



Ottawa, Monday, May 31, 1993

**Inquiry No.: NQ-92-008**

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

**CERTAIN FLAT HOT-ROLLED CARBON STEEL SHEET PRODUCTS  
ORIGINATING IN OR EXPORTED FROM THE FEDERAL  
REPUBLIC OF GERMANY, FRANCE, ITALY, NEW ZEALAND,  
THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA**

**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 January 29, 1993, and of a final determination of dumping dated April 29, 1993, respecting the importation into Canada of flat hot-rolled carbon steel strip, sheet and floor plate originating in or exported from the Federal Republic of Germany, France, Italy, New Zealand, the United Kingdom and the United States of America, produced to any specification of the ASTM standard or any other recognized designation system or standard, or produced to any proprietary specification, in coils or cut lengths, in widths from 3/4 in. to 96 in. (19 mm to 2,439 mm) inclusive and in thicknesses from 0.060 in. to 0.625 in. (1.60 mm to 15.87 mm) inclusive, but not including:

- a) hot-rolled carbon steel strip and sheet known as "skelp" for use in the manufacture of pipes and tubes; and
- b) hot-rolled carbon steel sheet products in cut lengths of a thickness of 0.187 in. (4.75 mm) or greater.

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 the Federal Republic of Germany, France, Italy, New Zealand, the United Kingdom and the United States of America has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan  
Member

Desmond Hallissey

Desmond Hallissey  
Member

Michel P. Granger

Michel P. Granger  
Secretary

The statement of reasons will be issued within 15 days.

**Inquiry No.: NQ-92-008**

Place of Hearing: Ottawa, Ontario  
Date of Pre-Hearing Conference: April 13, 1993  
Dates of Hearing: May 3 to 7, 1993  
May 10 to 13, 1993  
May 17, 1993

Date of Finding: May 31, 1993

Tribunal Members: Charles A. Gracey, Presiding Member  
Kathleen E. Macmillan, Member  
Desmond Hallissey, Member

Director of Research: Douglas Cuffley  
Commerce Officers: Anis Mahli  
Don Shires

Economist: Simon Glance

Statistical Officers: Gilles Richard  
Robert Larose

Counsel for the Tribunal: David M. Attwater

Registration and Distribution Officer: Pierrette Hébert

**Participants:**

Lawrence L. Herman  
William R. Hearn  
for Stelco Inc.

Ronald C. Cheng  
Gregory O. Somers  
for Algoma Steel Inc.  
Sidbec-Dosco Inc.  
IPSCO Inc.

Alexander D. Givens  
Steven K. D'Arcy  
for Dofasco Inc.

**(Manufacturers)**

Peter Clark  
John Haime  
for British Steel Canada Inc.

**(Importer)**

C.J. Michael Flavell, Q.C.  
Geoffrey C. Kubrick  
Chris Hines  
James P. McIlroy  
Paul Lalonde  
for USX Corporation  
U.S. Steel Group, A Unit of  
USX Corporation  
National Steel Corporation  
LTV Steel Company  
WCI Steel, Incorporated  
Acme Steel Company  
Bethlehem Steel Export Corporation

Simon V. Potter  
Denis Gascon  
for Francosteel Canada Inc.  
Sollac et Daval, Aciers d'Usinor  
et de Sacilor

Donald Goodwin  
for Preussag Stahl AG  
BHP New Zealand Steel Limited  
ILVA S.p.A.

Roger Alfred  
Director of Operations  
Freeway Washer Limited

Yvan Rochon, CA  
Finance Director and Controller  
GARANT, Division of Hanson  
Kidde Canada Inc.

**(Importers/Exporters)**

**CORRIGENDUM**

**TO THE FINDING OF MAY 31, 1993**

Ottawa, Monday, May 31, 1993

**Inquiry No.: NQ-92-008**

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**CERTAIN FLAT HOT-ROLLED CARBON STEEL SHEET PRODUCTS  
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REPUBLIC OF GERMANY, FRANCE, ITALY, NEW ZEALAND,  
THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA**

**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 January 29, 1993, and of a final determination of dumping dated April 29, 1993, respecting the importation into Canada of flat hot-rolled carbon steel strip, sheet and floor plate originating in or exported from the Federal Republic of Germany, France, Italy, New Zealand, the United Kingdom and the United States of America, produced to any specification of the ASTM standard or any other recognized designation system or standard, or produced to any proprietary specification, in coils or cut lengths, in widths from 3/4 in. to 96 in. (19 mm to 2,439 mm) inclusive and in thicknesses from 0.060 in. to 0.625 in. (1.60 mm to 15.87 mm) inclusive, but not including:

- a) hot-rolled carbon steel strip and sheet known as "skelp" for use in the manufacture of pipes and tubes; and
- b) hot-rolled carbon steel sheet products in cut lengths of a thickness of 0.187 in. (4.75 mm) or greater.

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 the Federal Republic of Germany, France, Italy, New Zealand and the United Kingdom has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods.

In accordance with subsection 43(1.1) and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal finds that the dumping in Canada of the aforementioned goods from the United States of America has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

The statement of reasons will be issued by June 15, 1993.



Ottawa, Tuesday, June 15, 1993

**Inquiry No.: NQ-92-008**

**CERTAIN FLAT HOT-ROLLED CARBON STEEL SHEET PRODUCTS  
ORIGINATING IN OR EXPORTED FROM THE FEDERAL  
REPUBLIC OF GERMANY, FRANCE, ITALY, NEW ZEALAND,  
THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA**

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

**DECISION:** The Canadian International Trade Tribunal has found that the dumping in Canada of certain flat hot-rolled carbon steel sheet products from the Federal Republic of Germany, France, Italy, New Zealand, the United Kingdom and the United States of America has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods.

Place of Hearing:	Ottawa, Ontario
Date of Pre-Hearing Conference:	April 13, 1993
Dates of Hearing:	May 3 to 7, 1993 May 10 to 13, 1993 May 17, 1993
Date of Finding:	May 31, 1993
Date of Corrigendum:	June 3, 1993
Date of Reasons:	June 15, 1993
Tribunal Members:	Charles A. Gracey, Presiding Member Kathleen E. Macmillan, Member Desmond Hallissey, Member
Director of Research: Commerce Officers:	Douglas Cuffley Anis Mahli Don Shires
Economist:	Simon Glance
Statistical Officers:	Gilles Richard Robert Larose
Counsel for the Tribunal:	David M. Attwater
Registration and Distribution Officer:	Pierrette Hébert
<b>Participants:</b>	Lawrence L. Herman William R. Hearn for Stelco Inc.

Ronald C. Cheng  
Gregory O. Somers  
for Algoma Steel Inc.  
Sidbec-Dosco Inc.  
IPSCO Inc.

Alexander D. Givens  
Steven K. D'Arcy  
for Dofasco Inc.

**(Manufacturers)**

Peter Clark  
John Haime  
for British Steel Canada Inc.

**(Importer)**

C.J. Michael Flavell, Q.C.  
Geoffrey C. Kubrick  
Chris Hines  
James P. McIlroy  
Paul Lalonde  
for USX Corporation  
U.S. Steel Group, A Unit of  
USX Corporation  
National Steel Corporation  
LTV Steel Company  
WCI Steel, Incorporated  
Acme Steel Company  
Bethlehem Steel Export Corporation

Simon V. Potter  
Denis Gascon  
for Francosteel Canada Inc.  
Sollac et Daval, Aciers d'Usinor  
et de Sacilor

Donald Goodwin  
for Preussag Stahl AG  
BHP New Zealand Steel Limited  
ILVA S.p.A.

Roger Alfred  
Director of Operations  
Freeway Washer Limited

Yvan Rochon, CA  
Finance Director and Controller  
GARANT, Division of Hanson  
Kidde Canada Inc.

**(Importers/Exporters)**



**Witnesses:**

Donald K. Belch  
Director - Government Relations  
Stelco Inc.

John M. Leskew  
General Sales Manager - Steel Service  
Centres  
Co-ordinator - Export Sales  
Stelco Inc.

R.H. (Bob) Thompson  
Cost Supervisor  
Lake Erie Works  
Stelco Steel

Tom E. Witter  
Sales Manager - Hot Rolled Sheets  
Lake Erie Works  
Stelco Inc.

R.A. (Bob) Clark  
General Supervisor  
Accounting Control  
Algoma Steel Inc.

Glenn M. Hogan  
General Manager  
Flat Rolled Sales  
Algoma Steel Inc.

Derek M. de Korte  
Manager - Marketing  
Algoma Steel Inc.

P. Murray Williamson  
General Manager - Sales & Marketing  
Steel Mill Products Division  
IPSCO Inc.

Glenn A. Gilmore  
Trade Supervisor  
IPSCO Inc.

Peter A. Benne  
Corporate Vice-President  
Carbon Steel  
Samuel, Son & Co., Limited

Robert C. Varah  
Director  
Commercial Development  
Dofasco Inc.

John D. Wood  
General Manager  
Sales and Service  
Distribution Industries  
Dofasco Inc.

Dennis G. Martin  
Manager - Market Information  
Dofasco Inc.

William E. Mann  
Manager Operations  
Accounting  
Dofasco Inc.

Larbi Belarbi  
Director, Marketing and Administration  
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Raymond Leblanc  
Commercial Director, Sheet  
Sidbec-Dosco Inc.

Thomas E. Kinley  
Vice-President  
British Steel Canada Inc.

Georges Chartrand  
Sales Manager  
British Steel Canada Inc.

James R. Yates  
President  
Francosteel Canada Inc.

Hugo G. Martin  
Director of Purchasing  
Wilkinson Steel and Metals,  
A Division of Premetalco Inc.

Ted Roberts  
Purchasing Agent  
General Motors of Canada Limited

M.J. (Mike) Makagon  
Chairman  
Maksteel Service Centre  
Div. of Makagon Industries Ltd.

Mindy S. Fleishman  
Manager - Marketing  
United States Steel International, Inc.

Alex Tymochenko  
Noracor  
Metals & Materials Inc.

Jerry D. Kendall  
Vice-President  
Marketing - Steel Products  
Acme Steel Company

Scott C. Gill  
Steel Trader  
Preussag Handel Canada Corporation

Klaus Thomas  
Director of Sales  
Preussag Handel GmbH

Robert P. Howard  
General Manager  
New Zealand Steel (Australia) Pty.  
Limited

Sylvia Ferrante  
Manager Tubular, Hot Rolled and  
Export  
BHP Trading (Canada) Ltd.

Bruce J. Allan  
Sales Manager  
ILVA Canada, Inc.

