CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, January 23, 1992

Inquiry No.: NQ-91-003

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

CERTAIN CARBON STEEL WELDED PIPE ORIGINATING IN OR EXPORTED FROM BRAZIL, LUXEMBOURG, POLAND, TURKEY AND YUGOSLAVIA

F I N D I N G

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 September 25, 1991, and of a final determination of dumping dated December 9, 1991, respecting the importation into Canada of carbon steel welded pipe, originating in or exported from Brazil, Luxembourg, Poland, Turkey, and Yugoslavia, produced to ASTM standards A53 or A120 in sizes from 0.540 in. (13.7 mm) to 16 in. (406.4 mm) outside diameter, with plain or finished ends and with black, regular mill coat or galvanized surface finishes.

Pursuant to paragraph 42(2)(*a*) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that:

- the dumping of the aforementioned carbon steel welded pipe originating in or exported from Brazil has caused, is causing and is likely to cause material injury to Canadian production of like goods; and,

- the dumping of the aforementioned carbon steel welded pipe originating in or exported from Luxembourg, Poland, Turkey and Yugoslavia has caused, but is not causing and is not likely to cause material injury to Canadian production of like goods.

Moreover, pursuant to paragraph 42(2)(*b*) of the *Special Import Measures Act*, the Canadian International Trade Tribunal finds that:

- the dumping of the aforementioned carbon steel welded pipe originating in or exported only from Brazil would have caused material injury, except for the acceptance of the undertakings.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Robert J. Martin
Robert J. Martin
Secretary

The statement of reasons will be issued within 15 days.

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Inquiry No.: NQ-91-003

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	December 16 to 18, 1991
Date of Finding:	January 23, 1992
Tribunal Members:	Sidney A. Fraleigh, Presiding Member Arthur B. Trudeau, Member Robert C. Coates, Q.C., Member
Director of Research:	Selik Shainfarber
Research Officer:	Anis Mahli
Statistical Officer:	Robert Larose
Counsel for the Tribunal:	Clifford Sosnow
Registration and Distribution Officer:	Pierrette Hébert

Participants:

	Lawrence L. Herman
for	Stelpipe (A Unit of Stelco Inc.)
	Ronald C. Cheng and Gregory O. Somers
for	Ipsco Inc. and Sidbec-Dosco Inc.
	(Complainants)
	Michael Kaylor
for	Olympia Tubes Limited
	(Importer)
	John D.F. Rolland
for	TradeARBED Canada Inc.
	C.J. Michael Flavell
for	Borusan Boru
	(Exporters)

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, February 7, 1992

Inquiry No.: NQ-91-003

CERTAIN CARBON STEEL WELDED PIPE ORIGINATING IN OR EXPORTED FROM BRAZIL, LUXEMBOURG, POLAND, TURKEY AND YUGOSLAVIA

Special Import Measures Act - Whether the dumping of certain carbon steel welded pipe has caused, is causing or is likely to cause material injury, or has caused or is causing retardation to the production in Canada of like goods; and whether the dumping of the aforementioned carbon steel welded pipe would have caused, during any period after the undertakings were accepted, material injury to the production in Canada of like goods, except for that acceptance.

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping of certain carbon steel welded pipe originating in or exported from Brazil has caused, is causing and is likely to cause material injury to Canadian production of like goods; the dumping of the aforementioned goods originating in or exported from Luxembourg, Poland, Turkey and Yugoslavia has caused, but is not causing and is not likely to cause material injury to Canadian production of like goods; and the dumping of the aforementioned goods originating in or exported only from Brazil would have caused material injury, except for the acceptance of the undertakings.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	December 16 to 18, 1991
Date of Finding:	January 23, 1992
Date of Reasons:	February 7, 1992
Tribunal Members:	Sidney A. Fraleigh, Presiding Member Arthur B. Trudeau, Member Robert C. Coates, Q.C., Member
Director of Research:	Selik Shainfarber
Research Officer:	Anis Mahli
Statistical Officer:	Robert Larose
Counsel for the Tribunal:	Clifford Sosnow
Registration and Distribution Officer:	Pierrette Hébert
Participants:	Lawrence L. Herman for Stelpipe (A Unit of Stelco Inc.) Ronald C. Cheng and Gregory O. Somers for Ipsco Inc. and Sidbec-Dosco Inc. **(Complainants)**

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(Importers)

C.J. Michael Flavell and G.C. Kubrick
for Borusan Boru

(Exporter)

Witnesses:

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General Administrative and
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TradeARBED Canada Inc.

