CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, October 18, 1993

Inquiry No.: NQ-93-001

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

CERTAIN SOLDER JOINT PRESSURE PIPE FITTINGS AND SOLDER JOINT DRAINAGE, WASTE AND VENT PIPE FITTINGS, MADE OF CAST COPPER ALLOY, WROUGHT COPPER ALLOY OR WROUGHT COPPER, ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA AND PRODUCED BY OR ON BEHALF OF ELKHART PRODUCTS CORPORATION, ELKHART, INDIANA, NIBCO INC., ELKHART, INDIANA, AND MUELLER INDUSTRIES, INC., WICHITA, KANSAS, THEIR SUCCESSORS AND ASSIGNS

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 June 18, 1993, and of a final determination of dumping dated September 13, 1993, respecting the importation into Canada of solder joint pressure pipe fittings and solder joint drainage, waste and vent pipe fittings, made of cast copper alloy, wrought copper alloy or wrought copper, in diameters up to 6 in. and the metric equivalent, for use in heating, plumbing, air conditioning and refrigeration applications, originating in or exported from the United States of America and produced by or on behalf of Elkhart Products Corporation, Elkhart, Indiana, Nibco Inc., Elkhart, Indiana, and Mueller Industries, Inc., Wichita, Kansas, their successors and assigns.

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 originating in or exported from the United States of America and produced by or on behalf of Elkhart Products Corporation, Elkhart, Indiana, Nibco Inc., Elkhart, Indiana, and Mueller Industries, Inc., Wichita, Kansas, their successors and assigns, has caused, is causing and is likely to cause material injury to the production in Canada of like goods, excluding:

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(i) the subject goods listed in Appendix A; and

(ii) the subject goods identified on the basis of outside dimensions and destined for air conditioning and refrigeration applications.

W. Roy Hines
W. Roy Hines
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

APPENDIX A

LIST OF EXCLUSIONS

BUSHINGS

1-1/4 C X MALE CAST TRAP BUSHING[1]
1-1/2 C X MALE CAST TRAP BUSHING[1]
2 CXM CAST TRAP BUSHING[1]
3/4 X 1/4 FITXC WROUGHT BUSHING
1/2 X 3/8 FITXC WROUGHT FLUSH BUSHING
5/8 X 1/2 FITXC WROUGHT BUSHING
1 X 3/8 FITXC WROUGHT BUSHING
3 X 1-1/4 FITXC WROUGHT P BUSHING
3-1/2 X 2 FITXC WROUGHT P BUSHING
3-1/2 X 3 FITXC WROUGHT BUSHING
4 X 3-1/2 FITXC WROUGHT BUSHING
6 X 2-1/2 FITXC WROUGHT BUSHING
6 X 4 FITXC WROUGHT BUSHING
6 X 5 FITXC WROUGHT BUSHING
1/2 X 1/4 FTGXC WROUGHT FLUSH BUSHING
1-1/2 X 1 FTGXFE WROUGHT FLUSH BUSHING

ADAPTERS

1/4 C X FE WROUGHT ADAPTER
3/8 C X FE WROUGHT ADAPTER
3/4 X 1 C X FE WROUGHT ADAPTER
1 FITXFE WROUGHT ADAPTER
3/8 CXM WROUGHT ADAPTER
1/2 X 1/4 CXM WROUGHT ADAPTER
1/2 X 1 CXM WROUGHT ADAPTER
1 X 1-1/4 CXM WROUGHT ADAPTER
1/2 FITXM WROUGHT ADAPTER
1/8 C X FE WROUGHT ADAPTER
1/4 X 1/8 C X FE WROUGHT ADAPTER
1/4 X 3/8 C X FE WROUGHT ADAPTER
3/8 X 1/4 C X FE WROUGHT ADAPTER

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1. These items are drainage fittings. The balance of the fittings listed in this appendix are pressure fittings.

3/8 X 1/2 C X FE WROUGHT ADAPTER
5/8 X 1/2 C X FE WROUGHT ADAPTER
1 X 1-1/4 C X FE WROUGHT ADAPTER
1-1/4 X 1-1/2 C X FE WROUGHT ADAPTER
1-1/2 X 1-1/4 C X FE WROUGHT ADAPTER
1-1/2 X 2 C X FE WROUGHT ADAPTER
1/4 FITXFE WROUGHT ADAPTER
3/8 FITXFE WROUGHT ADAPTER
1/2 X 1/4 FITXFE WROUGHT ADAPTER
1/2 X 3/8 FITTXFE WROUGHT ADAPTER
3/4 X 1/2 FITXFE WROUGHT P ADAPTER
1 X 3/4 FITTXFE WROUGHT ADAPTER
1-1/4 FITXFE WROUGHT ADAPTER
1-1/2 FITXFE WROUGHT ADAPTER
2 FITXFE WROUGHT ADAPTER
2 X 1-1/2 C X FE WROUGHT ADAPTER
2-1/2 C X FE WROUGHT ADAPTER
1/8 CXM WROUGHT ADAPTER
1/4 CXM WROUGHT ADAPTER
1/4 X 1/8 CXM WROUGHT ADAPTER
1/4 X 3/8 CXM WROUGHT ADAPTER
1/4 X 1/2 CXM WROUGHT ADAPTER
3/8 X 1/4 CXM WROUGHT ADAPTER
3/8 X 1/2 CXM WROUGHT ADAPTER
1 X 1/2 CXM WROUGHT ADAPTER
1 X 1-1/2 CXM WROUGHT ADAPTER
1-1/4 X 3/4 CXM WROUGHT ADAPTER
1-1/4 X 1 CXM WROUGHT ADAPTER
1-1/4 X 1-1/2 CXM WROUGHT ADAPTER
1-1/2 X 1 CXM WROUGHT ADAPTER
1-1/2 X 1-1/4 CXM WROUGHT ADAPTER
1-1/2 X 2 CXM WROUGHT ADAPTER
1/4 FITXM WROUGHT ADAPTER
3/8 FITXM WROUGHT ADAPTER
3/4 FITXM WROUGHT ADAPTER
3/4 X 1/2 FITXM WROUGHT ADAPTER
1 FITXM WROUGHT ADAPTER
1-1/4 FITXM WROUGHT ADAPTER
1-1/2 FITXM WROUGHT ADAPTER
2 FITXM WROUGHT ADAPTER
2 X 1-1/4 CXM WROUGHT ADAPTER
2 X 1-1/2 CXM WROUGHT ADAPTER
2-1/2 X 2 CXM WROUGHT ADAPTER

