemblies.

There are two other manufacturers of A-312 pipe in Canada, both of which produce very small volumes in the subject size range when compared to ATI. Canadian Erectors Pipe began to manufacture A-312 pipe in the spring of 1990 at production facilities in Kingston, Ontario. The company also makes A-778 pipe. Henderson Barwick Inc. produces stainless steel welded pipe at a plant in Brockville, Ontario. Most of the company's production is A-778 pipe in sizes larger than 6 in.

In the domestic market, ATI sells stainless steel welded pipe exclusively to eight distributors, seven of which, in turn, sell pipe to end users. An eighth distributor is a master distributor that sells only to other distributors. The other two manufacturers of A-312 pipe also sell to distributors.

IMPORTERS/EXPORTERS

In addition to JYE, Revenue Canada investigated two other Taiwanese manufacturers of stainless steel welded pipe: Ta Chen Stainless Pipe Co. Ltd. and Yeun Chyang Industrial Co. Ltd.

Seven Canadian importers of the subject goods were also investigated: Acier inoxydable Pinnacle Stainless Steel Inc., Atlas Alloys, A Division of Rio Algom Limited, BHP Trading Canada Ltd., C. Itoh & Co. (Canada) Ltd., Davlin Stainless Products, Marmon/Keystone Canada Corporation and PAC PVF Trade Inc.

Stainless steel welded pipe in the subject size range is also imported from several other sources, including the United States, Holland and Sweden.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION

The period of investigation chosen by the Deputy Minister covered imports of stainless steel welded pipe from Taiwan between January 1, 1990, and December 31, 1990. In the final determination, the Deputy Minister found that 78 percent of imports had been dumped by a weighted average margin of dumping of 18.2 percent, expressed as a percentage of normal value.

Subsequent to the preliminary determination, Revenue Canada obtained information which indicated that any anti-dumping measures should be limited to stainless steel welded pipe manufactured to ASTM A-312, ASME SA-312 or equivalent specifications. Therefore, the investigation was terminated against other specifications of stainless steel welded pipe, such as A-778 and "A-240" pipe.

ECONOMIC INDICATORS

In 1988, the domestic market for A-312 stainless steel welded pipe exhibited its highest level during the inquiry period. The market then declined gradually until the first quarter of 1991, when there was a significant improvement in demand.

Canadian production of A-312 stainless steel welded pipe also reached a peak in 1988, followed by two years of declining output. Total domestic output declined in 1990 despite the entry of Canadian Erectors Pipe into the market in the third quarter of the year. The first quarter of 1991 saw production volumes improve significantly over the same period in 1990.

Imports of A-312 stainless steel welded pipe from all sources rose by nearly 150 percent from 1987 to 1990. However, the volume of imports of pipe from Taiwan grew 30 times during this period, while imports from other sources increased by only 6 percent. As a result, by 1990, imports of pipe from Taiwan accounted for 59 percent of all imports, compared to the 5-percent share they had held in 1987. In the first quarter of 1991, despite the initiation of the anti-dumping investigation by Revenue Canada, Taiwanese pipe still accounted for 31 percent of total imports.

Sales of domestically manufactured pipe represented a decreasing share of the market between 1987 and 1990, but rebounded strongly in the first quarter of 1991. The market share accounted for by Taiwanese pipe grew over 20 times from 1987 to 1990, but fell significantly during the first three months of 1991.

The income statement for the subject goods submitted by ATI shows decreasing sales, gross margins and net incomes beginning in 1988, with the most severe declines in all indices in 1990.

Average domestic prices for A-312 stainless steel welded pipe increased in 1988 and 1989, but declined throughout 1990, recovering marginally in the first quarter of 1991. The net landed value of Taiwanese pipe also rose in 1988 and 1989, and fell in 1990, remaining virtually unchanged in the first quarter of 1991.

COMPLAINT

Counsel for ATI submitted that the dumping of stainless steel welded pipe from Taiwan had caused the company material injury in the form of substantial decreases in production, profitability, employment and capacity utilization. The circumstances in the current inquiry were claimed to be quite different from those of a 1990 review on stainless steel welded pipe (RR-90-002), where the Tribunal rescinded the finding against six countries, concluding that the domestic industry would not be materially injured if dumping were to resume from these sources.