John A. Vigilante, Jr.  
Director - Sales Coordination  
National Steel Corporation

Roger Alfred  
Director of Operations  
Freeway Washer Limited

Yvan Rochon  
Finance Director and Controller  
GARANT, Division of Hanson  
Kidde Canada Inc.

Jean Drolet  
Purchasing Director  
GARANT, Division of Hanson  
Kidde Canada Inc.

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20th Floor  
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365 Laurier Avenue West  
Ottawa, Ontario  
K1A 0G7



Ottawa, Tuesday, June 15, 1993

**Inquiry No.: NQ-92-008**

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THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
KATHLEEN E. MACMILLAN, Member  
DESMOND HALLISSEY, Member

**STATEMENT OF REASONS**

**CONDUCT OF THE INQUIRY**

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*<sup>1</sup> (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 January 29, 1993, and of a final determination of dumping dated April 29, 1993, respecting the importation into Canada of flat hot-rolled carbon steel strip, sheet and floor plate originating in or exported from the Federal Republic of Germany, France, Italy, New Zealand, the United Kingdom and the United States of America, produced to any specification of the ASTM<sup>2</sup> standard or any other recognized designation system or standard, or produced to any proprietary specification, in coils or cut lengths, in widths from 3/4 in. to 96 in. (19 mm to 2,439 mm) inclusive and in thicknesses from 0.060 in. to 0.625 in. (1.60 mm to 15.87 mm) inclusive, but not including:

- a) hot-rolled carbon steel strip and sheet known as "skelp" for use in the manufacture of pipes and tubes; and
- b) hot-rolled carbon steel sheet products in cut lengths of a thickness of 0.187 in. (4.75 mm) or greater.

The Deputy Minister's investigation into dumping covered importations of the subject goods made from January 1 to June 30, 1992, for the United States. For all other countries, the period of investigation covered shipments of the subject goods made from October 1, 1991, to June 30, 1992.

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1. R.S.C. 1985, c. S-15.

2. American Society for Testing and Materials.

The notices of preliminary and final determinations of dumping were published in Part I of the February 13 and May 15, 1993, editions of the Canada Gazette, respectively. The Tribunal's notice of commencement of inquiry issued on February 2, 1993, was published in Part I of the February 13, 1993, edition of the Canada Gazette.

As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian producers and importers of the subject goods, requesting production, financial, import and market information, as well as other information, covering the period from 1989 to 1992. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared a pre-hearing staff report covering that period.

In addition to the pre-hearing staff report, the staff sent two separate supplementary questionnaires to users, fabricators and steel service centres to elicit pricing data relative to their purchases of the subject goods for both imported and domestically produced goods. The supplementary pricing data were summarized by the staff and presented as additional Tribunal exhibits during the hearing.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, all exhibits filed by the parties at the hearing, as well as the transcript of all proceedings. All public exhibits were made available to the parties. Protected exhibits were made available only to independent counsel who had given undertakings.

A pre-hearing conference was held in Ottawa, Ontario, on April 13, 1993, as well as public and *in camera* hearings, which were held from May 3 to May 13 and on May 17, 1993. The complainants, Stelco Inc. (Stelco) and Algoma Steel Inc. (Algoma), were represented by counsel at the hearing. Sidbec-Dosco Inc. (Sidbec-Dosco), IPSCO Inc. (IPSCO) and Dofasco Inc. (Dofasco), all three producers of the subject goods and supporters of the complaint, were also represented by counsel, as were numerous exporters and importers. The Tribunal also invited Mr. Ted Roberts, Purchasing Agent for General Motors of Canada Limited (GM Canada), and Mr. Hugo G. Martin, Director of Purchasing for Wilkinson Steel and Metals, A Division of Premetalco Inc. (Wilkinson Steel), to answer questions pertaining to the purchasing and pricing of the subject goods.

On May 31, 1993, the Tribunal issued its finding that the dumping in Canada of certain flat hot-rolled carbon steel sheet products originating in or exported from the Federal Republic of Germany, France, Italy, New Zealand, the United Kingdom and the United States, had not caused, was not causing and was not likely to cause material injury to the production in Canada of like goods.

On June 3, 1993, the Tribunal issued a corrigendum to the finding of May 31, 1993, concerning the aforementioned goods. In order to correct a clerical error, the finding was separated into two parts, including a new paragraph dealing with goods from the United States.

## **PRODUCT**

The product that is the subject of this inquiry is described by the Deputy Minister in the preliminary determination of dumping as certain flat hot-rolled carbon steel products, which include strip, sheet and floor plate. Strip is usually produced in widths of up to 12 in. (304.8 mm) inclusive and in thicknesses of 0.0255 in. to 0.2299 in. (0.648 mm to 5.839 mm) inclusive. Sheet and floor plate are usually produced in widths of over 12 in. to 96 in. (304.8 mm to 2,438.4 mm) and in thicknesses of 0.0449 in. to 0.2299 in. (1.140 mm to 5.839 mm). Strip, sheet and floor plate can be sold in coils or cut lengths.

The most common ASTM specifications for the flat hot-rolled carbon steel strip and sheet are: A414, A568, A569/659, A570, A606, A607, A621M, A622M, A635 and A715; and for floor plate: A36, A283 and A786.

The Deputy Minister excluded skelp from the product definition for the reasons that most Canadian pipe- and tube-producing facilities that use skelp are owned by domestic hot-rolled sheet producers and that the skelp consumed by these facilities is not susceptible to import competition. The Deputy Minister also excluded hot-rolled carbon steel sheet products in cut lengths of a thickness of 0.187 in. (4.75 mm) or greater to remove those goods covered by a separate dumping investigation involving certain hot-rolled carbon steel plate and high-strength low-alloy plate. The Department of National Revenue (Revenue Canada) also notified the Tribunal, following the preliminary determination of dumping, that the sheet products which did not meet a specification and which were referred to and sold as "off-spec products," "less-than-prime products" or "seconds" were not subject to the investigation.

## **PRODUCTION PROCESS**

The subject goods can be produced from either steel ingots or slabs. Although the technology to produce the subject goods may vary from one mill to another, the production process is generally the same for all domestic producers.

The production of hot-rolled steel sheet involves several stages. A hot slab of steel in thicknesses of 4 in. to 9 in. (101.6 mm to 228.6 mm), or an ingot, is rolled on a continuous mill at temperatures above 1,600°F (870°C). The slab is progressively reduced to a sheet of the required thickness. At this stage, the rolling pressure, heating and cooling impart to the steel the required metallurgical properties. In addition, during the hot-rolling stage, oxide (scale) forms on the surface of the sheet. For some applications, the scale is unacceptable. It is removed by acid pickling. After pickling, rinsing and drying, an oil is applied as a temporary protection against rust. The sheet is coiled, and the edges are usually slit to remove minor edge imperfections and to provide closer width tolerances. Finally, before the subject goods are delivered to the end user, the coils may be transported to a steel service centre for slitting into specified widths and lengths.

Floor plate, which is also produced on hot strip mills, is hot finished in a final pass or passes to form a pattern on the surface of the sheet.

## **MARKETING AND DISTRIBUTION**

Hot-rolled carbon steel sheet products are sold directly to end users or marketed through steel service centres which resell the sheet in full coils, slit coils and cut lengths. It is estimated that two thirds of the domestic production of the subject goods are sold directly to end users, while the balance is sold to steel service centres.

The auto-manufacturing industry is the single, largest consumer of the subject goods. In this industry, the sheet is used to produce car frames, bumpers, wheels and certain power train components. The subject goods are also used to produce sheet piling, guard rails, electric generators and transformers, and agricultural machinery. A significant proportion of domestic production and imports is consumed by non-automotive stampers and steel fabricators.

The subject goods are sold on a contractual or non-contractual (spot) basis. The sheet sold to the auto-manufacturing industry, for example, is usually contracted for a period of at least one year. Under these long-term arrangements, domestic mills negotiate price, volume, parts/specifications and duration of the contract with their clients. Releases to ship the product from a blanket order are based on the purchaser's needs and the supplier's lead time. The sales made on a spot price basis are negotiated individually.

The price of the subject goods consists of a "base coil price" to which additional charges are added for a variety of features that may be specified by the customer to meet technical requirements of the application for which the steel is intended. The critical features in determining the price of the subject goods are grade, thickness, width, processing and surface finish.

Hot-rolled carbon steel sheet products from the United States are, for the most part, sold on a direct basis to end users and steel service centres. Because of the proximity of U.S. mills to Canadian users, shipments are frequently limited to truck- or train-load tonnages delivered on an "as required" basis.

Sheet products from the remaining countries are normally imported by exporters' agents or trading houses and arrive in larger volumes by ship.

## **DOMESTIC INDUSTRY**

The complainants and the other domestic producers appearing in support of the complaint account for all of the domestic production of hot-rolled carbon steel sheet products. They include: Stelco of Hamilton, Ontario; Algoma of Sault Ste. Marie, Ontario; Dofasco of Hamilton, Ontario; IPSCO of Regina, Saskatchewan; and Sidbec-Dosco of Montréal, Quebec.

Stelco, in 1946, began to produce the subject goods at its first continuous hot strip mill at Hilton Works in Hamilton, Ontario. With the commissioning in 1983 of its 80-in. hot strip mill at Lake Erie Works in Nanticoke, Ontario, Stelco expanded the capacity for, and the production of, the subject goods. In addition to producing the subject goods, Stelco produces other steel products (heat-treated plate, bar products, wire products and pipe products) at various plants located in the provinces of Ontario, Quebec and Alberta.

The hot-rolled sheet products, which Stelco produces at the two hot strip mill facilities, vary in widths from 3/4 in. to 75 in. (19 mm to 1,905 mm) and in thicknesses from 0.060 in. to 0.625 in. (1.52 mm to 15.87 mm).

Algoma<sup>3</sup> produces a broad range of steel products which include flat-rolled sheet and plate, structural shapes (including wide flange shapes), seamless tubular products, rails and rail accessories, and various semi-finished products. The subject goods are produced in a hot strip mill in Sault Ste. Marie, in widths of 3/4 in. to 96 in. (19 mm to 2,438 mm) and in thicknesses of 0.060 in. to 0.500 in. (1.52 mm to 12.70 mm). Algoma is the only remaining domestic mill that produces floor plate.