UNIONS

1/2 CXC CAST UNION
3/4 CXC CAST UNION
1/2 CXC WROUGHT UNION
3/4 CXC WROUGHT UNION
1 CXC WROUGHT UNION
1/2 CXFE CAST UNION
3/4 CXFE CAST UNION
3/8 CXM CAST UNION
1/2 CXM CAST UNION
3/4 CXM CAST UNION
1/4 CXC WROUGHT UNION
3/8 CXC WROUGHT UNION

COUPLINGS

3/4 X 1/4 CXC WROUGHT COUPLING
5/8 X 1/2 CXC WROUGHT COUPLING
3/4 X 1/2 CXC WROUGHT ECC COUPLING
5/8 X 1/4 CXC WROUGHT COUPLING
5/8 X 3/8 CXC WROUGHT COUPLING
3-1/2 X 3 CXC WROUGHT COUPLING
4 X 2-1/2 CXC WROUGHT COUPLING
4 X 3-1/2 CXC WROUGHT COUPLING
6 X 4 CXC WROUGHT COUPLING
8 CXC WROUGHT COUPLING
1/2 CXC WROUGHT CROSSOVER COUPLING

TUBE END CAPS

1/2 WROUGHT TUBE END CAP
3/4 WROUGHT TUBE END CAP
1 WROUGHT TUBE END CAP
1-1/4 WROUGHT TUBE END CAP
1-1/2 WROUGHT TUBE END CAP
2 WROUGHT TUBE END CAP
3 WROUGHT TUBE END CAP
1/8 WROUGHT TUBE END CAP
1/4 WROUGHT TUBE END CAP
3/8 WROUGHT TUBE END CAP
2-1/2 WROUGHT TUBE END CAP
4 WROUGHT TUBE END CAP

TUBE STRAPS

1-1/4 WROUGHT COPPER TUBE STRAP
1-1/2 WROUGHT COPPER TUBE STRAP
2 WROUGHT COPPER TUBE STRAP
3 WROUGHT COPPER TUBE STRAP
1/2 WROUGHT COPPER TUBE STRAP
3/4 WROUGHT COPPER TUBE STRAP
1/8 WROUGHT COPPER TUBE STRAP
1/4 WROUGHT COPPER TUBE STRAP
3/8 WROUGHT COPPER TUBE STRAP
1 WROUGHT COPPER TUBE STRAP

ELBOWS

3 FITXC WROUGHT P 45 ELBOW
4 FITXC WROUGHT P 45 ELBOW
3 CXC WROUGHT P 45 ELBOW
4 CXC WROUGHT P 45 ELBOW
1 CXC WROUGHT 90 ELBOW (LT)
3 FITXC WROUGHT 90 ELBOW
4 FITXC WROUGHT 90 ELBOW
1/2 CXC WROUGHT 90 ELBOW (LT)
1-1/4 CXC WROUGHT 90 ELBOW (LT)
1-1/2 CXC WROUGHT 90 ELBOW (LT)
2 CXC WROUGHT 90 ELBOW (LT)
5/8 CXC WROUGHT 90 ELBOW
1/4 FITXC WROUGHT 90 ELBOW
3/8 FITXC WROUGHT 90 ELBOW
1/2 CXC CAST 90 VENT ELBOW
3/8 CXFE CAST 90 ELBOW
1/8 CXC WROUGHT 45 ELBOW
1/4 CXC WROUGHT 45 ELBOW
3/8 CXC WROUGHT 45 ELBOW
3-1/2 CXC WROUGHT 45 ELBOW
5 CXC WROUGHT P 45 ELBOW
1/8 CXC WROUGHT 90 ELBOW (LT)
1/4 CXC WROUGHT 90 ELBOW (LT)
3/8 CXC WROUGHT 90 ELBOW (LT)
5/8 CXC WROUGHT 90 ELBOW (LT)
1 X 1/2 CXC WROUGHT 90 ELBOW (LT)
1 X 3/4 CXC WROUGHT 90 ELBOW (LT)
1-1/4 C X 1/2C WROUGHT 90 ELBOW (LT)
1-1/4 C X 3/4C WROUGHT 90 ELBOW (LT)
1-1/4 C X 1C WROUGHT 90 ELBOW (LT)
1-1/2 X 1 CXC WROUGHT 90 ELBOW (LT)
3 CXC WROUGHT 90 ELBOW (LT)

1/8 CXC WROUGHT 90 ELBOW
1/2 X 1/4 CXC WROUGHT 90 ELBOW
1/2 X 3/8 CXC WROUGHT 90 ELBOW
1 X 1/2 CXC WROUGHT 90 ELBOW
1-1/4 X 1 CXC WROUGHT 90 ELBOW
1-1/2 C X 1-1/4 C WROUGHT P 90 ELBOW
2 X 1-1/2 CXC WROUGHT P 90 ELBOW
3 CXC WROUGHT 90 ELBOW
3-1/2 CXC WROUGHT 90 ELBOW
4 CXC WROUGHT 90 ELBOW
6 CXC WROUGHT 90 ELBOW
8 CXC WROUGHT 90 ELBOW