Counsel noted that imports of the subject goods from Taiwan had increased at a remarkable rate from 1987 to 1990 and remained high in the first quarter of 1991, even after the initiation of the anti-dumping investigation by Revenue Canada. According to counsel, both the proportion of goods that were dumped and the weighted average margin of dumping, as set out in the final determination, were high.

In response to arguments raised by counsel for JYE, counsel contended that the price and dumping analyses submitted by the exporter could not be considered relevant because they were based on the lower dumping margins and volumes contained in the preliminary determination. Counsel for ATI maintained that to ignore the margin of dumping as provided in the final determination would constitute a perverse reading of the law. Furthermore, counsel submitted that there was no evidence to suggest that any one exporter, namely JYE, should be, or legally could be, excluded from a finding of

injury as the damage experienced by ATI was attributable to the dumping of Taiwanese pipe "*en masse*."

To support the argument that ATI sustained injury because of dumped imports, counsel made reference to the many documents presented, which showed specific instances of lost sales and price erosion, as well as to continuing decreases in published price lists, changes in discount policy and the practice of spot pricing. These, argued counsel, provided clear evidence of a causal link between dumped Taiwanese pipe and ATI's injury. It was counsel's view that, with regard to the two cases of lost sales and price erosion involving duty drawback, the only issue that should be considered by the Tribunal was whether the dumping had resulted in ATI losing orders or having to lower prices, thus contributing to the company's injury. The drawback *per se* is not relevant, in counsel's submission.

In terms of alternative explanations for the injury experienced by ATI, counsel asserted that the company was an efficient manufacturer with no delivery or quality problems. Further, even if the injury suffered by ATI had been exacerbated by a contraction of the market, the Tribunal was required to find injury if the dumping had been a substantial cause of the damage.

Counsel also submitted that there is a likelihood of injury, in that Taiwanese producers have shown a clear propensity to export large volumes of product to the Canadian market at substantial margins of dumping. In addition, the three Taiwanese producers have the capacity to supply the Canadian market 17 times over. Counsel also noted that an anti-dumping action against Taiwan was being considered by manufacturers of stainless steel welded pipe in the United States.

RESPONSE

Counsel for JYE argued that any injury to ATI should not be attributed to dumped pipe originating with the exporter. JYE and its sole Canadian importer, BHP Trading Canada Ltd., were claimed by counsel to be responsible marketers that had not sought to take market share from ATI. Counsel noted that, through BHP Trading Canada Ltd., JYE sells to only one Canadian distributor. Further, counsel submitted that the tonnage shipped to Canada had remained relatively stable in 1989 and 1990.

Counsel drew the Tribunal's attention to the testimony of the witness for BHP Trading Canada Ltd. that JYE sets prices on the basis of the cost of stainless steel strip and not in relation to ATI's prices. Counsel also referred to calculations that allegedly demonstrated that JYE's pipe prices, inclusive of any anti-dumping duties, would still be below current ATI's price levels.¹ Counsel noted that significant negative margins of dumping had been found on some JYE's products and suggested that if both dumped and undumped goods were considered together, the overall impact of any dumping on ATI had been minimal.²

1. The calculations referred to by counsel for JYE were developed using data provided in the preliminary determination.

2. Again, this statement is in reference to data contained in the preliminary determination.

In response to the complainant's case, counsel noted that no evidence of lost sales or price erosion due to JYE's products was presented for the period from late 1989 to the second quarter of 1990. In addition, counsel argued that any evidence on lost sales or price erosion presented for 1989 was not relevant since the period of investigation used by Revenue Canada only covered 1990. Further, ATI could not have sustained injury on orders for which duty drawback was available because the company's prices would have still been uncompetitive. Finally, counsel argued that anti-dumping actions against Taiwanese stainless steel welded pipe producers in other jurisdictions were not relevant to the inquiry at hand.

Counsel concurred that under SIMA, the Tribunal is required to make a finding with respect to the goods to which the final determination applies. However, counsel went on to assert that SIMA does not specifically require the Tribunal to consider the margin of dumping as stated in the final determination. According to counsel, section 42 of SIMA requires the Tribunal to consider whether the dumping is causing injury, and section 42 has reference only to the preliminary determination.