Brian S. Cain
Vice-President
Eastern Canadian Region
Comco Pipe & Supply Company

J.D. (Jack) Lewis
Vice-President
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Jack Zimmerman
Olympia Tubes Limited

Fred Zimmerman
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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, February 7, 1992

Inquiry No.: NQ-91-003

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

CERTAIN CARBON STEEL WELDED PIPE ORIGINATING IN OR EXPORTED FROM BRAZIL, LUXEMBOURG, POLAND, TURKEY AND YUGOSLAVIA

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding member
ARTHUR B. TRUDEAU, Member
ROBERT C. COATES, Q.C., 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* (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 September 25, 1991, and of a final determination of dumping dated December 9, 1991, respecting the importation into Canada of carbon steel welded pipe originating in or exported from Brazil, Luxembourg, Poland, Turkey, and Yugoslavia, produced to ASTM [American Society for Testing and Materials] standards A53 or A120 in sizes from 0.540 in. (13.7 mm) to 16 in. (406.4 mm) outside diameter, with plain or finished ends and with black, regular mill coat or galvanized surface finishes.

The notices of preliminary and final determinations of dumping were published in Part I of the October 19, 1991, and December 9, 1991, editions of the Canada Gazette, respectively. The Tribunal issued a notice of commencement of inquiry on October 4, 1991, that was published in Part I of the October 12, 1991, edition of the Canada Gazette.

As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian manufacturers and importers of the subject goods, requesting production, financial, import and market information, as well as other information, covering the period from January 1, 1986, to June 30, 1991. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared protected and public pre-hearing staff reports covering that period. The record of this inquiry consists of all Tribunal exhibits, including protected and public replies to questionnaires, 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.

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Public and *in camera* hearings were held in Ottawa, Ontario, commencing December 16, 1991. The complainants, Stelpipe (A Unit of Stelco Inc.) (Stelpipe), Ipsco Inc. (Ipsco), and Sidbec-Dosco Inc. (Sidbec-Dosco), were represented by counsel at the hearing, submitted evidence and made argument in support of an injury finding. Counsel for the importer, Olympia Tubes Limited (Olympia), as well as counsel for Borusan Boru (Borusan), a Turkish exporter, submitted evidence and made argument in support of a finding of no injury. A representative of TradeARBED Canada Inc. (TradeARBED), the Canadian agent of TradeARBED S.A. of Luxembourg, appeared before the Tribunal, submitted evidence and answered questions put to him by counsel and members of the Tribunal.

On January 23, 1992, the Tribunal issued a finding that the dumping of the goods from Brazil has caused, is causing and is likely to cause material injury to Canadian production of like goods; the dumping of the subject goods from Luxembourg, Poland, Turkey and Yugoslavia has caused, but is not causing and is not likely to cause material injury to Canadian production of like goods; and the dumping of the subject goods only from Brazil would have caused material injury, except for the acceptance of the undertakings.

THE PRODUCT

The product that is the subject of this inquiry is described by the Deputy Minister in the preliminary determination of dumping as carbon steel welded pipe originating in or exported from Brazil, Luxembourg, Poland, Turkey and Yugoslavia, produced to ASTM standards A53 or A120 in sizes from 0.540 in. (13.7 mm) to 16 in. (406.4 mm) outside diameter, with plain or finished ends and with black, regular mill coat or galvanized surface finishes. According to the domestic industry, A120 is no longer produced in Canada. In 1988, it was replaced by A795. The parties submitted that A795 is equivalent to A120 and the Tribunal agrees.

The American Iron and Steel Institute (AISI) classifies carbon steel welded pipe into the following groups according to their end uses: standard pipe, pressure piping, line pipe, water well pipe, and oil country tubular goods.

Standard pipe is the subject of this inquiry. It is generally intended for the low-pressure conveyance of steam, water, natural gas, air and other liquids and gases in plumbing, heating and fire protection systems. The preponderant nominal sizes consist of 1 in., 2 in., 3 in., 4 in., 6 in., and 8 in. This pipe is produced according to ASTM specifications. The ASTM A53 specification is considered to be the highest quality and is suitable for welding, coiling, bending and flanging.

Standard pipe is manufactured on mills using continuous weld (CW) and electric resistance weld (ERW) technologies. ERW pipe represents over 90 percent of imports. The ERW pipe is made by forming flat rolled steel sheet, strip or plate, known as skelp, into tubular configuration and welding along the joint axis. Pipe produced on the CW mills varies between a minimum of 0.405 in. and usually a maximum of 4.5 in. in outside diameter, while pipe formed on ERW mills has an outside diameter ranging from 2.0 in. to 24.0 in. In both processes, after the forming of the pipe, the product undergoes straightening and end processing, i.e., it is cropped, faced and reamed. Standard pipe is produced in two finishes: the standard black mill finish (lacquered) and a galvanized finish.

The major proportion of the domestic production of standard pipe is marketed through national distributors. They have branches across Canada that purchase their requirements independently from either domestic manufacturers, trading companies or by direct import. There are also many importers as well as domestic end users that import the subject pipe directly.

THE DOMESTIC INDUSTRY

The complainants in this inquiry consist of three large producers, Stelpipe, Ipsco and Sidbec-Dosco. There are several other smaller producers that specialize in manufacturing subject goods in a limited size range. The combined production of the three major producers accounts for the major proportion of domestic production of the subject goods. Therefore, for purposes of this inquiry, Stelpipe, Ipsco and Sidbec-Dosco represent the domestic industry.