TEST CAPS

1/2 WROUGHT TEST CAP
3/4 WROUGHT TEST CAP
1 WROUGHT TEST CAP
1-1/4 WROUGHT TEST CAP
1-1/2 WROUGHT TEST CAP
2 WROUGHT TEST CAP
3 WROUGHT TEST CAP

TEES

1/2 X 1/2 X 1 WROUGHT TEE
3/4 X 3/4 X 1 CXCXC WROUGHT TEE
1 X 1 X 1-1/4 CXCXC WROUGHT TEE
1 X 1 X 1-1/2 CXCXC WROUGHT TEE
1-1/2 X 1-1/2 X 2 WROUGHT TEE
2-1/2 CXCXC WROUGHT TEE
3 CXCXC WROUGHT TEE
4 CXCXC WROUGHT TEE
4 X 4 X 3 WROUGHT TEE
1/4 CXCXC WROUGHT TEE
3/8 CXCXC WROUGHT TEE
3/8 X 3/8 X 1/4 CXCXC WROUGHT TEE
1/2 X 1/2 X 3/4 CXCXC WROUGHT TEE
1-1/4 X 3/4 X 1/2 WROUGHT TEE
1/8 CXCXC WROUGHT TEE
3/8 X 3/8 X 1/2 CXCXC WROUGHT TEE
1/2 X 3/8 X 3/8 CXCXC WROUGHT TEE
1/2 X 3/8 X 1/2 CXCXC WROUGHT TEE
1/2 X 1/2 X 1/8 CXCXC WROUGHT TEE
1/2 X 1/2 X 1/4 CXCXC WROUGHT TEE
1/2 X 1/2 X 3/8 CXCXC WROUGHT TEE
3/4 X 1/2 X 3/8 CXCXC WROUGHT TEE

3/4 C X 3/4 C X 3/8 C WROUGHT P TEE
1 X 1 X 3/8 CXCXC WROUGHT TEE
1-1/4 X 1-1/4 X 1-1/2 WROUGHT TEE
1-1/4 C X 1-1/4 C X 2 C WROUGHT TEE
1-1/2 X 3/4 X 1/2 WROUGHT TEE
1-1/2 X 3/4 X 1 WROUGHT TEE
1-1/2 X 3/4 X 1-1/4 WROUGHT TEE
1-1/2 X 1 X 1/2 WROUGHT TEE
1-1/2 X 1 X 1-1/4 WROUGHT TEE
2 X 1 X 1 WROUGHT TEE
2 X 1-1/4 X 1/2 WROUGHT TEE
2 X 1-1/4 X 3/4 WROUGHT TEE
2 X 1-1/4 X 1 WROUGHT TEE
2 X 1-1/4 X 1-1/2 WROUGHT TEE
2 X 2 X 2-1/2 WROUGHT TEE
2-1/2 X 3/4 X 2-1/2 WROUGHT TEE
2-1/2 X 1 X 2 WROUGHT TEE
2-1/2 X 1 X 2-1/2 WROUGHT TEE
2-1/2 X 1-1/4 X 2 WROUGHT TEE
2-1/2 X 1-1/4 X 2-1/2 WROUGHT TEE
2-1/2 X 1-1/2 X 3/4 WROUGHT TEE
2-1/2 X 1-1/2 X 1 WROUGHT TEE
2-1/2 X 1-1/2 X 1-1/4 WROUGHT TEE
2-1/2 X 1-1/2 X 1-1/2 WROUGHT TEE
2-1/2 X 1-1/2 X 2 WROUGHT TEE
2-1/2 X 1-1/2 X 2-1/2 WROUGHT TEE
2-1/2 X 2 X 1/2 WROUGHT TEE
2-1/2 X 2 X 3/4 WROUGHT TEE
2-1/2 X 2 X 1 WROUGHT TEE
2-1/2 X 2 X 1-1/4 WROUGHT TEE
2-1/2 X 2 X 1-1/2 WROUGHT TEE
2-1/2 X 2 X 2 WROUGHT TEE
2-1/2 X 2 X 2-1/2 WROUGHT TEE
3 X 3/4 X 3 WROUGHT TEE
3 X 1 X 3 WROUGHT TEE
3 X 1-1/4 X 3 WROUGHT TEE
3 X 1-1/2 X 1-1/2 WROUGHT TEE
3 X 1-1/2 X 3 WROUGHT TEE
3 X 2 X 1 WROUGHT TEE
3 X 2 X 1-1/4 WROUGHT TEE
3 X 2 X 1-1/2 WROUGHT TEE
3 X 2 X 2 WROUGHT TEE
3 X 2 X 2-1/2 WROUGHT TEE
3 X 2 X 3 WROUGHT TEE
3 X 2-1/2 X 1 WROUGHT TEE
3 X 2-1/2 X 1-1/4 WROUGHT TEE
3 X 2-1/2 X 1-1/2 WROUGHT TEE
3 X 2-1/2 X 2 WROUGHT TEE
3 X 2-1/2 X 2-1/2 WROUGHT TEE
3 X 2-1/2 X 3 WROUGHT TEE
3-1/2 CXCXC WROUGHT TEE

4 X 2 X 4 WROUGHT TEE
4 X 2-1/2 X 2-1/2 WROUGHT TEE
4 X 2-1/2 X 3 WROUGHT TEE
4 X 2-1/2 X 4 WROUGHT TEE
4 X 3 X 2 WROUGHT TEE
4 X 3 X 3 WROUGHT TEE
4 X 3 X 4 WROUGHT TEE
6 CXCXC WROUGHT TEE
6 X 6 X 4 CXCXC WROUGHT TEE

Y BRANCHES

1/2 45 CAST Y BRANCH
3/4 45 CAST Y BRANCH
1 45 CAST Y BRANCH
1-1/4 45 CAST Y BRANCH
1-1/2 45 CAST Y BRANCH
2 45 CAST Y BRANCH