REASONS FOR DECISION

Before proceeding with its reasons for decision, the Tribunal must first dispose of an argument raised by counsel for JYE. It was submitted that in the current inquiry, the Tribunal should consider the information on dumping contained in the preliminary determination in arriving at its decision. Under section 43 of SIMA, the Tribunal is required to make a finding with respect to the goods to which the final determination applies. Although SIMA does not expressly provide for the Tribunal to consider the information on dumping contained in the final determination, the Tribunal has the implied jurisdiction to consider such information in making a finding under section 43 of SIMA. The information on dumping in the final determination represents the most current and accurate information on the dumping activity that took place during the period of Revenue Canada's investigation. Consequently, the Tribunal relied on this information in arriving at its decision in this case.

Under section 42 of SIMA, the Tribunal is obliged to determine whether the dumping found by the Deputy Minister has caused, is causing or is likely to cause material injury to the domestic industry. In reaching a decision on past and present injury in such inquiries, the Tribunal must always consider two principal issues: first, whether the injury claimed to have been incurred by the complainant is, in fact, material and, second, whether there is a direct causal link between such material injury and the dumping found by the Deputy Minister.

In terms of the first issue, that is, whether the complainant has suffered material injury, the information provided in response to the Tribunal's questionnaires as well as the additional evidence adduced at the hearing clearly reveal ATI's worsening situation over the inquiry period. Following several years of relatively stable financial performance, revenues, gross margins and profits all deteriorated substantially in 1990. Other principal indicators of injury, including market share, production, employment and capacity utilization, showed similar decreases.

From 1987 to 1990, imports of stainless steel pipe from Taiwan grew at what can only be characterized as a dramatic rate, increasing over thirtyfold, capturing a proportionately larger share of the domestic market. Almost all of the increase in market

share came at the expense of the domestic industry, whose presence in the market declined steadily during the inquiry period.

The history of revisions to ATI's published price lists provides a further indication of the substantial damage being sustained by the company. In April 1990, a price list was issued that contained reductions of 10 percent or more on most types of pipe. However, this price list was not accepted by the market and it was abandoned by ATI a few months later. For approximately the next nine months, ATI quoted prices to its distributors on an order-by-order basis. A price list issued in May 1991 remained in effect for less than a month and, following several weeks of renewed spot pricing, a new list with lower prices was issued. According to witnesses for ATI, the June 1991 price list appears to have been accepted by the market.

In addition to revisions in its price lists, ATI made several changes to its purchaser discount policy. The first revision came in January 1990 when the company increased the level of its quantity discounts to distributors. Then, beginning with the May 1991 price list, the policy of granting discounts based on the volume of annual purchases was eliminated and replaced with a policy of a flat discount rate for all purchasers. Witnesses for ATI claimed that this change was in direct response to the pricing practices of Taiwanese manufacturers and was instituted despite the arguments of larger purchasers that it put them on the same footing as small buyers.

As a final point to this first issue, the Tribunal would like to note that although ATI's performance appears to be somewhat more robust in the first quarter of 1991, the company has not recovered to a degree that would alter the Tribunal's conclusion as to the materiality of the injury sustained.

The second criterion that must be met before a finding of past and present injury can be made is the existence of a clear causal link between the injury incurred by the domestic manufacturer of the subject goods and the dumped imports. In the Tribunal's view, other things being equal, the situation of simultaneously declining domestic production and large and increasing volumes of imports, a high proportion of which have been dumped at significant margins of dumping, provides *prima facie* evidence of causality. Such conditions are present in the inquiry at hand. That is, in the final determination it was found that nearly 80 percent of imports of Taiwanese stainless steel pipe had been dumped at a weighted average margin of dumping of some 18 percent. Further, as noted above, Taiwanese pipe made significant inroads into the Canadian market at the same time as domestic production registered substantial declines.

As acknowledged by both industry and distributor witnesses at the hearing, A-312 stainless steel welded pipe is a commodity for which price is the most important purchase criterion. Thus, the extensive documentary evidence presented by ATI of occasions when it was requested by its distributors to lower its published prices to meet prices of Taiwanese pipe illustrated the direct price suppressive effects of the dumped goods. The total value of such instances of claimed lost sales and price erosion due to dumped Taiwanese pipe is substantial in relation to actual revenues. The many revisions to ATI's price lists and distributor discount policies represent additional evidence of the causal link between the dumping and the injury sustained by the company. Finally, there is the testimony by a witness for a major distributor, Atlas Alloys, A Division of Rio Algom Limited, that, by 1990, Taiwanese pipe had become the price leader in the Canadian market.