Stelco Inc. (Stelco) produced and sold the subject goods under the "Stelco" brand until 1984. During that year, Stelco reorganized its tubular product facilities into a separate business unit, "Stelco Pipe and Tube Company," to produce and market these products. This unit's name changed to "Stelpipe" in 1988. Stelpipe manufactures pipe, tube and other tubular products on eight mills located in Eastern and Western Canada. Five of the mills produce the subject goods. Four of them are at the Page-Hersey works in Welland, Ontario, and the fifth is in Camrose, Alberta. Besides its milling operations, until the third quarter of 1991, Stelpipe "tolled" out some production to Adtek Pipe & Tube Inc., in Weston, Ontario. Stelpipe uses both CW and ERW processes, and supplies the entire range of the subject goods. The products are sold across Canada.

Sidbec-Dosco is a wholly owned subsidiary of Sidbec Inc., which is owned by the province of Quebec. It has four facilities in Canada, but produces standard pipe only in Montréal. The Montréal facility uses CW technology for pipe up to 4 in. in outside diameter. Since 1987, Sidbec-Dosco has sourced ERW pipe from Delta Tube (Delta), a company owned jointly by Nova Steel and Sidbec Inc. Delta's size range is 2 in. to 6 in. in outside diameter. During the inquiry period, Sidbec-Dosco sold pipe products throughout Canada, except British Columbia.

Ipsco began to produce the subject goods in 1957. Ipsco operates nine ERW pipe mills located in Regina, Edmonton, Red Deer and Calgary. Five of the mills can produce the subject goods. The size range is from 2 3/8 in. to 16 in. in outside diameter. Ipsco has sold its pipe throughout Canada, except the Maritimes.

THE RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION

On September 16, 1987, the Deputy Minister initiated an investigation concerning the dumping into Canada of carbon steel welded pipe originating in or exported from Belgium, Brazil, France, Luxembourg, Poland, Turkey and Yugoslavia. The Deputy Minister, on January 29, 1988, terminated the investigation in respect of France and Belgium, and suspended the investigation respecting the subject goods from Brazil, Luxembourg, Turkey, Poland and Yugoslavia after price undertakings were signed by exporters from Brazil, Luxembourg and Yugoslavia. The exporters, who gave undertakings, accounted for the vast majority of subject exports to Canada. On January 18, 1991, the undertakings were extended for a period of three years, following a review by the Deputy Minister.

On September 25, 1991, the Deputy Minister terminated the undertakings. This action was taken because of evidence that led the Deputy Minister to conclude that the undertakings were being violated by two Brazilian exporters. Termination of the undertakings under these circumstances precipitated a preliminary determination of dumping pursuant to subsection 52(1) of the SIMA with respect to each country subject to the undertakings, namely, Brazil, Luxembourg and Poland. The preliminary determination also included Turkey and Yugoslavia, which were subject to the initial investigation, but which had not signed undertakings.

Before the suspension of the investigation in 1988, National Revenue, Customs and Excise (Revenue Canada) had found that the major proportion of importations made during the investigation period of January 1, 1986, to June 30, 1987, had been dumped by a weighted average margin of dumping that ranged from 10.7 percent to 51.0 percent when expressed as a percentage of normal value.

THE COMPLAINT

Stelpipe

In his extensive brief and argument, counsel for Stelpipe provided the Tribunal with a detailed chronology of market conditions during the post-1985 period. Counsel submitted that before the undertakings, the dumping of standard pipe from the named countries, especially Brazil, caused price erosion and suppression. In addition to erosion in prices, Stelpipe suffered significant losses in production, sales revenue and profitability. Employment had to be reduced, and capacity was underutilized. Counsel added that if price discipline were not imposed on subject countries, the resulting market disorder would jeopardize Stelpipe's investment in its new stretch reduction mill (SRM) slated to start production in March 1992.

Counsel argued that the undertakings resulted in a steady reduction of imports from the subject countries. Since 1987, there have been no imports from Poland and marginal volumes from Yugoslavia. However, Brazil and Turkey have never surrendered their strong position in the domestic market. Moreover, although Luxembourg had abandoned the market between 1987 and the first half of 1991, it has returned to Canada, in the second half of 1991, with a shipment that was dumped. In counsel's view, exporters in the subject countries would not hesitate to resort to their pre-1987 dumping practices at the first appropriate opportunity. In support of this contention, counsel noted that a number of the subject countries were subject to anti-dumping orders in other jurisdictions: specifically, Yugoslavia and Turkey in the European Community (EC), and Turkey and Brazil in the United States. He further noted that these countries, individually and collectively, possess huge production capacity and can supply significant volumes of the subject goods at low prices that can easily meet ASTM specifications.