RETURN BENDS

1/2 X 1-1/2 CXC WROUGHT RETURN BEND
1/2 X 1-3/4 CXC WROUGHT RETURN BEND
1/2 X 2 CXC WROUGHT RETURN BEND
1/2 X 3 CXC WROUGHT RETURN BEND
3/4 X 2-1/2 CXC WROUGHT RETURN BEND
1 X 3 CXC WROUGHT RETURN BEND
1-1/4 X 3 CXC WROUGHT RETURN BEND
1-1/2 X 4-3/8 CXC WROUGHT RETURN BEND

Inquiry No.: NQ-93-001

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	September 13 to 17, 1993
Date of Finding:	October 18, 1993
Tribunal Members:	W. Roy Hines, Presiding Member Anthony T. Eyton, Member Charles A. Gracey, Member
Director of Research:	Marcel J.W. Brazeau
Research Manager:	Tom A. Geoghegan
Research Officer:	W. Douglas Kemp
Economist:	Simon Glance
Statistical Officer:	Margaret Saumweber
Counsel for the Tribunal:	Shelley Rowe
Registration and Distribution Officer:	Claudette Friesen
Participants:	Darrel H. Pearson Peter W. Collins for Cello Products Inc. **(Complainant)**
	Lawrence L. Herman for Streamline Copper & Brass Ltd. **(Manufacturer/Importer)**
	and
	for Mueller Industries, Inc. **(Exporter)**
	David I. Hamer Brian C. Pel John Boscariol for Nibco Canada Inc. Nibco Inc.
	Robert R. Amsterdam Dean A. Peroff Cynthia Amsterdam for Amcast Industrial Ltd. Elkhart Products Corporation, A Subsidiary of Amcast Industrial Corporation
	Richard McKeagan President Mechanical Contractors Association of Canada **(Importers/Exporters)**

CANADIAN INTERNATIONAL TRADE TRIBUNAL
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Ottawa, Monday, October 18, 1993

Inquiry No.: NQ-93-001

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

DECISION: The Canadian International Trade Tribunal has found that the dumping in Canada of certain solder joint pressure pipe fittings and solder joint drainage, waste and vent pipe fittings, made of cast copper alloy, wrought copper alloy or wrought copper, originating in or exported from the United States of America and produced by or on behalf of Elkhart Products Corporation, Elkhart, Indiana, Nibco Inc., Elkhart, Indiana, and Mueller Industries, Inc., Wichita, Kansas, their successors and assigns, has caused, is causing and is likely to cause material injury to the production in Canada of like goods, excluding: (i) the subject goods listed in Appendix A to the finding; and (ii) the subject goods identified on the basis of outside dimensions and destined for air conditioning and refrigeration applications.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	September 13 to 17, 1993
Date of Finding:	October 18, 1993
Date of Reasons:	October 18, 1993
Tribunal Members:	W. Roy Hines, Presiding Member Anthony T. Eyton, Member Charles A. Gracey, Member
Director of Research:	Marcel J.W. Brazeau
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Counsel for the Tribunal:		Shelley Rowe
Registration and Distribution Officer:		Claudette Friesen
Participants:		Darrel H. Pearson Peter W. Collins
	for	Cello Products Inc.
		(Complainant)
		Lawrence L. Herman
	for	Streamline Copper & Brass Ltd.
		(Manufacturer/Importer)
		and
	for	Mueller Industries, Inc.
		(Exporter)
		David I. Hamer Brian C. Pel John Boscariol
	for	Nibco Canada Inc. Nibco Inc.
		Robert R. Amsterdam Dean A. Peroff Cynthia Amsterdam
	for	Amcast Industrial Ltd. Elkhart Products Corporation, A Subsidiary of Amcast Industrial Corporation
		Richard McKeagan President Mechanical Contractors Association of Canada
		(Importers/Exporters)

Witnesses:

Ernie Strobridge Product Development Manager Meridian Accurcast	Terry Aurini President Cello Products Inc.

Kim Bauer
Pinnacle Group

Clay Barbeau
Vice-President, Corporate Purchasing
Ideal Plumbing Group Inc.

Alvin Stein
Executive Vice-President
Ideal Plumbing Group Inc.

Garry D. Thompson
Senior Vice-President
North America, Plumbing
United Westburne Inc.

D. (Pat) Duncan
Purchasing Manager
Plumbing & Waterworks
Westburne Supply Ontario, A Division of
Westburne Industrial Enterprises Ltd.

Dennis J. Parker
Vice-President - Finance
Nibco Inc.

Joe Gross
Vice-President - Manufacturing and
Engineering
Nibco Inc.

Clifford E. Sarjeant, Eng.
General Manager
Nibco Canada Inc.

Brian Slack
President
Streamline Copper & Brass Ltd.

David L. Ewing
Vice-President and General Manager
Elkhart Products Corporation,
A Subsidiary of Amcast Industrial
Corporation

Peter J. Kuipers
Manager
Warehouse Service Centre
Amcast Industrial Ltd.