Dofasco began to roll steel plate in 1928. It is the only domestic producer that uses both ingot-cast products and cast slabs to produce the subject goods. The major proportion of its products comprises sheet and coil of hot- and cold-rolled steel, tin mill products, coated steel, small diameter tubular steel products and railway rolling stock. Dofasco produces a range of hot-rolled carbon products in widths of up to 60 in. (1,525 mm) and in thicknesses of 0.059 in. to 0.500 in. (1.5 mm to 12.7 mm) in two hot strip mills. Dofasco ceased producing floor plate at the end of 1992.

IPSCO was established in 1956 with the incorporation of Prairie Pipe Manufacturing Co. Ltd. In 1959, this company purchased Interprovincial Steel and Pipe Corporation Ltd. and assumed the name of Interprovincial Steel and Pipe Corporation Ltd. IPSCO is the only domestic producer to produce the subject goods from liquid steel produced from scrap metal melted in two electric arc furnaces. At the Regina facility, it produces the subject goods in cut lengths in thicknesses of 0.0747 in. to 0.1719 in. (1.90 mm to 4.37 mm) and in widths of 4 in. to 74 in. (101.6 mm to 1,879.6 mm). The subject goods are also produced in coils in identical widths and in thicknesses varying from 0.0747 in. to 0.7500 in. (1.9 mm to 19.0 mm). In addition, IPSCO's North Vancouver steel service facility buys certain gauges of the imported subject goods.

Sidbec-Dosco produces the subject goods at its Contrecoeur plant in Quebec. It produces hot-rolled carbon steel sheet in widths of up to 72 in. (1,828.8 mm) and in thicknesses of 0.060 in. to 0.750 in. (1.52 mm to 19.00 mm).

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3. Algoma was incorporated on June 1, 1992, after acquiring all of the assets and some liabilities of its predecessor, The Algoma Steel Corporation, Limited.

**ECONOMIC INDICATORS**

The key economic indicators in this inquiry are presented in the following table.

<b>ECONOMIC INDICATORS</b>				
	<b>1989</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>
<b>Production<sup>1</sup> (000 n/t)</b>	7,427	5,905	5,965	6,866
% Increase (decrease)		(20)	1	15
Export Sales (000 n/t)	987	765	974	1,328
<b>Canadian Consumption<sup>1</sup> (000 n/t)</b>	6,577	5,471	5,237	5,765
Producers' Internal Transfers (feedstock)	4,380	3,487	3,595	3,954
Producers' Open Market Sales	2,060	1,653	1,396	1,584
Sales from Subject Countries' Imports	115	314	243	224
Sales from Non-Subject Countries' Imports	22	17	3	3
<b>Apparent Market (000 n/t)</b>	2,172	1,969	1,587	1,790
% Increase (decrease)		(9)	(19)	13
<b>Composition of the Market (%)</b>				
Producers' Open Market Sales	94	83	84	87
Sales from Subject Countries' Imports	5	16	15	13
Sales from Non-Subject Countries' Imports	1	1	0	0
<b>Domestic Industry</b>				
Net Income				
Domestic Sales and Internal Transfers (%)	5	1	0	(1)
Domestic Sales (%)	14	3	2	0
Export Sales (%)	5	(14)	(19)	(15)
Production Capacity <sup>2</sup> (000 n/t)	12,464	12,594	12,619	12,644
Utilization Rate <sup>2</sup> (%)	83	67	70	75
Number of Employees	3,988	3,657	3,001	3,372
Number of Person-Hours Worked (000)	7,707	5,649	5,217	5,951
<hr/>				
n/t = Net ton.				
1. Flat hot-rolled carbon steel sheet products, excluding skelp.				
2. Total flat hot-rolled carbon steel sheet products, including skelp.				



The production of like goods in Canada was determined by the Tribunal to include all production of the subject goods, excluding skelp. It was determined to include feedstock that was sold or transferred to affiliated companies, or transferred internally for further processing into cold-rolled sheets or other products. This is further discussed under the heading "Like Goods" in the section entitled "Reasons for Decision."

The Canadian production of flat hot-rolled carbon steel sheet products dropped from 7.4 million net tons in 1989 to about 5.9 million net tons in 1990 and 1991. During 1992, however, production of these products rebounded to 6.8 million net tons, or 15 percent higher than 1991 production.

The Canadian consumption of the subject goods, which included the industry's internal transfers excluding skelp, domestic shipments and sales from all countries' imports, fell from a high of 6.6 million net tons in 1989 to a low of 5.2 million net tons in 1991, then recovered to 5.8 million net tons in 1992. Internal transfers (feedstock), which are consumed in the production of downstream flat cold-rolled sheet and galvanized products, and which hovered around 66 percent of domestic production for the subject goods during the period of review, fell from 4.4 million net tons in 1989 to about 3.5 million net tons in 1990 and 1991, before rebounding to 3.9 million net tons in 1992. Following overall consumption patterns, the industry's open market sales declined from 2.1 million net tons in 1989 to 1.4 million net tons in 1991, then climbed to 1.6 million net tons in 1992. In contrast, the volume of imports from the subject countries increased from 115,000 net tons in 1989 to peak at 314,000 net tons in 1990, then fell to 243,000 net tons in 1991 and 224,000 net tons in 1992. Canadian consumption of the subject goods from other countries has been negligible during the period of inquiry.

The domestic market for the subject goods is based on open market sales from domestic production and from imports for domestic consumption. As compared to 1989, the domestic market for the subject goods declined sharply in 1990 and 1991, before moving up in 1992. The domestic producers' market share dropped from 94 percent in 1989 to about 83 percent in 1990 and 1991, then climbed to 87 percent in 1992. During the same period, the market share captured by imports, largely from the United States, increased from 5 percent in 1989 to 16 percent in 1990, before falling in the following two years to 15 and 13 percent, respectively. Meanwhile, the market share held by imports from the non-subject countries did not exceed 1 percent throughout the period of inquiry.

The profit and loss data provided by the domestic producers indicate that the industry's pre-tax margins on its domestic sales of the subject goods declined from a high of 14 percent in 1989 to less than 1 percent in 1992. With regard to its export sales, the industry posted pre-tax loss margins during the post-1989 period that fluctuated between 14 percent and 19 percent, despite increasing volumes during that period.

Employment and capacity utilization followed the same trend. Employment in this industry dropped by 25 percent between 1989 and 1991, but moved up by 12 percent in 1992 over the 1991 level. Person-hours worked followed a comparable trend. During the same period, after bottoming out at 67 percent in 1991, the utilization rate of the production capacity for all flat hot-rolled carbon steel sheet products increased to 70 percent and 75 percent in 1991 and 1992, respectively.

**RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION**

The following table summarizes the margins of dumping as found by the Deputy Minister for each exporter investigated.

<b>MARGINS OF DUMPING</b>		
<b>Country</b>	<b>Exporter</b>	<b>Weighted Average Margin of Dumping</b>
Federal Republic of Germany	Preussag Stahl AG	56.54 <sup>1</sup>
	Klockner Stahl AG	56.54 <sup>1</sup>
Italy	ILVA S.p.A.	56.54 <sup>1</sup>
France	Sollac	18.92 <sup>2</sup>
New Zealand	BHP New Zealand Steel Limited	39.33 <sup>2</sup>
United Kingdom	British Steel Canada Inc.	40.82 <sup>2</sup>
United States	Advance Steel Company	56.54 <sup>1</sup>
	Kasle Steel Corp.	56.54 <sup>1</sup>
	McLouth Steel Corp.	56.54 <sup>1</sup>
	Sharon Steel Corp.	56.54 <sup>1</sup>
	Acme Steel Company	13.15 <sup>2</sup>
	Geneva Steel	11.98 <sup>2</sup>
	National Steel Corporation	7.81 <sup>2</sup>
	U.S. Steel Group, A Unit of USX Corporation	13.37 <sup>2</sup>
	WCI Steel, Incorporated	25.25 <sup>2</sup>
Nucor Steel	3.90 <sup>3</sup>	
	LTV Steel Company	8.85 <sup>3</sup>

Source: Revenue Canada's Statement of Reasons, dated April 29, 1993.

Notes:

1. These were exporters that were required to respond to Revenue Canada's Request for Information and that did not provide a complete submission. They were determined to be dumping by the highest margin of dumping found for the final determination.
2. These were exporters that were required to respond to the Request for Information and that provided a complete submission.
3. These were exporters that were not required to respond to the Request for Information and that voluntarily provided a complete submission.

Revenue Canada reported that, for purposes of determining the margins of dumping of the goods imported into Canada during the period of investigation, it limited its examination to the largest volume of imports from each country. In the case of imports from the United States, the period of investigation was from January 1 to June 30, 1992, and in the case of imports from all other named countries, from October 1, 1991, to June 30, 1992.

With respect to the United States, Revenue Canada required only 10 of the 211 companies that were exporting to Canada to respond to its Request for Information. During the investigation, one firm, Ilva USA Inc. was excluded, as it had not exported the subject goods during the period of investigation, and two additional firms, Nucor Steel and LTV Steel Company (LTV), were included in the investigation at their own request. The margins of dumping for the 11 firms that were investigated for purposes of the final determination are provided in the preceding table.

During the hearing, the six U.S. producers that were represented by counsel indicated their volume of exports to Canada during 1992. These exports represented approximately 15 percent of the total volume of imports from the United States in that year. There was a large volume of imports that was claimed to have been exported, in large part, by U.S. steel brokers, steel service centres and fabricators. This was corroborated by oral evidence provided by representatives of Canadian steel service centres that were competing against these imports. Since the specific exporters and destination of these imports remained unknown, they came to be known as the "mystery tons." These U.S. brokers, steel service centres and fabricators, for which marketing practices may be different from those of U.S. producers of the subject goods, were not investigated by Revenue Canada and, therefore, there were no specific margins of dumping determined for these exporters. The imports from exporters not investigated were subjected to a duty of 13 percent, which was based on the weighted average margin of dumping found for the five producers, Acme Steel Company (Acme), Geneva Steel, National Steel Corporation (National), USX Corporation (USX) and WCI Steel, Incorporated (WCI).

## **POSITION OF PARTIES**

### **Industry**

The position of the domestic industry was that dumped imports of the subject goods, in the volumes and at the dumping margins determined by the Deputy Minister, considered en masse and cumulatively, had caused, were causing and were likely to cause material injury to the production in Canada of like goods.

### **Stelco**

Counsel for Stelco noted that, during the period of inquiry, imports from the subject countries almost doubled to 224,000 net tons in 1992 from 115,000 net tons in 1989 and that the volume of imports from each of the named countries had increased substantially over 1989. In 1992, U.S. imports accounted for 72 percent of total subject imports and represented 12 percent of the total apparent market.