Counsel argued that the Tribunal should not make any exclusions from its finding. Importers of the subject goods tended to switch to new suppliers as soon as their former suppliers became subject to a finding. In the past, the new suppliers had commenced dumping, and the industry was obliged to take new action to stem the tide of dumping from the new sources. That pattern would be repeated in this case if exclusions were made.

Counsel noted that the present case involved essentially the same subject goods and raised substantially the same considerations as had been dealt with by the Tribunal in two recent cases. The Tribunal had found in favor of the industry in both those cases, and it would be "inconsistent" for the Tribunal not to do so in this case.

Sidbec-Dosco and Ipsco

Counsel for Sidbec-Dosco and Ipsco concurred with the arguments presented by counsel for Stelpipe. He further argued that based on his client's "uncontroverted" evidence, the Tribunal should find that the dumping of the goods from the subject countries have caused and are likely to cause material injury to domestic production of like goods. He added that there should be no exclusions from the injury finding. If exporters in countries such as Luxembourg wanted to avoid dumping in Canada, they should have no objection to submitting themselves to a Revenue Canada normal value ruling, since this would give them the price guidance they needed to know to price fairly.

THE RESPONSE

TradeARBED

The Canadian representative for TradeARBED, the exclusive agent for subject goods from Luxembourg, submitted that Luxembourg should be excluded from any injury finding. He stated that Luxembourg had respected its undertaking and had no interest in disrupting the Canadian market for the subject goods. Since 1988, TradeARBED had not imported any subject goods to Canada, with the exception of one shipment that arrived in September 1991. Revenue Canada had been given advance notice of the September shipment and had considered it to be in compliance with Luxembourg's undertaking. However, there was a misunderstanding between Revenue Canada and TradeARBED about the undertaking price, and when the goods arrived, Revenue Canada assessed them to be underpriced by a certain amount.

Olympia

Counsel for Olympia stated that his client's specific interest in this inquiry related to the September 1991 shipment of the subject goods from Luxembourg. Olympia had purchased these goods from TradeARBED. According to counsel, this shipment was not a cause of injury to the domestic industry. The goods were underpriced in error. Moreover, they remained largely unsold at Olympia's warehouse in Montréal.

In counsel's view, the evidence showed that Luxembourg had behaved responsibly in the Canadian market. On the international scene, there have been no findings implicating Luxembourg in the dumping of the subject goods. Counsel submitted that Luxembourg should be excluded from any injury finding in this case.

Borusan

Counsel submitted that Turkey should be excluded from any injury finding in this case. According to counsel, Turkey has always been and continues to be a small player in this market. The problems that the industry had was with Brazilian exports, not with Turkish exports.

Counsel noted that the high margin of dumping, which had been applied by the Deputy Minister to Turkish exports in the 1986-87 period of investigation resulted from the fact that Borusan had not provided certain information to Revenue Canada on time. This happened because of a misunderstanding by Borusan as to what should be submitted. However, since then, Borusan has cooperated fully with Revenue Canada, even though it was not subject to an undertaking, and had done nothing to disrupt the domestic market. This view was supported by the Deputy Minister when she reviewed the activities of Turkish exporters, in 1991, in connection with her review of undertakings at that time.

PRELIMINARY ISSUE

Jurisdiction of the Tribunal

At the hearing, counsel for different participants made various submissions concerning the Tribunal's jurisdiction in conducting the material injury inquiry pursuant to subsection 42(2) of SIMA.

Under subsection 52(1), the Deputy Minister can terminate an undertaking when she considers that the undertaking is being violated. Upon termination, the subsection also requires the Deputy Minister to make a preliminary determination of dumping and notify the Secretary of the Tribunal. Subsection 42(2) then directs the Tribunal to conduct a material injury inquiry on the following matters:

> *Whether the dumping [of the goods to which an undertaking was given]*
>
> > *42(2)(a) has caused, is causing or is likely to cause material injury or has caused or is causing retardation; or*
> >
> > *42(2)(b) would have caused, during any period after the undertaking or undertakings, as the case may be, with respect to the goods were accepted, material injury except for that acceptance.*

Counsel for Stelpipe and counsel for Ipsco and Sidbec-Dosco presented arguments, which were not contested, that the Tribunal had the jurisdiction to examine material injury pursuant to both paragraphs 42(2)(*a*) and 42(2)(*b*). The Tribunal agrees.

Had Parliament intended the Tribunal to conduct a material injury inquiry exclusively under paragraph 42(2)(*a*) or 42(2)(*b*), it could have easily done so by simply adding the word "either" to subsection 42(2). Thus, the phrase directing the Tribunal to conduct a material injury inquiry would read as follows: "[t]he Tribunal shall ... make inquiry [either] as to whether the dumping ... has caused, is causing or is likely to cause material injury ... or ... would have caused, during any period after the undertaking ... material injury except for that acceptance."