Richard McKeagan
President
Mechanical Contractors Association of
Canada

Rudolf J. Jetzelsperger
Comstock Canada

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Ottawa, Monday, October 18, 1993

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CERTAIN SOLDER JOINT PRESSURE PIPE FITTINGS AND SOLDER JOINT DRAINAGE, WASTE AND VENT PIPE FITTINGS, MADE OF CAST COPPER ALLOY, WROUGHT COPPER ALLOY OR WROUGHT COPPER, ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA AND PRODUCED BY OR ON BEHALF OF ELKHART PRODUCTS CORPORATION, ELKHART, INDIANA, NIBCO INC., ELKHART, INDIANA, AND MUELLER INDUSTRIES, INC., WICHITA, KANSAS, THEIR SUCCESSORS AND ASSIGNS

TRIBUNAL: W. ROY HINES, Presiding Member
ANTHONY T. EYTON, Member
CHARLES A. GRACEY, 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*[1] (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 June 18, 1993, and of a final determination of dumping dated September 13, 1993, respecting the importation into Canada of solder joint pressure pipe fittings and solder joint drainage, waste and vent (DWV) pipe fittings, made of cast copper alloy, wrought copper alloy or wrought copper, in diameters up to 6 in. and the metric equivalent, for use in heating, plumbing, air-conditioning and refrigeration (ACR) applications, originating in or exported from the United States of America and produced by or on behalf of Elkhart Products Corporation (Elkhart), Elkhart, Indiana, Nibco Inc. (Nibco), Elkhart, Indiana, and Mueller Industries, Inc. (Mueller), Wichita, Kansas, their successors and assigns.

The notices of preliminary and final determinations of dumping were published in Part I of the July 3 and September 25, 1993, editions of the Canada Gazette, respectively. The Tribunal's notice of commencement of inquiry issued on June 28, 1993, was published in Part I of the July 10, 1993, edition of the Canada Gazette.

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

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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 1990 to June 30, 1993. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports covering that period.

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.

Public and *in camera* hearings were held in Ottawa, Ontario, from September 13 to September 17, 1993.

PRODUCT

The Deputy Minister, in the final determination of dumping dated September 13, 1993, defined the subject goods as follows: solder joint pressure pipe fittings and solder joint DWV pipe fittings, made of cast copper alloy, wrought copper alloy or wrought copper, in diameters up to 6 in. and the metric equivalent, for use in heating, plumbing and ACR applications, originating in or exported from the United States of America and produced by or on behalf of Elkhart, of Elkhart, Indiana, Nibco, of Elkhart, Indiana, and Mueller, of Wichita, Kansas, their successors and assigns.

Solder fittings are used to connect copper water tubes together. The connections are made by heating the ends of the tubing and fitting, and filling the gap between the two with melted solder which solidifies on cooling to form a strong, leakproof connection. Solder fittings may be either cast, produced from copper ingots, or wrought, produced from copper tube. However, wrought fittings make up the majority of the market.

Wrought and cast fittings fall into two major subclassifications: pressure solder fittings and DWV solder fittings.

Pressure solder fittings are used primarily in copper-pipe lines conveying a liquid, usually water, in commercial and residential applications. They are also used extensively in ACR systems, under pressure. In Canada, pressure fittings are made in diameters ranging from 1/8 in. to 8 in. Residential applications involve primarily 1/2-in. and 3/4-in. fittings. ACR applications generally require 1/8-in. and 1/4-in. fittings. Fittings from 1 in. and up are used in industrial, institutional, commercial or multi-unit residential construction.

Pressure solder fittings are fabricated from wrought copper in either tube or wire form, or cast from brass ingots in a foundry and machined to specifications. There are over 1,000 different types/sizes of pressure fittings which fall into six main subcategories:

- couplings used to join tubes of either the same size or two different sizes to make longer runs through buildings;
- bushings used to reduce the diameter of other fittings;

- elbows used to change the direction of a copper tube by either 45^0 or 90^0;
- tees used to allow a copper line to be split into two separate lines;
- adapters used to connect a copper tube to an iron pipe or a water heater; and
- flanges or unions used to provide a connection that can be either unscrewed or unbolted for maintenance or repairs.

DWV solder fittings are used in systems collecting waste fluids and in systems providing venting to waste systems. These drainage systems are not pressurized, and the fittings are generally made of a lighter construction than that used in pressure systems. Most copper drainage fittings are used in industrial, institutional, commercial or multi-unit residential buildings. Plastic systems have now largely displaced copper drainage fittings in new single residential units.

In addition to the configurations found in pressure systems, DWV fittings are also produced in the following five subgroups:

- traps used to trap water to prevent sewer gases from coming back into a building;
- ferrules used to join a copper tube to a cast-iron pipe in older installations;
- joint adapters used to join a copper tube to a pipe or tube (typically plastic) that cannot be soldered;
- cleanouts used to provide access to drainage systems in case of blockage; and
- closet flanges used to connect toilets to copper drainage tubes.

All solder fittings are manufactured in Canada and the United States to ANSI[2] standards.

Although there are over 1,000 different types and configurations of solder copper fittings, the majority of the market is made up of 1/2-in. to 3/4-in. wrought elbows, 1/2-in. to 3/4-in. wrought couplings and 1/2-in. to 3/4-in. wrought tees.

PRODUCTION PROCESS

Cast Fittings

Cast fittings are produced in Canada using the green-sand casting process. Each fitting has a wooden or aluminum pattern which is the same size and shape as the finished casting. A sand core for each fitting is made, using an aluminum core box. The sand core forms the inside shape of the fitting when the mould is poured. A mould is made by filling a flask with moist sand and pressing a pattern into it. This leaves an impression which forms the outside of the casting. The core is set into this impression and the mould is closed. Molten brass is then poured into the mould. This flows between the inside surface of the green sand and the outside surface of the sand core, and is allowed to cool. The resultant casting is removed from the mould and is cleaned and conditioned in preparation for machining.

2. American National Standards Institute.

Castings are machined on either special-purpose reaming machines or turret lathes. All solder cast fittings have at least one end reamed to allow a copper tube to be soldered into it. The other end is either reamed, tapped or has a male thread cut onto it.

Wrought Fittings

Wrought tees and couplings are produced from lengths of heat-treated wrought copper tubing which is cut into short sections. After the tubing is cut, the resulting tee slugs are pressed in a hydraulic press, forming the tee branch. Another machine then decaps the branches and sizes the three ends to make a finished product.

Straight couplings are in a finished state after they have been cut from the tubing. Reducing couplings and bushings are produced from straight-cut slugs. A machine expands one end of the straight-cut slug to produce a finished fitting.