The Tribunal disregarded two cases of claimed lost sales and price erosion involving duty drawback in its deliberations. However, these are only two out of more than twenty cases and, even if they are put aside, the evidence of the detrimental impacts of dumping on ATI remains strong. Further, in its assessment of causality, the Tribunal focussed primarily on those cases of claimed lost sales and price erosion that took place in 1990 as this was the period during which the Deputy Minister determined that there had been dumping.

The Tribunal expected to see some deterioration in economic performance after 1988, a year that all witnesses agreed was exceptional in terms of sales and prices. In fact, the market decline appears to have been less gradual for this industry than for many others dependent on the construction sector. Witnesses for ATI explained that a significant proportion of the company's business involves large capital projects that, once under way, are not affected by a general economic slowdown. In the Tribunal's view, the deterioration in ATI's sales and financial performance was considerably greater than would be suggested by the downturn alone.

Given that the cost of stainless steel strip accounts for the bulk of the cost of stainless steel welded pipe, the falling cost of stainless steel strip beginning in the second quarter of 1989 might reasonably have been expected to lead to some decrease in the price of pipe. However, data gathered by the Tribunal's staff suggest that domestic pipe prices declined to a greater extent than strip costs, while the net landed value of Taiwanese pipe decreased by a lesser amount. Although labour and overhead costs represent a small proportion of the total manufacturing cost of stainless steel pipe, both remained relatively stable in 1989 and 1990 and, accordingly, cannot be considered as a factor in explaining the changes in pipe prices.

The Tribunal sees no other significant market factors that could account for the injury to the company. That is, there was no evidence that the product mix changed dramatically during the inquiry period or that there was a substantial difference in the composition of domestic production and Taiwanese imports. Similarly, there was no evidence adduced at the hearing with regard to any problems within ATI in areas such as quality, customer service or delivery.

In light of the foregoing, the Tribunal finds that the past and present material injury incurred by ATI is due to the dumping of stainless steel welded pipe from Taiwan.

The next consideration facing the Tribunal is whether there is a likelihood of injury due to the dumping of imports from Taiwan. In this regard, the Tribunal took note of the relative capacities of ATI and the three Taiwanese exporters at 6,000 tonnes and 54,000 tonnes, respectively. The Tribunal also considered the fact that imports from Taiwan continued to enter Canada in substantial volumes in the first quarter of 1991, even after the initiation of the anti-dumping investigation by Revenue Canada. According to information presented in the pre-hearing staff report,³ net landed values of Taiwanese pipe remained low in the first three months of this year. Testimony of a key distributor witness also referred to the continuing low prices of imports from Taiwan.

3. Schedule X, Tribunal Exhibit NQ-91-001-6 (Public) and Tribunal Exhibit NQ-91-001-7 (Protected).

The withdrawal of ATI's price list in May 1991, after only a few weeks, further illustrates the ongoing price pressures in the market.

These factors, coupled with the dramatic increase in Taiwanese imports during the inquiry period, suggested to the Tribunal that Taiwan would continue to be a source of dumped imports to Canada and these imports would, in all likelihood, prove materially injurious to the Canadian industry.

The Tribunal recognizes that there is a possibility that ATI's prices on particular pipe products could remain uncompetitive with Taiwanese prices, inclusive of anti-dumping duties. However, the Tribunal would look to factors other than the dumping as the cause of ATI's injury only if the evidence suggested that, on balance, the domestic industry would be unable to compete successfully even with a finding in place. The evidence before the Tribunal in no way supports such a conclusion.

Finally, the Tribunal must address the request by counsel for JYE that the company be excluded from any finding of past, present and future injury. The circumstances in which the Tribunal would exclude one or more exporters from a finding of material injury would be exceptional and are not present in the current inquiry. Revenue Canada determined that a significant proportion of JYE's products had been dumped at substantial margins of dumping. Further, the company has had an ongoing presence in the domestic market for several years and no evidence was led at the hearing to suggest that JYE's presence in the market would change in the future. Consequently, the Tribunal finds no reason to distinguish JYE from the other two Taiwanese exporters in this inquiry.

CONCLUSION

The Tribunal concludes that the dumping of certain stainless steel welded pipe originating in or exported from Taiwan has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

Kathleen E. Macmillan
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