In countering the position of opposing parties that the strikes in 1990 at Stelco and Algoma had a devastating effect on the industry, counsel argued that the strikes had lasted only four months and that low-priced imports, particularly from the United States, were in the marketplace before and after the strikes.

With regard to the relining of the Stelco furnace in 1991, counsel submitted that it represented another opportunity to import low-priced goods into the Canadian market. They further submitted that it did not affect the production of the subject goods, as the production level in 1991 was almost at the same level as it was in 1989, a boom year for domestic and export markets. Any drop in domestic production in 1991 was consistent with the drop in the total apparent market in that year.

Counsel reminded the Tribunal that it must assess the impact of the total imports from the United States and not only those from the individual companies that were represented at the hearing. With regard to the unaccounted U.S. imports from exporters not represented at the hearing, counsel submitted that they were coming from unrepresented U.S. producers, steel service centres, brokers and other agents.

With regard to prices, counsel noted that the Tribunal cannot make general price comparisons between imports and domestic like goods. There is a considerable price difference between the higher and lower grades of steel, and higher-value-added products must be compared to the price of similar domestically produced steel. When price comparisons are made, the price-depressive effects of the imports are clear. Though price matching may not be perfect in all product categories, the Tribunal must assess the evidence as a whole.

Counsel referred to paragraph 2, Article 3 of the GATT Anti-Dumping Code<sup>4</sup> (the Code) noting that the effect of dumping must be on prices. Specifically, the Tribunal must consider whether there has been significant price undercutting and whether the effect of dumping has been to depress prices or to prevent price increases. It was argued that, in an integrated North American market, the causality standard applied in Canada should be similar to that applied in the United States. It was suggested that the governing rule should be whether the injury is not inconsequential or immaterial. The Tribunal need not find injury as a result of dumping beyond all reasonable doubt. Counsel submitted that the Tribunal must consider the cumulative effect of dumping from all the subject countries and must not do a country-by-country analysis of injury.

With regard to imports from Geneva Steel, counsel for Stelco requested that the Tribunal consider whether the substantial tonnage exported to Canada by Geneva Steel was made in advance of a finding of injury to take advantage of the situation. They requested that the Tribunal make a finding under paragraph 42(1)(b) of SIMA. However, because of the finding of no injury, the Tribunal found it unnecessary to address this request.

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4. *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*, signed in Geneva on April 12, 1979.

### **Algoma, IPSCO and Sidbec-Dosco**

Counsel reiterated the position of the other domestic producers that dumped imports in the volumes and at the dumping margins determined by the Deputy Minister, considered en masse and cumulatively, had caused material injury to the production in Canada of like goods. They submitted that the past practice of the Tribunal and its predecessor bodies was to consider whether the cumulative effect of all dumped imports from all named countries materially injured domestic production before examining whether, in very limited circumstances, any particular product, producer or country should be excluded from the finding of injury.

Counsel also submitted that the two domestic complainants, Algoma and Stelco, account for the major proportion of domestic production and, therefore, any injury demonstrated to the other producers can only support the injury case of these two complainants. What is not at issue, counsel contended, is whether each domestic producer has been injured to the same degree.

In assessing the impact of dumping on the production in Canada of like goods, counsel argued that the Tribunal should only consider the production of primary hot-rolled carbon steel products that were sold on the open market and not the production of secondary products, steel plate, skelp and feedstock for cold rolling.

Counsel estimated that 50 percent of the Canadian market for the subject goods is in the automotive sector. The balance is split between the non-automotive end users and steel service centres. Roughly 80 percent of the market is in Central and Eastern Canada, and 20 percent in Western Canada. In reviewing the domestic industry's allegations of lost sales and price erosion, counsel submitted that the dominant influence in Central Canada was U.S. mills. Their prices were driven down by the low pricing of the mini-mill Nucor Steel in mid-1990, which forced them to export in order to maximize their production capacity utilization. Similarly, U.S. mills were also the dominant influence in Western Canada.

Counsel suggested that it did not matter who initiated the price declines or gave the first discount out of the thousands of transactions and offers in the Canadian market during the period in question. Though all sellers participated in price declines, counsel contended that an importer may not dump on the pretext that it only matches a Canadian producer's price. In support of this proposition, counsel referred to the *Soda Ash* decision<sup>5</sup> of the Anti-dumping Tribunal (the ADT), where it was stated that the domestic industry,

*could anticipate that competitors would follow [prices down], but it was entitled to assume that its competitors would not cross the line into injurious dumping.*<sup>6</sup>

Counsel argued that, in response to reduced prices from the U.S. imports, Canadian mills had to reduce their prices. Algoma responded to these reduced prices in

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5. *Commercial Grade Sodium Carbonate, Commonly Known as Soda Ash, Originating in or Exported from the United States of America*, Anti-dumping Tribunal, Inquiry No. ADT-7-83, July 7, 1983.

6. *Ibid.* at 12.

the first quarter of 1990, well before the strike. IPSCO responded in late-1990 by reducing its prices, but, in 1991, it had to withdraw from the market rather than continue to follow prices down. In contrast, Sidbec-Dosco did not initially discount prices and lost sales volume. When all production was threatened, it began to discount heavily in late-1991 through 1992. The pressure to reduce prices was also felt by offshore mills, which forced them to reduce their prices.

### **Dofasco**

Counsel argued that Dofasco was forced to follow the prices of the imported subject goods downward in order to preserve volume and market share. As a result of the price erosion, Dofasco suffered revenue losses and a reduction in its gross margin and net profit. Dofasco was not able to establish or maintain a single price increase for the subject goods after January 1, 1990, notwithstanding increases in costs.

With regard to the 1990 strike, counsel noted that, contrary to past strikes, Dofasco's average selling price dropped during this strike, along with its market share. During this time, Dofasco had excess capacity and diverted export tonnage to satisfy Algoma's customer needs. With regard to the claim that Dofasco took customers away from Algoma during the period that Dofasco owned Algoma, counsel submitted that, under a sales agreement between the two firms, a full protocol was established to ensure the orderly allocation of orders and to ensure that each party's customers were protected. The sales agreement was terminated in March 1992, shortly before Algoma formed the new company, and neither party suffered a material loss of customers or key personnel.

In support of a finding of future injury, counsel noted the production capacity of the named exporters, worldwide steel industry conditions, the existence of numerous importers and distributors, and the current U.S. trade actions against Canadian and other countries' exports of steel to the United States.

### **Importers and Exporters**

Counsel for the importers and exporters submitted that the dumping of the subject goods was not the cause of the injury suffered by the Canadian industry. The injury had been caused by factors that were not related to dumping. These factors included the recession, the export sales performance of the producers, the effects of the strikes in 1990 at both the Algoma and Stelco mills, the relining of the blast furnace at Stelco in 1991, the effects of the exchange rates, the relocation of several end users of the subject goods to the United States, the technology of mini-mills that conferred cost advantages, Algoma's insolvency and the fierce competition among Canadian producers to increase their market share and plant loadings.

### **BSC**

Counsel for British Steel Canada Inc. (BSC) argued that their client's pricing policy to match Canadian mill prices had not been disruptive and could not be considered as price suppressive. With regard to their client's importations from the United States, counsel argued that it was a specialized product sold at prices higher than Algoma's prices and, therefore, these imports were not causing any injury to Canadian producers. They noted that the market share of their client was less than 1/2 percent for each of the four years under review. Counsel also noted that the industry had made only one

allegation of lost sales against their client, and BSC had not made any sales to that account.

Counsel submitted that, in the event of a finding of injury, the Tribunal should exclude their client because the import volume was *de minimis* and not causing injury to the Canadian industry. They urged the Tribunal not to cumulate the imports of BSC with other subject imports. Counsel referred to the *Ski Pole* case,<sup>7</sup> in which the ADT excluded certain countries.

### **Bethlehem, Acme, LTV, National, USX, WCI**

Counsel for six U.S. integrated mills, Bethlehem Steel Export Corporation (Bethlehem), Acme, LTV, National, USX, and WCI, argued that the injury alleged by the Canadian producers had been caused by factors unrelated to dumping. They noted that the Code requires that the injury caused by these factors must not be attributed to the dumping. It was contended that the industry did not have a case and that they were retaliating against the U.S. trade actions with regard to their own exports of steel products to the United States. Counsel pointed out that one of the industry representatives had conceded during oral testimony that the dumping complaint was partially in response to the U.S. trade actions.

Counsel submitted that the evidence showed that imports from the United States had increased in 1990, as a result of the strikes, but that they had since been declining. The proportion of total U.S. imports held by their six clients gradually declined from 25 percent in 1989 to 15 percent in 1992. Counsel noted that their combined market share had declined to 1.4 percent in 1992 and that, therefore, their clients' importations should be considered as *de minimis* and be excluded in the event of a finding of injury.

Counsel argued that the causality standard that the Tribunal must follow is the one that was set by the Binational Panel in the recent *Carpet* case.<sup>8</sup> It must be shown that dumping, in and of itself, is causing material injury. According to counsel, the Tribunal must ascertain whether the evidence is reasonably capable of supporting such a finding. It cannot rely on market shares or on the staff report; there must be precise evidence of the injury caused by the dumping. Counsel also maintained that the Tribunal cannot dispense with an analysis of how dumping margins, as found by the Deputy Minister, relate to price declines or price spreads. It must find an actual link between the dumping and any reduced domestic sales volume to specific accounts and, thus, it cannot infer a link.

### **Francosteel**

Counsel for Francosteel Canada Inc. (Francosteel) identified the factors unrelated to dumping that affected the domestic industry as being its aggressive competition for major accounts, the domestic industry requiring a minimum order before servicing an

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7. *Alpine Ski Poles of Aluminum Alloy Originating in or Exported from Norway, France, the Federal Republic of Germany and Italy*, Anti-dumping Tribunal, Inquiry No. ADT-5-84, May 14, 1984.

8. *Machine Tufted Carpeting Originating in or Exported from the United States of America* (Injury), Article 1904 Binational Panel, Opinion and Order of the Panel, April 7, 1993.

account, the uncertainty about Algoma's future, the recession, the contraction in demand and a drop in world prices for steel. Counsel argued that the Code clearly places the burden of proof on the complainants. They must provide positive evidence of material injury and establish a causal link between dumping and injury. Counsel contended that the Tribunal must determine what portion, if any, of the price erosion and price suppression is attributable to dumped imports and if this portion affected Canadian mills to a significant degree.