In fact, this is precisely what Parliament has done in paragraph 42(1)(*b*). Under this paragraph, the Tribunal, following notice of a preliminary determination of dumping, is directed to inquire "... as to whether ... either ... there has occurred a considerable importation of like goods that were dumped, which dumping has caused material injury ... or ... the importer of the goods was or should have been aware that ... the exporter was

practising dumping and that the dumping would cause material injury ... " (emphasis added).

Also, at the hearing, counsel for the Turkish exporter, Borusan, argued that the Tribunal's material injury inquiry only covered subject goods from those countries from which undertakings were given, i.e., Brazil, Luxembourg and Yugoslavia. Counsel based this submission on the wording of subsection 42(2) of SIMA which empowers the Tribunal to conduct a material injury inquiry when undertakings are violated. Counsel relied on a clause in that subsection, which states that "[t]he Tribunal shall ... in respect of goods with respect to which an undertaking or undertakings have been terminated, make inquiry ...." Counsel argued that the Tribunal does not have the jurisdiction to consider Turkey and Poland, as exporters from these countries did not give undertakings.

Counsel for Ipsco and Sidbec-Dosco, relying on subsection 52(1) of SIMA, argued that the Deputy Minister's preliminary determination and, therefore, the Tribunal's material injury inquiry encompassed goods from Brazil, Luxembourg, Yugoslavia, Poland and Turkey. The Tribunal agrees.

When the Deputy Minister initiated her investigation on September 16, 1987, she did so regarding carbon steel welded pipe originating in or exported from Brazil, Luxembourg, Yugoslavia, Poland, Turkey, France and Belgium. On January 29, 1988, the Deputy Minister terminated her investigation in respect of goods imported only from France and Belgium. On the same day, the Deputy Minister accepted undertakings from exporters in Brazil, Luxembourg and Yugoslavia.

The Tribunal does not consider that when the Deputy Minister accepted undertakings only from exporters from Brazil, Luxembourg and Yugoslavia, she terminated her investigation respecting goods from the non-undertaking countries, i.e., Poland and Turkey. First, the Deputy Minister clearly terminated her investigation only in respect of France and Belgium when she accepted the undertakings. Second, the Tribunal considers the argument that the Deputy Minister terminated her investigation in respect of Poland and Turkey to be contrary to subsection 35(1) of SIMA. This subsection sets out the grounds upon which the Deputy Minister can terminate an investigation (in respect of some or all of the goods) once the investigation has been initiated, but before a preliminary determination has been made. A perusal of subsection 35(1) readily reveals that Parliament has not granted the Deputy Minister the power to terminate the investigation in respect of goods from non-undertaking countries just because she has accepted undertakings from other countries. Rather, according to this subsection, the Deputy Minister can terminate the investigation in one of three situations: (1) where there is insufficient evidence of dumping; (2) where the margin of dumping or the volume of dumped goods is negligible; or (3) where the evidence does not disclose a reasonable indication of material injury.

Section 51 of SIMA deals with terminations of undertakings following a written request to the Deputy Minister to do so. Although the section does not apply to the facts of the present case, the Tribunal considers that the wording of this section supports its conclusion that the acceptance of an undertaking does not terminate the investigation in respect of goods from non-undertaking countries. Pursuant to subsection 51(2), when an undertaking is terminated following a written request to do so, the Deputy Minister "shall forthwith cause the investigation to be resumed with respect to all the goods to which the investigation related when he accepted the undertaking ..." (emphasis added).

Thus, on the day the Deputy Minister accepted the undertakings, the goods covered by her investigation were those originating in or exported from Brazil, Luxembourg, Yugoslavia, Poland and Turkey.

Pursuant to paragraph 50(*a*) of SIMA, "[f]orthwith after accepting, in any investigation ... undertakings with respect to dumped ... goods, the Deputy Minister shall ... cause further action in the investigation to be suspended ...." Therefore, the investigation in respect of goods exported from Brazil, Luxembourg, Yugoslavia, Poland and Turkey was not terminated, but merely suspended.

On September 25, 1991, the Deputy Minister terminated the undertakings because of violations by certain Brazilian exporters. According to paragraphs 52(1)(*e*) and 52(1)(*f*) of SIMA, once the Deputy Minister terminates undertakings, she must " ... make a preliminary determination of dumping ... with respect to each of the goods that were the subject of the investigation ..." (emphasis added) and " ... cause notice ... of the preliminary determination to be ... filed with the Secretary [of the Tribunal] ...." Since the goods that were "the subject of the investigation" were those from Brazil, Luxembourg, Yugoslavia, Poland and Turkey, the preliminary determination defined by the Deputy Minister and sent to the Tribunal, and thus the Tribunal's material injury inquiry, must encompass goods from these countries.