Elbows are also produced from lengths of heat-treated copper tubing, using special bending equipment which bends the elbows to the proper degree (45^0 or 90^0) and cuts the elbows. Another machine then expands the ends to create uniform cup dimensions. The ends of the elbows are then "faced" to provide a square soldering cup. Finally, the elbows are cleaned, inspected and packaged.

DOMESTIC INDUSTRY

At the present time, there are three domestic producers of the subject fittings. Cello Products Inc. (Cello), the complainant in this inquiry, is located in Cambridge, Ontario. The other two producers, Streamline Copper & Brass Ltd. (Streamline), of Strathroy, Ontario, and Bow Metallics Ltd. (Bow), of Montréal, Quebec, did not support Cello in its complaint.

Cello produces wrought fittings and is the sole domestic producer, and one of only two North American producers of cast fittings. The firm began production of wrought fittings in the late 1960s. It was purchased by its present owners in 1983. The new owners have continually expanded the firm's product line since 1983. Cello sources a portion of its wrought-fitting requirements from Elkhart in the United States and produces virtually all its cast fitting requirements in its own Canadian cast-brass foundry. Cello also distributes threaded brass fittings, as well as rough brass and valves, as complementary products to the subject fittings.

Streamline is a wholly owned subsidiary of Mueller of Wichita, Kansas. In 1964, it began producing wrought copper fittings for the Canadian market. In early 1991, the firm began producing metric wrought fittings for the European market and sharply curtailed production of the subject fittings for the Canadian market. It continued to service domestic demand largely with imports from its parent, Mueller, in the United States. In 1993, Streamline resumed Canadian production of imperial fittings in larger volumes.

Bow is owned by CEVA Industries Inc. of Montréal, Quebec. Until mid-1991, the firm produced only plastic pipe and plastic fittings. In July 1991, Bow purchased the EMCO Limited (Emco) production facility in Dorchester, Ontario, to produce insert fittings (non-subject goods) for its polybutylene plumbing products. Until its sale of this facility, Emco had produced the subject goods at this location. Bow currently produces

a short line of wrought pressure and drainage copper fittings. It rounds out its product line of copper fittings by purchasing imports and domestically produced goods.

None of the domestic producers manufacture the full line of fittings. They outsource some of their fitting requirements by purchasing from other domestic producers or by importing fittings from the United States, where this practice is also common.

MARKETING AND DISTRIBUTION

In Canada, copper fittings are marketed mainly through several large distributors that sell mostly to the plumbing trade. To a lesser degree, the subject fittings are sold to ACR wholesalers and retailers, such as Canadian Tire Corp. and Home Hardware, and to original-equipment manufacturers.

Solder copper fittings are essentially a commodity product. Plumbing wholesalers often mix like fittings from two or more suppliers in shipments to customers. Most producers of fittings normally offer a full range of fittings despite the fact that they produce only certain segments of the product line. In order to fill out their respective product lines, they purchase from other producers those products that they cannot produce.

Distributors are, by far, the largest customer segment in Canada for the subject fittings, accounting for about 85 percent of the market. Four large distributors, United Westburne Inc. (Westburne), Emco Supply (including Western Supplies), Ideal Plumbing Group Inc. (Ideal Plumbing) and Crane Supply, and a large buying group, Canaplus Inc., comprise the majority of this market segment.

Prices of the subject copper fittings are based on published price lists. These price lists change from time to time, generally reflecting price changes of the subject goods, primarily caused by changes in the price of copper. They are usually accompanied by a wholesalers' discount sheet that lists a published discount or series of discounts to be applied to a particular price list. Selling prices are often further reduced by off-sheet discounts, which include a competitive allowance discount, a cash discount, a pick-up allowance, etc. In addition to the published and off-sheet discounts, negotiations are held prior to the start of each calendar year in order to establish the wholesalers' rebate. This volume rebate is another form of discount and generally is in proportion to the dollar value of purchases made by the customer during the calendar year. Rebates may be paid monthly, quarterly or annually, or in some combination of these periods.

During the course of the hearing, there was testimony concerning recent changes in the purchasing practices of some of the larger distributors. In an attempt to inject a measure of price stability into the fittings market and to protect their inventories against the effects of wide swings in prices, these distributors began pursuing "strategic alliances" with one or two producers. These alliances are also intended to provide cost savings in areas such as warehousing, distribution, purchasing and administration. The exploitation of economies in these areas is expected to increase the price competitiveness of distributors in the marketplace. This is a major departure from the traditional practice of one customer dealing with several suppliers.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION

On September 13, 1993, the Deputy Minister made a final determination of dumping respecting the subject goods. He found that 96 percent of the goods reviewed during the period of investigation - September 1 to November 30, 1992 - had been dumped at a weighted average margin of dumping of 47 percent. The results of the investigation, by exporter, are shown in the following table.

MARGINS OF DUMPING

Exporter	Imports Reviewed %	Goods Dumped[1] %	Weighted Average Margin of Dumping %
Elkhart	99	89	35
Nibco	98	99	50
Mueller	98	96	49
Grinnell Corporation	100	100	57
Overall	99	96	47

1. As a percentage of imports reviewed.

Source: Department of National Revenue for Customs and Excise, Final Determination of Dumping, Statement of Reasons, September 13, 1993.

EXPORTERS/IMPORTERS

During his investigation, the Deputy Minister identified four exporters of the subject goods. Three of these are producers of the subject goods. The fourth, Grinnell Corporation (Grinnell), exported products originating from one of the three named producers. The named exporters which produce the subject goods in the United States are:

1) Elkhart, A Subsidiary of Amcast Industrial Corporation, of Elkhart, Indiana. Elkhart ships mostly to Amcast Industrial Ltd. (Amcast), a related importer, and Cello, the complainant.