There were only rare examples of underselling, and there was no systematic evidence of undercutting or low price offers by imports, in general, or by imports from France. Counsel also noted that the pricing and volume reduction survey prepared by the staff concluded that the majority of the respondents never obtained a price reduction from Canadian mills in response to competitive import prices.

With regard to the western Canadian market, counsel argued that IPSCO had driven prices down and that it was the price leader in that market. They referred to the testimony of Mr. Hugo G. Martin from Wilkinson Steel, who described the drop in IPSCO's prices by \$80 per net ton in 1990 and by a further \$60 per net ton in 1991, and who testified that western Canadian companies are sometimes unable to find Canadian sources in that region. Francosteel, counsel noted, is only involved in a small portion of the western Canadian market. Its pricing policy is adjusted by reference to Canadian mill prices, and its prices for regular coils were much higher than IPSCO's prices for the same products. As such, counsel argued that their client's prices could not be deemed as being disruptive.

With regard to future injury, counsel submitted that it must be based on more than mere allegation and conjecture. The evidence offered by the complainants is only conjectural. To use the effect of a potential U.S. injury finding against Canadian producers' exports as an example of future injury is highly speculative, especially in the case of France, where its exports are not causing injury to Canadian producers. What is imminent is the improved economy in 1993. There was also a significant improvement in the Canadian industry's performance in 1992. There is also evidence of a lower Canadian dollar. The spot prices reported by PaineWebber have stabilized since May 1991 in Canada and the United States, and there is no further downward pressure. There is also evidence of increasing demand and production in the automotive sector.

#### **ILVA, New Zealand Steel, Preussag**

Counsel for ILVA S.p.A (ILVA), BHP New Zealand Steel Limited (New Zealand Steel) and Preussag Stahl AG (Preussag) noted that his three clients were concentrated in different markets or products: New Zealand Steel is in the B.C. market; Preussag exported exclusively floor plate; and ILVA was predominantly supplying fabricators of automobile parts. He noted that the evidence showed that Italy accounted for less than 1 percent of market share in both 1991 and 1992. The shares held by New Zealand and German imports were also less than 1 percent each for the past two years. Counsel argued that, with these small market shares, compared to the market share held by Canadian producers, his clients could not be having an impact on the Canadian market, but that they were merely participating in this market. Counsel argued that prices in Canada were not led down by imports, but that they were driven down across the board by end-user customers, particularly from the auto-manufacturing industry.



Counsel estimated that the market for floor plate is about 2.5 percent of the entire market for the subject goods. Algoma is the only Canadian producer of floor plate. Its prices for floor plate are approximately \$5 to \$7 a hundredweight higher than the price for black plate, while the additional production cost to make floor plate does not justify the premium price that Algoma is asking for this product. The last order of floor plate from Germany was in December 1991 and, therefore, Algoma's claim of injury due to price offers of German floor plate in the first quarter of 1992 was unfounded. Counsel argued that New Zealand Steel had exported less than 3,000 net tons of floor plate in 1992 and that Algoma was not interested in the B.C. market.

New Zealand Steel only markets its goods in British Columbia, its share of the total Canadian market being less than 1 percent. Counsel contended that IPSCO is the competition in that market and that it had not made any claims of lost sales or price suppression against the New Zealand product. He noted that the price for the cut-to-length material from his client's coils was \$4.50 a hundredweight above IPSCO's price. He also addressed the specific allegations of Algoma and Dofasco, noting that New Zealand Steel either did not supply to those accounts or its prices were higher than the domestic prices.

Counsel noted that ILVA is a small niche player concentrating on manufacturers of automobile parts in Ontario that export the finished parts to the United States and that obtain a duty drawback on the imported steel. He contended that there was a paucity of claims of injury caused by ILVA to the Canadian industry, addressing two examples where ILVA's prices were higher than the domestic prices.

In summary, counsel noted that the industry had made a few broad accusations and unfounded complaints. In the case of ILVA and New Zealand Steel, counsel argued that the volume and prices of their imports could not be considered to be a cause of price suppression or lost sales. In the case of Preussag, which services the floor plate market, counsel contended that the Canadian industry had demonstrated a definite lack of interest in this market. It also made injury claims that are unrelated to Preussag's product.

### **Requests for exclusion**

Finally, several requests were made, in the event of a finding of injury, to exclude certain products that were not available from Canadian production. Such requests were made by firms represented by counsel, but also from firms that appeared without counsel, such as GARANT, Division of Hanson Kidde Canada Inc. and Freeway Washer Limited. In view of the Tribunal's decision, there is no need to discuss these requests for exclusions.

### **REASONS FOR DECISION**

Section 42 of SIMA requires the Tribunal to determine whether the dumping of the subject goods, as found by the Deputy Minister, has caused, is causing or is likely to cause material injury to the production in Canada of like goods. In order to conduct this inquiry, it is necessary to determine what constitutes like goods to the imported subject goods. The Tribunal must then be satisfied that the domestic industry, which formed the subject of this inquiry, constituted, at least, the major proportion of the total domestic production of the like goods. Finally, it must be determined whether the

domestic industry has suffered from, or is threatened with, material injury and whether there is a causal link between the material injury suffered and the dumping of the subject goods. In the event of a finding of injury, the Tribunal will then consider exclusion requests.

### **Like Goods**

For purposes of determining injury to the domestic industry, the Tribunal had to ascertain what constituted like goods to the imported subject goods. The domestic industry encompasses the domestic production of the like goods.

Subsection 2(1) of SIMA defines like goods, in relation to the imported subject goods, as:

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

Clearly, domestically produced goods meeting the definition of the subject goods, as defined by the Deputy Minister in the preliminary determination of dumping, would constitute like goods as being identical in all respects to the subject goods. At issue in this inquiry was whether domestically produced skelp, which is hot-rolled sheet used for the production of pipes and tubes, is like goods, though imported skelp was excluded from the subject goods. Also at issue was whether hot-rolled sheet used as feedstock for the production of cold-rolled steel constituted like goods.

### **Skelp**

In *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd.*,<sup>9</sup> the Federal Court of Appeal rejected the proposition that paragraph (b) of the definition of like goods is to be considered only in the absence of goods described in paragraph (a). In other words, the Tribunal may include goods that closely resemble the imported goods within the class of like goods domestically produced even when there are goods "identical in all respects" to the imported goods. As such, the Federal Court of Appeal has recognized that, even when there is domestic production of identical goods to those imported, goods that closely resemble the imports and that are substitutable therefor and in competition with the latter may also constitute like goods.

In *Sarco Canada Limited v. The Anti-dumping Tribunal*,<sup>10</sup> the Federal Court of Appeal accepted the ADT's approach to the analysis of like goods, where the ADT stated that,

*the question of whether goods are "like" is to be determined by market considerations. Do they compete directly with one another? Are the same consumers being sought? Do they have the same end-use functionally? Do they fulfill the same need? Can they be substituted one for the other?*<sup>11</sup>

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9. [1982] 2 F.C. 283.

10. [1979] 1 F.C. 247.

11. *Ibid.* at 251-52.

The ADT also considered the physical characteristics, including similarities and dissimilarities, of the goods in considering whether they were "like goods."

The ADT focused on the degree of substitutability between the imported goods and the domestically manufactured goods. If goods were seen to be readily substitutable one for the other, there was an inclination to consider them like goods. This analysis was supported by a comparison of the characteristics of the goods.

There is no judicial guidance as to whether like goods can include goods that were specifically excluded in the preliminary determination of dumping. However, by posing those questions sanctioned in the *Sarco* case, it may be found that domestically produced skelp and the subject imports are substitutable and in competition with each other. As such, though imported skelp is excluded from the class of goods defined by the Deputy Minister, domestically produced skelp may qualify as "like goods."

However, on the basis of the evidence, the Tribunal concluded that skelp is not like goods. The expression "skelp" must be interpreted to include a particular end use. As skelp, by its very definition, has an end use which is different from the other hot-rolled sheet products, it is distinct in that respect. As such, it is not identical in all respects to the subject goods. Also, the evidence indicated that skelp is made to a gauge unique from most hot-rolled sheet products, has a specific chemistry depending on its end use and is made to particular dimensions.

Furthermore, skelp does not have uses and other characteristics which closely resemble the subject goods. As already indicated, the uses to which skelp is put are distinct from the subject goods. Also, there is some evidence that the physical characteristics of skelp are distinct from the subject goods. The evidence supported the conclusion that domestically produced skelp would not be in competition with and substitutable for the subject goods.

### **Feedstock for cold rolling**

On the basis of the evidence, the Tribunal concluded that feedstock is like goods. The threshold question was whether the feedstock is encompassed within the definition of the subject goods. At issue is whether feedstock is made to some specification or standard.

There was some testimony that feedstock is not made to a specification or standard. However, the preponderance of evidence supports the opposite conclusion. The testimony of Mr. Derek M. de Korte of Algoma was that the feedstock is being produced to a particular specification. In the chemical analysis certificate, provided by Francosteel to the Tribunal, which accompanied a 1990 shipment of feedstock from Sollac of France to Dofasco, a particular steel grade was listed. In an accompanying letter, Francosteel confirmed that the feedstock does "meet specification." Similarly, in a letter to the Tribunal from Cold Metal Products Company, Ltd. (CMP), an independent Canadian cold roller, it is indicated that its feedstock must always meet the stringent specifications dictated by it and that ASTM specifications are too general. On this basis, the imported feedstock was found to have a specification and, thus, considered subject goods.

In considering whether domestically produced feedstock is like goods, the Tribunal had to determine whether it is identical in all respects to the subject goods or whether its uses and other characteristics closely resemble the subject goods. At Appendix 2 to the preliminary determination of dumping, it is indicated that CMP was an importer of the subject goods during the period investigated by the Deputy Minister. CMP also purchases feedstock from a domestic supplier. In a letter to the Tribunal dated May 18, 1993, CMP indicated that the feedstock that it purchases "always meets our specifications. Otherwise, it is not acceptable." From this, the Tribunal inferred that, assuming a similar end use, imported and domestically produced feedstock would be identical.

It is clear to the Tribunal that domestically produced feedstock has uses and users similar to those of imported feedstock. As to similar characteristics, it was indicated in testimony provided by Dofasco that feedstock is coiled at a unique temperature, that it has a gritty surface enabling it to be caught in the rolls and pulled more successfully and that the sheet must have a crown, being thinner at the edges. As these characteristics are required for proper cold reduction of hot sheet, the Tribunal can infer that they are shared by both imported and domestically produced feedstock. Also, both would be produced from similar raw materials through similar production processes. On the basis of the above, the Tribunal concluded that domestically produced feedstock, is like goods.