REASONS FOR DECISION

The Tribunal notes that this is an unusual inquiry involving unusual circumstances. The preliminary determination, which gives rise to this inquiry, under subsection 42(2) of SIMA, relates to dumping found by the Deputy Minister between January 1986 and June 1987, that is, between four and a half and six years ago. The length of this time lag between the dumping and the injury inquiry is unprecedented. It is due to the suspension of the Deputy Minister's investigation in 1988, following the acceptance of undertakings and the subsequent reactivation of the investigation in late 1991, following Brazil's undertaking violations.

This situation has raised a unique issue in this case, which the Tribunal is empowered to address under paragraph 42(2)(*b*), namely, whether the dumping would have caused material injury, in the period following the acceptance of the undertakings, if the undertakings had not been put in place. In addition to the foregoing, this case will address, as do all injury inquiries, whether the dumping has caused, is causing or is likely to cause material injury to domestic production of subject goods.

The Tribunal notes that the market for carbon steel welded pipe and the industry's performance has been the subject of two other examinations during the past two years. More particularly, in June 1990, the Tribunal, as a result of a review, continued a carbon steel welded pipe finding against Korea, which was originally made in June 1983. Thirteen months later, in July 1991, the Tribunal found that the dumping of carbon steel welded pipe from Argentina, India, Romania, Taiwan, Thailand and Venezuela had caused, was causing and was likely to cause material injury to domestic production. The Korean review focused on developments between 1983 and 1989. The subsequent multi-country inquiry studied the period from 1988 through the first quarter of 1991. In both of the above cases, the Tribunal concluded that the industry had been vulnerable to material injury from dumping over the periods examined. The Tribunal, in this case, has seen nothing which would lead it to any different conclusion.

Specifically, the evidence shows that, except for 1988, which was a year of economic recovery and buoyant demand, the industry, over the past 10 years, has consistently incurred substantial losses. These losses are likely to continue, over the near term, given the current bleak market conditions and the poor sales forecasts. The severity of these losses is a reflection of persistently depressed prices for the subject goods. Cyclical economic slowdowns combined with intense competitive pressures from imports, many of which were found to be dumped, have contributed to this poor performance.

Having said that, the Tribunal will turn its attention to examining, collectively and on an individual basis, the activities of each of the named countries in this case. The Tribunal will first examine the issues and evidence pertaining to what these countries actually did, under the known conditions, that is, with the undertakings in place. The Tribunal will then consider what would have happened if the undertakings had not been put in place as well as what is likely to happen in the future.

In addressing the question of what happened in the past, the Tribunal finds it convenient to divide its analysis of events under two periods: the pre-undertaking period (pre-1988); and the post-undertaking period (1988 onward).

Pre-Undertaking Period

The evidence shows that the named countries doubled their share of total imports between 1984 and 1986, going from 23 percent to 45 percent of total imports. This increase was largely attributable to a surge in imports from Brazil. Overall, however, what appears to have been happening is that imports from the named countries began increasingly to replace subject goods from Korea, which was under the constraints of the 1983 finding. In 1987, imports from Brazil continued at robust levels, while the combined imports from the other named countries declined substantially. As a result, the five countries share of total imports fell to 30 percent.

The Deputy Minister's investigation of the imports from the named countries covered the 18-month period between January 1, 1986, and June 30, 1987. During this period, of the 23,126 tonnes investigated, 97.5 percent were found to be dumped at a weighted-average margin of 25.4 percent. The Tribunal notes that the 1986-87 period was a particularly bad one for the industry, with sales falling to decade low levels. The evidence adduced at the hearing suggests that the surge in imports during this period, which was attributable to the dumping, resulted in price erosion and suppression, reduced sales revenue, increasing losses, reduced employment and underutilization of capacity. In these circumstances, the Tribunal has no doubt that, taken as a whole, the dumping by the named countries caused material injury to the industry.

However, it is clear from the evidence that the major cause of injury, by far, was Brazilian sourced subject goods. Indeed, throughout the three-year period before the undertakings, Brazil alone accounted for the major proportion of subject imports from the named countries. In fact, in 1987, Brazilian imports constituted more than four-fifths of combined imports from the named countries as neither Luxembourg, Poland or Turkey shipped any pipe in that year. Moreover, the combined market share of the named countries, aside from Brazil, never exceeded 3 percent at its highest level.

Post-Undertaking Period

Turning to the post-undertaking period, the Tribunal finds that, of the named countries, only Brazil acted in a disruptive manner. More particularly, the evidence shows that Brazil became dissatisfied with the price levels in its undertakings, soon after the undertakings were signed in January 1988, culminating with its violation of the undertakings in 1991. Throughout the post-undertaking period, Brazil continued to have a substantial presence in the market, just as it had in the pre-undertaking period. However, in the first half of 1991, its market share and sales volume increased significantly, while the market as a whole was contracting. These increases in a declining market were no doubt caused, in the opinion of the Tribunal, by Brazil's violation of its price undertakings.