2) Nibco, of Elkhart, Indiana. It ships mostly to Nibco Canada Inc., a related importer.

3) Mueller, of Wichita, Kansas. It ships to Streamline, a related importer and producer of the subject goods.

While the Department of National Revenue for Customs and Excise (Revenue Canada) identified five other importers from the United States, the named exporters have consistently accounted for over 98 percent of total imports of the subject goods from the United States into Canada.

ECONOMIC INDICATORS

The following tables summarize the key indicators of the domestic market's performance, derived from data obtained by the Tribunal during the course of the inquiry.

ECONOMIC INDICATORS

	1990	1991	1992	Jan.-June 1992	Jan.-June 1993
Production (000 lbs)	3,981	2,342	2,000	996	1,083
Imports (000 lbs)					
Subject	2,488	4,681	5,324	2,380	1,432
Other	126	254	176	125	123
Apparent Market (000 lbs)	5,989	6,972	7,056	3,225	2,456
% Increase (decrease)		16	1		(24)
Market Share (%)					
Domestic Production	58	33	24	26	39
Subject Imports	40	63	73	70	56
Other Imports	2	4	3	4	5
Exports (000 lbs)	250	221	403	256	95
Industry Employment	69	46	42	40	49

In most respects, 1992 was the industry's worst year. Domestic production was virtually halved, dropping from nearly 4 million pounds in 1990 to 2 million pounds, while imports from the named exporters more than doubled, driving their market share to a peak of 73 percent, at the expense of the domestic industry. Some improvement in the industry's performance was evident in the first half of 1993. Production volumes increased marginally, while import volumes dropped considerably. As a result, the market share of the domestic industry increased somewhat, though it has not yet returned to 1990 levels.

Between 1990 and 1992, material costs and fierce price competition drove down the price of copper fittings by as much as 40 percent. Copper and copper-ingot prices

declined steadily throughout the period, falling by 12 to 13 percentage points by 1992. However, while the average sales prices of fittings, both domestic and imported, fell at about the same rate as material costs in 1991, they continued to slide in 1992, falling another 15 percentage points. Most, if not all, of this continued deterioration in prices came as competition with U.S. exports intensified.

A survey of the major Canadian distributors of copper fittings demonstrated that their purchase prices dropped considerably in 1992, before strengthening somewhat in 1993.

PRICE INDICATORS

	1990	1991	1992	Jan.-June 1992	Jan.-June 1993
Comex Index	124.5	110.0	107.8	99.8	95.4
Copper Ingots Index	154.5	132.9	136.3	130.0	132.8
Average Selling Prices					
Cello[1]	3.81	3.83	3.68	3.49	4.57
Streamline[1]	4.67	3.93	2.82	2.95	4.55
Bow[1]	-	4.17	2.39	3.16	4.27
Total Producers	4.35	3.89	3.25	3.29	4.52
Elkhart[2]	4.75	3.56	3.86	3.65	5.46
Mueller[2]	4.68	3.95	2.84	2.95	4.56
Nibco[2]	3.99	3.38	2.68	2.66	5.14
Named Exporters	4.20	3.59	2.99	3.03	5.02

1. Average selling prices per pound from domestic production for domestic consumption.
2. Average selling prices per pound of imports for domestic consumption.

The industry reacted swiftly to the presence of low-priced imports in the marketplace. During the 1990-93 period, its financial performance tumbled from a position of profitability in 1990 to one of extensive losses in 1992. In the first half of 1993, with somewhat higher prices and an increased market share, the industry made a profit.

POSITION OF PARTIES

Cello - Producer

Cello took the position that it has been, is being and is likely to be materially injured by the dumping of the subject goods; that such dumping has caused and is causing material retardation; that it represents a major proportion of the domestic industry; that material injury has manifested itself in many forms; that there is a nexus to be drawn between the dumping and such material injury; and, finally, that it would be agreeable to granting exclusions for those products which it does not plan to produce over the next five years.

Counsel for Cello referred to paragraph 42(3)(*a*) of SIMA which requires that the Tribunal take fully into account paragraph 1 of Article 4 of the GATT Anti-Dumping Code[3] (the Code). They submitted that Cello represents a major proportion of the domestic production of the subject goods and that the Tribunal should not exercise its discretion under paragraph 1(i) of Article 4 of the Code to exclude Cello from the definition of domestic industry because it is also an importer of the dumped goods. In counsel's view, if the Tribunal excluded Cello on that basis, it would be denying the existence of an industry. Counsel referred to a number of cases where the Tribunal's predecessors, in exercising their discretion under paragraph 1(i) of Article 4, did not exclude producers who were also importers of dumped goods.[4] Counsel also highlighted the fact that it is not uncommon in the industry for producers of the subject goods in North America to source goods from other producers.

Counsel argued that material injury to Cello manifested itself in the form of loss of production, loss of sales, price erosion, loss of profitability, reduced employment and reduced utilization of plant capacity. Counsel focused on Cello's performance in 1992, as compared to 1991, and pointed to the substantial margins of dumping found by the Deputy Minister. They then compared Cello's negative 1992 results to those of 1993,

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

4. *Bottoming Materials of Natural and/or Synthetic Rubber Composition Produced or Exported by or on Behalf of Goodyear Tire and Rubber Company, Windsor, Vermont and American Biltrite Incorporated, Chelsea, Massachusetts for Use in the Footwear Repair Industry, Including but not Limited to Heels, Half Soles, Full Soles, Sports Soles, Soling Sheets (Commonly Referred to as Solid Slabs and Printed Slabs) and Toplifting*, Anti-dumping Tribunal, Inquiry No. ADT-7-82, September 27, 1982; *Optical Contact Lenses, Namely, Soft, Hard, Gas-Permeable, Toric and Bifocal Lenses, but Excluding Intraocular Lenses that are Surgically Implanted in the Human Eye, Originating in or Exported from the United States of America, the United Kingdom of Great Britain and Northern Ireland, and the Republic of Ireland*, Anti-dumping Tribunal, Inquiry No. ADT-15-83, March 27, 1984; and *Gasoline Powered Chain Saws Originating in or Exported from the Federal Republic of Germany, Sweden and the United States of America*, Canadian Import Tribunal, Inquiry No. CIT-2-87, July 3, 1987, 14 C.E.R. 171.

when prices are said to have stabilized in more normal patterns, which, they argued, is not surprising given the investigation by Revenue Canada.