#### **Like goods internally transferred**

The issue of like goods, and specifically the issue of internally transferred goods, was addressed at the pre-hearing conference. It was argued, on behalf of the domestic industry, that the class of like goods should be restricted to those goods sold in the merchant market. It should not include hot sheet internally transferred by the manufacturer for downstream production of goods such as cold-rolled, tin-plated or galvanized steel.

The Tribunal had to determine whether it makes a difference if like goods are transferred internally rather than sold in the merchant market. There is no statutory basis for excluding internally transferred goods from the production in Canada of like goods for purposes of determining injury thereto. The domestic industry is defined in the Code in terms of production of like goods and does not include consideration of the market or distribution channels for the goods. Thus, the Tribunal concluded that both internally transferred like goods and those sold in the merchant market must be considered part of the production in Canada subject to the injury inquiry.

#### **Domestic Industry**

Pursuant to paragraph 42(3)(a) of SIMA, the Tribunal must take fully into account paragraph 1, Article 4 of the Code, which sets out the definition of domestic industry. It provides that,

*In determining injury the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.*

The Tribunal finds that this requirement is met, as the complainants and the other domestic producers appearing in support of the complaint account for all of the domestic production of hot-rolled carbon steel sheet.

### **Material Injury**

In conducting its inquiry, the Tribunal must first decide if the domestic industry has suffered from or is threatened with material injury. Secondly, the Tribunal must be satisfied that there is a causal link between the injury observed or threatened and the dumped imports. It must be satisfied that the injury is not attributable to other factors present in the marketplace.

It was evident to the Tribunal that the industry had suffered material injury in the form of a substantial deterioration in sales revenue and financial performance. However, the economic recession, the labour disruptions at Stelco and Algoma, and various other developments were cited as possible explanations for the poor performance of Canadian producers over the period of inquiry.

### **Analysis of Market Indicators**

The Tribunal began by examining market developments over the period of inquiry to determine the influence of imports on industry performance.

The evidence indicates that the market for flat hot-rolled carbon steel sheet underwent significant changes between 1989 and 1992. Demand for the product fell sharply during the period of inquiry. The market share held by Canadian mills, although high in relation to imports, also deteriorated. Together, these two factors resulted in a sizeable loss of sales volume and revenues for Canadian producers. Price reductions occurring at the same time exacerbated the declines in sales revenues.

The economic recession began in earnest in 1990, and the steel industry was among the first industries to feel its impact on sales and prices. Market demand for the subject goods fell by 9 percent, as some Canadian manufacturers and fabricators moved their operations to the United States, while other steel purchasers reduced their activities or closed outright. Of the roughly 400,000 net ton reduction in sales by domestic mills in 1990, over half is attributable to reductions in market demand.

Two important developments occurred in 1990 that contributed to the expansion in imports from the subject countries, which more than doubled in that year. The most critical was the four-month strikes at Stelco and Algoma. The Tribunal notes the contention by these two producers that they prepared in advance for the strikes and, by stockpiling products and diverting export sales, that they were able to provide for most of their customers. The Tribunal also observes that production of the three other Canadian producers that were not on strike also fell in 1990, albeit at about half the rate as the two struck companies, suggesting that factors other than the strikes were behind the decline in sales in 1990. Testimony at the hearing revealed that several customers of the struck companies, anxious to protect their raw material supply, turned to U.S. and other foreign sources in 1990. For example, the witness for GM Canada attributed the increase in its purchases of U.S. products to the strikes. He explained that, in response to the uncertainty generated by the strikes and to protect itself against domestic supply shortfalls, the firm switched its purchases from Algoma and Stelco to Dofasco, and when

the market began to heat up, it negotiated contracts with U.S. suppliers that extended into 1991. This reinforced the view prevailing at the time, as reflected in press reports and the companies' annual reports, that the strikes cost Algoma and Stelco customers in 1990 and beyond. As a result, the industry suffered a loss both in market share and cash flow.

The other factor that explained, in part, the market penetration of the foreign and, particularly, U.S. subject goods, was the appreciation of the Canadian dollar. When the Canadian dollar began to strengthen in 1990, U.S. steel became more economical to buy. Moreover, the exchange rate movement also resulted in losses to Canadian mills on contracts that they had negotiated in U.S. funds.

In the Tribunal's view, the economic recession, the strikes at Stelco and Algoma, and the rise in the value of the Canadian dollar are the major factors explaining the decline in industry sales revenue and net income in 1990. While imports increased their presence in the Canadian market that year, there is no evidence that they were sold at dumped prices. In the opinion of the Tribunal, the increases in imports in 1990 occurred as a result of the strikes and, to a lesser extent, exchange rate movements, and cannot be attributed to the effects of dumping.

Market demand fell even more sharply in 1991 as the recession deepened, declining some 19 percent that year. Sales from domestic production fell by more than 250,000 net tons, but the market share of Canadian mills still increased by one percentage point, to 84 percent. During the year, Stelco's Hilton Works, which supplies 40 percent of the company's molten iron requirements, was shut down for four months for a partial reconstruction and relining of its blast furnace. Stelco's sales to the Canadian market fell by a proportionately greater amount than the industry average in that year.

Imports from the subject countries remained relatively high, accounting for 15 percent of the market in 1991. U.S. imports represented the majority, at 12 percent of the market, or 195,000 net tons. Evidence adduced at the hearing revealed that U.S. mills continued to be the second source of supply for many Canadian steel fabricators and steel service centres. For example, AG Simpson Company Ltd. and J.I. Case, two steel fabricators, retained some portion of their business with U.S. steel mills, even though they returned the majority of their purchases to Canadian producers after the strikes were resolved. Again, this confirms information given to shareholders at the time that producers would have to compete aggressively in order to regain business lost during the strikes.

Prices continued to deteriorate in 1991, fuelled by the severe drop in demand for the subject goods. In addition, the Canadian dollar rose further, reaching US\$0.88 in the third quarter of 1991, a 10-year high. This made U.S. products even more attractive. A number of the call reports tabled by the complainants to prove price erosion contained references to the high value of the Canadian dollar, which indicated that the value of the dollar was an important factor in buyers' purchasing decisions during that year. Testimony by the witness from GM Canada also underlined the impact of exchange rates on prices at that time.

After a two-year decline in the market, demand for the subject goods recovered by 13 percent in 1992. Domestic producers supplied all of this additional business, as the subject imports fell by 19,000 net tons, or 8 percent.

Despite the increase in market demand and the initiation of the dumping investigation by Revenue Canada in August 1992, prices continued to fall throughout 1992. It was not until early 1993 that prices began to firm. This suggests to the Tribunal that factors other than dumping were the major factors behind the price erosion that occurred in the market in 1992.

The year 1992 was a year of intense price competition in the domestic market, largely fuelled, in the Tribunal's opinion, by the actions of Canadian producers themselves. Algoma's restructuring plan had been accepted in March 1992, making official its independence from Dofasco. The restructuring plan saw governments guarantee a major portion of Algoma's debt. In early April 1992, Algoma regained the ability to market its own production. From January 1990 to April 1992, Dofasco had been responsible for selling Algoma's production of the subject goods using Algoma's customer lists and sales personnel. The Tribunal lends some credence to the view that Algoma's aggressive pricing in 1992 arose from its desire not only to compete with dumped imports but to recapture lost accounts and reestablish itself as a viable and long-term supplier in the market.

The evidence also indicated that Sidbec-Dosco's pricing policy contributed to a deterioration in market prices in 1992. According to the firm's witnesses, Sidbec-Dosco decided to drop its domestic prices in 1992 to bring production up to more acceptable levels. As a consequence, its sales increased dramatically, particularly in the Ontario market where the firm made important inroads. The information before the Tribunal shows that Sidbec-Dosco sold its product to users in Ontario at prices markedly below those of the imported product.

Over the period of inquiry, sales by the domestic producers fell by close to 500,000 net tons, of which over 75 percent is attributable to the effects of the economic recession. The balance can be traced to increases in imports from the named countries.

### **Price Erosion**

Market prices for the subject goods fell by approximately 15 percent over the period of inquiry. Central to the case made by the complainants is that dumped imports eroded prices, putting Canadian producers in the position of having to meet lower prices or lose sales. However, Canadian producers brought little verifiable evidence of import price offerings or sales to Canadian accounts that would have allowed the Tribunal to conclude that dumped imports played an important role in the price declines that occurred between 1989 and 1992. (The Tribunal's analysis of industry allegations of lost sales and price erosion in various accounts is contained in the following section.) Accordingly, the Tribunal was forced to rely on information collected by the Tribunal's staff to ascertain the pricing behaviour of imports and domestic products during the period of inquiry.

The Tribunal began by examining information collected in its questionnaires and reported in the staff report which showed trends for average prices for imports and domestic products. The data showed a clear deterioration in the selling prices for both domestic products and imports over the 1989-92 period. Even after adjustments made by the Tribunal's staff to bring all reported prices to a delivered basis by including freight,

the pricing table revealed that average delivered selling prices for the subject country imports were consistently higher than those of the domestic products in each year of the period of inquiry.

Counsel for the domestic industry took the view that average price comparisons were not valid in view of the differing product mix sold by domestic producers and importers. Testimony by a number of parties during the public hearing established that a considerable portion of importers' business involves the sale of higher-value-added products to niche markets at higher prices than the bulk of the sales engaged in by domestic producers. This may account, in part, for the generally higher import prices.

In order to permit price comparisons that were sensitive to the product mix, the Tribunal's staff conducted a supplementary pricing survey which obtained delivered purchase prices from steel service centres and end users,<sup>12</sup> for the domestic and imported subject goods in a selection of product specifications including A569 commercial quality, A621 drawing quality, A622 drawing quality special killed and A607 high-strength low-alloy, in specific gauges and widths during the months of January, April, July and October of 1991 and 1992. The survey results confirmed the erosion of producer and importer delivered prices from 1991 to 1992 for specific carbon steel sheet products.

The supplementary pricing survey was also used to examine the industry's claim of price erosion due to the dumping of the subject goods. The survey permitted an examination of the prices paid by particular accounts to domestic and import suppliers for the subject products with the same grade specifications, gauge and size. The survey results consisted of over 1,200 individual purchase prices and provided over 450 price series for comparison purposes. Representatives of three of the respondents to this survey, Samuel, Son & Co., Limited (Samuel), Wilkinson Steel and GM Canada appeared as witnesses and were cross-examined during the course of the Tribunal's public hearing.