As far as the other countries are concerned, the import statistics show that Luxembourg complied fully with its undertaking between January 1988 and August 1991, as it shipped no goods to Canada during this period.[1] However, there was one shipment (about 1,500 tonnes) which arrived in September 1991 and which was priced below Luxembourg's undertaking. As far as this particular shipment is concerned, Mr. Rolland of TradeARBED, the exclusive Canadian distributor for Luxembourg, testified that Revenue Canada officials were apprised of the price at which these goods were to be imported before their importation. According to Mr. Rolland, Revenue Canada officials indicated that the prices were in compliance with Luxembourg's undertaking. It later turned out that the applicable undertaking price had been underestimated by a certain amount (less than 10 percent) because of a misunderstanding between Revenue Canada and TradeARBED, with the result that the imported goods were underpriced by that amount. According to the evidence presented by Olympia, the Canadian distributor that purchased the goods from TradeARBED, the goods remain largely unsold in its warehouse because of lack of demand.

With respect to Yugoslavia, the evidence shows that it maintained a modest level of shipments from 1988 through June 1991 (the last date for which statistics are available), while complying fully with its undertaking. As for Poland, whose exporters did not give an undertaking, there were no Polish imports in the post-undertaking period.

Although Turkey did not give an undertaking, the Deputy Minister verified the post-undertaking activities of Turkish exporters in connection with the general review of undertakings that was carried out by Revenue Canada in 1991. This review found that Turkey had not taken advantage of its exclusion from the 1988 round of undertakings. The Deputy Minister noted, in the review decision, that Borusan, the " ... largest active exporter appears to be making an effort to limit quantities shipped so as not to seriously disrupt the Canadian market.... " The Deputy Minister also noted that U.S. statistics covering imports of Turkish pipe into the United States show that " ... prices to the United States are lower than to Canada" and that these " ... higher prices to

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1. The Tribunal notes that one of the witnesses appearing on behalf of Stelpipe, Mr. Brian S. Cain of Comco Pipe & Supply Company (Comco), testified that his company had purchased, in 1988 and 1989, a small amount of the subject goods originating in Luxembourg from a distributor in the United States. The evidence provided by Comco in the form of the relevant import documents shows that these goods were classified under commodity codes that do not describe subject goods. Hence, they were not reported as subject goods by Statistics Canada.

Canada appear to be a further indication of prudence on the part of the Turkish exporters." The Tribunal has been presented with no evidence suggesting that the above observations regarding Turkey have lost any of their validity in the year which has elapsed since they were made.

The next questions that must be addressed in this case are whether there would have been material injury if the undertakings were not put in place, and consequently, what is likely to occur in the future in the absence of an injury finding against the named countries.

In the opinion of the Tribunal, the answer to these questions is relatively clear-cut only in the case of Brazil. Brazil violated its undertakings, and its absence from the proceedings has left the Tribunal with unanswered questions about its actions and intentions. The evidence shows that Brazil's disruptive influence in the Canadian market has continued unabated in the post-undertaking period and that Canada has remained a target for Brazil's large export capacity. Having regard to the foregoing, the Tribunal is of the view that, if Brazil had not been put under the scrutiny of the undertakings in 1988, it would have done whatever would have been necessary to sustain and enlarge its Canadian market presence, including dumping, without regard to the injurious effects this would have had on the domestic industry. Moreover, the Tribunal has no reason to come to a different conclusion concerning the likely behavior of Brazilian exporters in the future if they are not made subject to the discipline of a positive finding.

The Tribunal will now consider the evidence in regard to the other four countries, starting with Luxembourg. The Canadian representative for TradeARBED testified that TradeARBED would have been content to continue living with the 1988 undertaking if it had not been terminated by the Deputy Minister because of Brazil's violation. He stated that TradeARBED sold a range of steel products in Canada to steel manufacturers, and subject goods were a minor part of its Canadian business. Furthermore, TradeARBED was a profitable company that did not seek out business at any price.

The Tribunal notes that, except for the September 1991 shipment, Luxembourg has been absent from the Canadian market for a period of five years. In fact, its absence from the Canadian market began one year prior to the undertakings, in 1987. Given the normal lead times for the arrival of shipments from offshore, this means that Luxembourg's last export order to Canada was taken some 10 to 12 months before the Deputy Minister initiated the dumping investigation in this case, in September 1987. These facts and chronology suggest to the Tribunal that Luxembourg's absence from the Canadian market over the past five years has been motivated by more than only the concerns and constraints arising from the investigation and subsequent undertaking. Other factors have influenced Luxembourg's activities, including concern for its overall steel trade interests in Canada. Having regard to the foregoing, the Tribunal is inclined to conclude, on balance, that Luxembourg would not have caused material injury to Canadian production, even in the absence of an undertaking. Moreover, on the basis of the same considerations, the Tribunal is of the view that Luxembourg is not likely to be a disruptive factor in the future.