The survey results did not present to the Tribunal an overall picture of domestic producers competing with the subject country imports and, consistently, either reducing their prices to maintain accounts or being displaced by lower import prices, such as would be expected under circumstances of injurious price erosion from imports. Rather, the results showed a limited degree of direct price competition between subject country imports and domestic products. The most frequent form of competition was direct competition among domestic producers for identical products sold to a particular account. There were, however, some examples of lower-priced subject imports competing for and apparently, gaining accounts. These were largely concentrated in the B.C. market and tended to involve offshore imports, mostly from New Zealand. There was little in the way of "leapfrogging" between domestic and imported goods in the Ontario market where 70 percent of the subject goods are sold.

In addition to conducting the pricing survey discussed above, the Tribunal's staff conducted a second survey of buyers of the subject goods. It sought to obtain specific instances where buyers secured price or volume reductions from domestic producers in

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12. End users of the subject hot-rolled carbon steel sheet are principally fabricators, stampers, and auto manufacturers.



response to lower price offers from importers or exporters. Most purchasers reported that a price reduction had never been secured from Canadian producers as a result of competing offers from imports.

Only one respondent to the survey reported securing any price reductions from a domestic mill in response to competing low price offers. In the case of three price reductions obtained from Dofasco prior to 1992, the competing price was offered by a steel service centre, but the respondent was unable to confirm whether the product offered was an imported or domestically produced product. In 1992, a steel service centre offered imports from France at lower prices than Dofasco's then selling price, which resulted in Dofasco reducing its price to this account.

The same respondent reported five instances of reducing its volume purchases from Dofasco in response to lower-priced products supplied by a steel service centre. In each case, the respondent was unable to identify the source of the competing product. Only two of these reductions were in 1992.

Finally, this respondent reported two instances of switching its source of supply from Dofasco to steel service centres in the summer of 1990, but was unable to identify the source of the replacement product.

The Tribunal notes the limited response rate and small volume of like goods reported in the responses to the staff's second survey of buyers. However, while perhaps not contributing greatly to the overall body of evidence, there is clearly little, if any, support in this information for the industry's claim of price erosion caused by dumped imports.

In sum, the Tribunal found little in the material collected by the staff in its various surveys to attribute the price declines observed over the period of inquiry to dumped imports from the subject countries. For the most part, import prices exceeded domestic producers' prices, both on average and for specific products to individual accounts.

The Tribunal notes with interest Algoma's efforts to illustrate the impact of dumping on prices of like goods by comparing indexed sales returns of the subject goods with those of quench and tempered plate, a non-subject product. According to Algoma, this plate was chosen for analysis because it is less sensitive to dumping. The Tribunal believes that such analysis could serve as a useful tool to quantify the extent of the injury suffered. However, the Tribunal notes that quench and tempered plate was sold in a relatively small market niche, at prices significantly higher than those for the subject goods. Therefore, the prices for quench and tempered plate would be subjected to less impact from recessionary pressures and other factors than the prices for the subject goods. As such, the Tribunal was not satisfied that quench and tempered plate was a suitable product for making such a comparison.

### **Buyers' Evidence**

During the course of the public hearing, the Tribunal heard testimony from four witnesses representing steel service centres and end users. The Tribunal called representatives of Wilkinson Steel and GM Canada. Stelco brought a representative of

Samuel, and counsel for the six integrated U.S. steel mills subpoenaed a witness from Maksteel Service Centre (Maksteel). Wilkinson, GM Canada and Samuel were each respondents to the staff's supplementary pricing survey.

Wilkinson, a steel service centre operating in British Columbia, introduced a cut-to-length line in 1990. The witness for Wilkinson contended that, in response, IPSCO lowered its prices for hot-rolled coil to its own cut-to-length operation in Vancouver, with the result that the other domestic mills had to reduce their coil prices to remain competitive. The witness provided a review of domestic and import selling prices for a selection of the subject goods' specifications both within and outside of IPSCO'S product range. A review of this evidence shows that IPSCO was the price leader in its size range from early 1991 through 1992.

Samuel's representative contended that U.S. steel service centres and brokers were shipping secondary and excess prime product to Canada at dumped prices. This witness' evidence included price offers from certain U.S. steel service centres. However, for the most part, the price offers were not supported by sales invoices relating to any domestic producer's accounts. One of the offers was provided to Samuel Son International in the United States and related to prices being offered to U.S. buyers. Samuel's representative testified that the company does not import from Samuel Son International in the United States.

The witness from Maksteel reported that, beginning in 1990, there appeared to be a large volume of low-priced subject goods entering Canada from the Detroit area. He indicated that these imports were being sold to Canada by U.S. brokers. The witness was not able to provide details as to whether the products were seconds or prime hot-rolled products. Asked whether these low prices were the driving force behind declines in domestic market prices, the witness pointed out that the auto-manufacturing industry's unwillingness to accept price increases had a flattening effect on prices and that the relative impact of the low-priced imports on the selling prices of a particular company would depend on the sector of the market to which that company was selling.

The testimony of these witnesses verified the presence of dumped imports in the market and low price offers, but provided virtually no evidence of producers reducing their selling prices in response to dumped imports. Moreover, the evidence pointed to IPSCO's aggressive pricing and emphasized the very important influence of the auto-manufacturing industry on price levels.

The Tribunal heard evidence that up to 70 percent of the subject goods that are marketed domestically are sold, either directly or through steel service centres, to stampers and fabricators for the auto-manufacturing industry. Given this dominant importance of the auto-manufacturing industry as an end user and buyer of the subject goods, the Tribunal was particularly interested in the role played by the auto-manufacturing industry and invited its own witness, a representative of GM Canada, to testify.

Having heard and questioned that witness carefully and having exposed the witness to cross-examination, the Tribunal's view is that the dumped imports had little impact upon this major segment of the market. Canadian producers made no allegations of lost sales to their automotive accounts as a result of the dumping. Indeed, GM Canada purchases at least 95 percent of its annual requirements from Canadian

mills. Further, it is the apparent policy and practice of auto manufacturers to purchase the overwhelming bulk of their requirements within North America. Any impact from dumped imports would, therefore, have to be in the form of price erosion or suppression and would, furthermore, be confined to U.S. product.

One allegation of price erosion from U.S. mills with respect to GM Canada was made by a Canadian producer, but the producer was unable to provide the name of the competing source or the price at which the product was offered. Thus, the Tribunal was unable to determine whether dumped imports were a cause of the price reduction reported by the domestic producer. Indeed, testimony of the witness for GM Canada with respect to its raw material procurement policy reveals a rather tenuous link between prevailing market prices and prices negotiated by that auto manufacturer. Its policy is to choose among only those North American mills that are on a pre-approved short list and to sign contracts lasting one year or longer. Central to the negotiations, besides price, are discussions of cost savings, quality criteria, exchange rates, "just in time" delivery arrangements and other non-price factors. Only in exceptional and infrequent circumstances does this manufacturer purchase on the spot market and, then, only in small quantities. The witness for GM Canada emphasized the importance of these non-price factors in its sourcing decisions.

The Tribunal accepts that the availability of competing U.S. product at low prices might add some downward pressure to these price negotiations, but believes that the evidence shows that the Canadian mills respond less to this influence than to the very strong price-setting powers that auto manufacturers enjoy. Indeed, in testimony, the witness for GM Canada explained that its buying structures, procedures and policies are designed to effect the lowest possible prices for raw materials. The Tribunal finds the evidence compelling that producers' prices were eroded on their sales of the subject goods to the automotive sector, as a result of the strong price-setting power of the large auto manufacturers. In the Tribunal's view, the auto manufacturers exert that influence on prices irrespective of the availability of imports at dumped prices. This was a very important consideration in the Tribunal's decision, given the very large proportion of the subject goods used in this sector of the market.

### **Industry's Allegations of Lost Sales and Price Erosion**

The Tribunal reviewed all of the allegations submitted by the industry of lost sales and price erosion due to the dumping of the subject imports. A summary follows, covering the majority of these allegations. This summary is indicative of all the allegations presented by the industry. Stelco and Algoma provided most of the documentation in support of these claims, which included sales representative call reports and internal memoranda intended to document specific instances of lost sales or price erosion. By far, the bulk of this material concerned price offers from U.S. sources, both from U.S. mills and steel service centres. For purposes of reviewing the evidence led by the industry and that submitted by the importers, the Tribunal's observations on the various allegations are organized according to the alleged country of origin of the imports. This approach is merely for ease of presentation and is not a country-by-country analysis of the question of injury. It remains the practice of the Tribunal to assess the cumulative impact of injuriously dumped imports on domestic production.

### United States

The majority of the industry's claims were based on alleged low price offers for imported steel, unsupported by evidence of their impact on domestic pricing. The call reports and other internal memoranda often described reasons, other than price, which were affecting the producers' ability to sell to a particular account. There were few documented allegations relating to 1992 and, in particular, to the period investigated by the Deputy Minister, during which dumping was found to have occurred.

The preponderant share of the U.S. imports, possibly as high as 70 percent, appears to have come from steel brokers, steel service centres and fabricators, for which the Tribunal had little evidence. During the hearing, they were referred to as the "mystery tons" which were alleged to have caused price erosion in the marketplace. The only evidence presented was some price offers made by certain U.S. steel service centres and steel brokers. There was no evidence as to where these volumes went and at what prices.

The evidence presented by the U.S. producers that appeared at the public hearing, in response to the few claims against them, satisfied the Tribunal that the claims were unfounded. In the case of one claim, the U.S. mill identified by the industry terminated sales to the account in question due to that mill's inability to compete with domestic producers' prices.

A claim by Algoma alleging that it had to lower its bid price to a major auto manufacturer in order to compete with dumped prices from U.S. mills did not identify the competing U.S. mill or mills nor establish their bid prices.

### France

The industry submitted five allegations of price erosion and lost sales respecting imports from France during the 1989-92 period of inquiry. The first involved price offers received by an Algoma account in Western Canada in early 1989. The prices undercut Algoma's stated selling prices at the time. Algoma submitted no evidence of lost sales volume or reduced prices to the account. There was no examination of this allegation during the hearing.

Stelco alleged that, in October 1990, Francosteel issued a general price offer on behalf of its export source in France that undercut Stelco's book price. Testimony by a witness for Stelco, concerning selling prices reported by the company in respect of an allegation involving imports from Italy, established that Stelco was selling like goods in 1991, at prices below its own book price and at prices below the Francosteel price offer.