In the case of Yugoslavia, the Tribunal notes that, in October 1989, Yugoslavia was found to be dumping tubes in the EC. While the European situation merits consideration, the Tribunal is not of the view that it should override what the facts of this case indicate regarding Yugoslavia's behaviour in the Canadian market. In this regard, the record shows that average annual Yugoslavian exports to Canada have

remained at roughly the same very modest levels over the past seven years. Moreover, as mentioned earlier, Yugoslavia has been able to maintain this level of shipments without dumping in the post-undertaking period. Therefore, there is no basis on which to conclude that Yugoslavia would have caused material injury in the absence of an undertaking. As to the future, there seems little likelihood that Yugoslavian pipe exports will be a factor in international trade, over the near term, given the political, economic and military situation in the country at present.

In the case of Turkey, the evidence shows, as has already been noted, that although Turkey exported subject goods to Canada in the post-undertaking period, it endeavoured to do so in a non-disruptive way. The Tribunal also notes that, in a recent administrative review by the U.S. Department of Commerce, Turkish pipe and tube exports to the United States originating from Borusan (the only active Turkish exporter to Canada) were, for all practical purposes, found to be undumped. However, in another recent case involving pipe and tube in the EC, Borusan accepted an undertaking, following a finding that it had dumped by a margin of 8.1 percent. Although other Turkish exporters are also named in the EC finding, as noted, they are not active in Canada.

While the Tribunal takes note of these other situations, in the end, what is of overriding importance to the Tribunal is how Turkey conducted itself in Canada. In this connection, it is clear from the record that Sunezco International Inc. (Sunezco), Borusan's exclusive Canadian agent, voluntarily maintained close contact with Revenue Canada from 1988 onward, providing officials with advance notice of its planned activities and specific importations. To illustrate the lengths to which Sunezco had gone to avoid causing any difficulty in the market, the company's owner, Mr. Nezih Bosut, gave testimony regarding a 1988 shipment about which the industry was concerned. After learning of these concerns, he disposed of the shipment in a manner which resulted in a substantial financial loss without adversely affecting the industry. Mr. Bosut further testified that selling Turkish pipe in Canada was not the major part of his business. His principal business was buying Canadian steel and selling it in Turkey to Turkish tubular steel producers. According to Mr. Bosut, Sunezco had a clear interest in maintaining good relations with Canadian steel producers.

Furthermore, the evidence shows that Turkish imports increased in volume and market share in the post-undertaking period compared to the pre-undertaking period. Yet, these gains do not appear to have been made by dumping because, as cited earlier, the Deputy Minister found nothing to indicate that Turkey had taken advantage of the absence of any formal constraints on its exports. In other words, as Turkey did not need to dump to achieve market increases, it seems reasonable to conclude that it would not have dumped. The Tribunal is also of the view, based on Turkey's track-record since 1989, that Turkish exporters are not likely to engage in injurious dumping in the future.

Poland, according to import data, has been absent from the Canadian market since 1987, and it shipped only a negligible amount in 1986. This means, as in the case of Luxembourg, that the last export orders were taken long before the initiation of the Deputy Minister's investigation in September 1987. Therefore, Poland's departure from the market cannot be said to have been simply in reaction to concerns arising from the investigation. Polish disinterest in the Canadian market is also revealed in the testimony of Olympia witnesses who stated that they had sounded out Polish exporters in the past few years to see if they would be interested in returning to Canada, but to no avail. The foregoing leads the Tribunal to the conclusion that Polish exporters abandoned the

market and that they probably would have done so in any event. Furthermore, there are no reasons to conclude that Polish exporters are likely to be a disruptive influence in the future.

The Tribunal notes that industry counsel have argued that, in order to discourage source shifting, none of the named countries should be excluded from a positive finding. According to counsel, the subject goods are traded like commodities, with little to distinguish one country's products from another, except price. Because of this, in the past, there has been a marked tendency for Canadian importers to switch their sources of supply from countries that have become subject to findings to countries that are not subject to findings. Counsel further noted that, often, many of these non-subject countries commenced dumping, thereby depriving the industry of the benefits it expected to receive from the findings in place and obliging it to initiate new actions against these countries. The Tribunal agrees that the foregoing is a valid general concern which has necessitated and, undoubtedly, will continue to necessitate vigilance on the part of the domestic industry. However, each case must be decided on its own merits and, in this case, the Tribunal is unable to conclude, on the basis of the facts and evidence adduced, that either Luxembourg, Yugoslavia, Turkey or Poland pose a threat of injurious dumping in Canada.

CONCLUSION

In light of the foregoing, the Tribunal concludes that:

- the dumping of the aforementioned carbon steel welded pipe originating in or exported from Brazil has caused, is causing and is likely to cause material injury to Canadian production of like goods;

- the dumping of the aforementioned carbon steel welded pipe originating in or exported from Luxembourg, Poland, Turkey and Yugoslavia has caused, but is not causing and is not likely to cause material injury to Canadian production of like goods; and

- the dumping of the aforementioned carbon steel welded pipe originating in or exported only from Brazil would have caused material injury, except for the acceptance of the undertakings.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member