Stelco alleged that, in September 1991, Francosteel sold a particular specification to a steel service centre at prices lower than Stelco's selling prices to most of its top accounts. Testimony by a witness for Stelco confirmed that the top 10 accounts referred to were end users and not steel service centres. Stelco provided no evidence of reduced prices or lost sales volume to that particular account in connection with this allegation.

Algoma alleged that, in February 1992, Francosteel offered floor plate to two steel service centres at delivered prices of more than \$80 per net ton below Algoma's selling price at the time. A witness for Francosteel testified that no sales of floor plate were made to the accounts identified in the allegation. Witnesses for Algoma could not confirm whether the company was selling floor plate to the named accounts at the time of the allegation.

Algoma alleged that, in April 1992, Francosteel offered a specific gauge to a particular account at more than \$100 per net ton below Algoma's selling price at the time. The supporting documentation, together with testimony by a witness for Algoma, confirmed that Algoma's sales volume to the account in 1992 had declined by over 70 percent from the previous year due to the account's high inventories of finished goods and the related drop in demand for the subject goods. The supporting documentation also established that Algoma remained the account's major supplier.

The Tribunal concludes that there is no evidence of systematic price undercutting or low price offers by imports from France.

#### United Kingdom

BSC submitted that the company's policy was to match domestic prices, and the evidence established that this firm did not undercut prices of domestic mills. Moreover, BSC's imports were relatively small, accounting for less than 1/2 percent of the domestic market annually. The company's imports from the United States have been sold at prices higher than those for competing domestic product. One allegation of lost sales was made by the industry. However, BSC did not sell the subject goods to the named account at the time of the allegation.

#### Germany

Algoma, the only domestic producer of floor plate, alleged that, in the first quarter of 1992, Preussag offered floor plate at prices below Algoma's selling prices, thereby forcing Algoma to reduce its prices. The supporting documentation consisted of an Algoma internal memorandum dated July 27, 1992. No invoices were filed to establish sales at Algoma's then selling price nor was there evidence of price offers or sales at the claimed reduced price.

A second claim against Preussag by Algoma respecting a low price offer for imports of floor plate from Germany in November 1992 was also shown to be unfounded, as the last order of floor plate from Germany was in December 1991. There were no arrivals of floor plate in Canada from Germany after April 1992. The price offer cited by Algoma related to a product from Belgium, a non-subject source.

#### Italy

Stelco claimed that a general price offer, dated April 30, 1991, issued by ILVA for pickled and oiled, commercial-quality coil undercut domestic producers' prices. Stelco's transaction price for like goods at that time was in a range with an upper limit equal to the ILVA price offer. A witness for ILVA testified that the price offer was at the then

prevailing market prices. However, the offer generated no sales, leading to the conclusion that the price offer was above market prices. Stelco filed no evidence of reduced prices or lost sales to any account in connection with the ILVA offer.

Dofasco claimed lost sales to dumped imports from Italy with respect to a particular account. The evidence, in this case, established that the account continued to purchase the subject goods from ILVA because of quality considerations. ILVA's prices were higher than Dofasco's prices for the same goods.

### New Zealand

Algoma claimed lost sales to New Zealand Steel in December 1991 respecting a major account in Western Canada. The allegation relates to the period when Dofasco was still responsible for the marketing of Algoma products. The supporting documentation, a call report from a Dofasco salesperson, indicated that the account was demanding preferential pricing from Dofasco compared to Dofasco's prices to the account's competitors. However, Dofasco was unwilling to reduce its price to this account and, as a result, the account refused to buy from Dofasco. In the Tribunal's view, Dofasco's unwillingness to discount its price was the reason that Dofasco could not secure orders from this account rather than the availability of dumped imports from New Zealand.

Algoma alleged lost sales to New Zealand Steel in February 1992 of a particular specification which the witness for New Zealand Steel testified was not shipped to Canada during the period of inquiry. Algoma also alleged that, in February 1992, New Zealand Steel sold floor plate to the same account at dumped prices. The Tribunal finds that the allegation of lost sales has not been substantiated, particularly in the absence of any evidence of Algoma accounts displacing any portion of their domestic purchases with imports.

### **Causality**

Pursuant to Article 3 of the Code, a determination of injury must be based on positive evidence and involve an examination of both the volume of the dumped imports and their effect on prices in the domestic market for like goods and the consequent impact of these imports on the domestic producers of such goods. The domestic industry focused its allegations on the price-eroding effects of dumped imports and lost sales to these imports. In determining whether there was a causal link between the material injury suffered by the domestic industry and the cumulative impact of the dumped imports from the various subject countries, the Tribunal concentrated its analysis on these commercial market transactions.

In the Tribunal's opinion, the evidence did not establish the necessary nexus between the material injury suffered by the domestic industry and the dumped imports. The industry made a number of claims of low price offers for imported steel and could show that steel prices were declining during the period of investigation. However, many of the industry's claims were incomplete in that they often failed to identify the source involved or details as to prices and volumes. Indeed, there was a sizeable share of U.S. imports exported from sources other than those examined by the Deputy Minister, for which no evidence beyond the most superficial anecdotal sort was adduced concerning the origin, the destinations or the transaction prices of such imports.

Through cross-examination, doubt was cast on many of the allegations, and industry witnesses were unable to respond by clarifying some of the details in doubt. Furthermore, there was limited positive evidence for 1992, the year in which dumping was found by the Deputy Minister to have occurred.

The Tribunal appreciates the difficulty that the industry experiences in producing commercial intelligence of the sort that the Tribunal requires to understand the pricing behaviour in the marketplace. After all, the industry's business is to make and sell steel, not to prepare for anti-dumping cases. However, the Tribunal would also expect that price reductions at individual accounts are only undertaken on the authority of sales or marketing managers who are satisfied that the reductions are necessary in order to keep the business. This requires a knowledge of the source of the competition and details about the prices and volumes involved. Because of its very nature, it is material that only the domestic industry can gather; it is not available to the Tribunal from other sources. And it is this type of information, frequently supplemented by the testimony of purchasers of the subject goods that have themselves switched to or received offers from imported sources, on which the Tribunal depends to form the crucial link between dumped imports and injury to the domestic industry.

Critical to any determination of material injury due to dumped imports is evidence that low import prices took business away from Canadian producers or forced price declines in the domestic market. In short, price is the necessary nexus if one is to establish that the dumped imports, and not some other factor or combination of factors, caused the injury suffered. In this case, however, market data compiled by the Tribunal's staff showed import prices over the period of inquiry that were, on average, higher than domestic prices. Even when corrected for differences in product mix, the Tribunal saw few instances of lower-priced imports displacing Canadian producers at individual accounts in the pricing survey data gathered by the staff. Lacking either evidence of low-priced import sales or offers to individual accounts or general market data that showed lower import prices, it is impossible to conclude that dumped imports caused the injury to domestic producers.

At the same time, the Tribunal was confronted with a number of other explanations for the price and sales declines that occurred over the period of inquiry. In a time of deepening recession, excess domestic production capacity and drastic declines in end-user demand, it was entirely reasonable, in the Tribunal's view, that prices would have fallen from their historically high levels of 1989. There was no indication that price declines in Canada were any worse than those experienced worldwide over the period of inquiry, and they might even have been milder, judging from the deteriorating returns of domestic producers on their export sales. Witnesses at the hearing spoke of the pressure put on steel suppliers by purchasers facing stiff foreign competition themselves on their end products. Mention was also made of the 140,000 net tons of demand for the subject goods that moved south of the border as a result of the relocation of auto parts manufacturers and other steel users to the United States. The strikes were another factor affecting production of the subject goods in 1990 and, to a lesser extent, in 1991. In addition, centralized purchasing procedures, instituted by the major auto manufacturers, increased pressure on Canadian mills to reduce prices for a large portion of their business. Moreover, the high value of the Canadian dollar in 1990 and 1991 made U.S. imports more competitive in the Canadian market during these two years. These factors, a number of which were cited in annual reports to shareholders and press

commentaries by domestic producers at the time, were, in the Tribunal's view, the major causes behind the difficulties faced by the domestic industry.

The only subject country for which the Tribunal found evidence of dumped imports competing aggressively and taking sales from domestic producers was New Zealand. However, New Zealand product was confined to the west coast market and accounted for less than 1 percent of Canadian market demand over the period of inquiry. Although the Tribunal notes, with some concern, New Zealand's efforts to gain market share using dumped imports, it is unable to conclude that this resulted in material injury to domestic producers, given the very low tonnages involved.

In total, imports from offshore subject countries reached a peak of only 4 percent of the domestic market during the period of inquiry. In contrast to the situation that exists for plate and various other steel products, offshore sales were only made to order. Dockside sales, which tend to have a depressing effect on market prices, did not occur for the subject goods.

For the reasons outlined above, the Tribunal finds that the dumping of the subject imports has not caused and is not causing material injury to the production in Canada of like goods.

With regard to its assessment of future injury, the Tribunal is cognizant of the present U.S. trade actions and their potential for diverting exports to Canada. It is also aware of the excess production capacity in the named countries and their propensity to dump the subject goods. However, while the subject imports have been found to be dumped and the industry has suffered material injury, the industry's evidence on lost sales, price erosion and price suppression failed to establish a causal link between the dumping and the industry's injury. Moreover, beginning in 1992, there was an upturn in the industry's production, exports, domestic sales and market share, employment, and production capacity utilization. As such, the Tribunal has no basis to conclude that the domestic industry will be confronting an imminent threat of injury due to dumping in the foreseeable future.

Should dumped imports have a negative impact on industry performance in the future, it would be open to the industry to bring a new action against the named countries, based on the facts as they may exist at the time. As in this case, the domestic industry must establish a causal nexus between the injury suffered by it and the dumping of the subject goods before relief can be made available.

In initiating an inquiry of this nature, a complainant is enjoined with an evidentiary burden to support its allegations of injury due to dumping. The Tribunal is prepared to accept various forms of evidence used to substantiate these claims. As occurred in this case, the Tribunal will assist in ascertaining the facts through such means as its questionnaires and pricing surveys. However, it is ultimately the domestic industry that must make its case.

## **CONCLUSION**

In light of the foregoing, the Tribunal finds, pursuant to subsection 43(1) of SIMA, that the dumping of certain flat hot-rolled carbon steel sheet products originating in or exported from the Federal Republic of Germany, France, Italy, New Zealand and the



United Kingdom has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods.

In accordance with subsection 43(1.1) and pursuant to subsection 43(1) of SIMA, the Tribunal finds that the dumping in Canada of certain flat hot-rolled carbon steel sheet products originating in or exported from the United States has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Member

Desmond Hallissey  
Desmond Hallissey  
Member