Counsel submitted that material retardation can apply not only "to the establishment of production from scratch" but also to the "establishment of additional production." They noted that Cello has been adding to its range of production since 1983 on the basis of sound business practices and referred to the evidence of the principals of Cello regarding the timing and choices of investments. Counsel noted that the company had curtailed its plans for the production of additional items in 1992 because of the dumping. They invited the Tribunal to find material retardation with respect to those items not presently produced, but for which Cello has production plans.

Cello is vulnerable to dumping, according to counsel, and in the absence of a finding of material injury, prices will deteriorate and the company will continue to suffer injury. U.S. producers are giants by comparison to Cello, and they have substantial capacity. The subject goods are a commodity product and competition is based on price. Counsel contended that large customers will exact price concessions from suppliers, and others will follow, thereby driving prices down. This, in turn, will cause material injury to Cello.

In anticipation of arguments by opposing counsel, counsel for Cello dismissed the recession, capital investment and technology issues, competitiveness of Cello due to costs or cost structure, and self-sufficiency and outsourcing as causes of material injury to Cello. They indicated that Cello had quite reasonable results in 1990 and 1991, and again in 1993 when sales and profitability improved, unlike in 1992 when sales declined and profits were eroded.

Streamline/Mueller - Producer and Importer/Exporter

Counsel for Streamline and Mueller argued three main points at the hearing. First, counsel argued that Cello could only claim past, present and future injury with respect to the goods that it produced at the time of the hearing and actively supplied from its own production. Second, counsel argued that Cello could only claim retardation in the future in relation to goods that it could produce on the basis of plans that could realistically be implemented in the near future and which involved production that was clearly foreseen and imminent. Finally, counsel argued that any goods which could not be included in Cello's past, present and future injury or retardation claims should be excluded.

In considering Cello's retardation claim, counsel referred to paragraph 6 of Article 3 of the Code relating to the determination of threat of injury which, he stated, includes material retardation. This provision requires that a finding of threat of injury be based on facts, not merely on allegation, conjecture or remote possibility, and that a change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. On that basis, counsel argued that Cello's production of new goods must be clearly foreseen and imminent. Counsel agreed that production by Cello of new configurations of tees, elbows and couplings and/or bushings was foreseeable over the next 18 months since Cello already had the requisite equipment. However, counsel argued that the production of some of the adapters in Cello's 18-month plan was not reasonably foreseeable and imminent.

Counsel submitted that exclusions are always warranted when goods are not available from production in Canada and that exclusions may be granted where it is shown that goods are not readily available from production in Canada, although the complainant shows an ability to supply the market,[5] or where imports do not compete with Canadian production.[6] Counsel argued that the goods which Cello has no intention of producing should be excluded. Counsel suggested that if the Tribunal makes an injury finding, it should determine the class of goods to which the finding applies and exclude all other goods.

Moreover, counsel submitted that the Tribunal, in considering the issue of exclusions, should distinguish between cast and wrought fittings for the following reasons: (1) there are separate tariff item numbers for cast fittings and wrought fittings; (2) Cello refers to cast and wrought fittings separately; (3) cast and wrought fittings are produced by separate manufacturing processes; and (4) cast and wrought fittings have different physical characteristics and specifications.

Nibco - Importer/Exporter

Counsel for Nibco and Nibco Canada Inc. argued that Nibco's sales in Canada are unrelated to dumping and that exports of the subject goods by Nibco have not caused, are not causing and are not likely to cause material injury to the production in Canada of like goods.

Counsel also argued that the Tribunal should exercise its discretion under paragraph 1 of Article 4 of the Code to exclude Cello from the definition of domestic industry since it imported significant quantities of the allegedly dumped subject goods. Counsel acknowledged that there have been cases where the Tribunal's predecessors have not excluded producers which were also importers of dumped goods. However, counsel focused on the decision of the Anti-dumping Tribunal in *Bottoming Materials*[7] and argued that the facts in that decision were different. In particular, counsel pointed out that the producer in *Bottoming Materials* was the only domestic producer. Further, counsel referred to the Anti-dumping Tribunal's comments in that decision to the effect that the situation might have been different had the volumes of imports of dumped goods been greater. In counsel's view, Cello's position is different, since it is not the only domestic producer and it imported large volumes of the allegedly dumped subject goods. Other domestic producers of like goods did not allege injury due to imports.

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5. See, for example, *Gypsum Board, Composed Primarily of a Gypsum Core, with Paper Surfacing Bonded to the Core, Originating in or Exported from the United States of America*, Canadian International Trade Tribunal, Inquiry No. NQ-92-004, January 20, 1993; *Certain 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*, Canadian International Trade Tribunal, Inquiry No. NQ-92-008, May 31, 1993; and *Certain Cold-Reduced Flat-Rolled Sheet Products of Carbon Steel Originating in or Exported from the Federal Republic of Germany, France, Italy, the United Kingdom and the United States of America*, Canadian International Trade Tribunal, Inquiry No. NQ-92-009, July 29, 1993.

6. *Machine Tufted Carpeting Originating in or Exported from the United States of America*, Canadian International Trade Tribunal, Inquiry No. NQ-91-006, April 21, 1992.

7. *Supra*, note 4.

Counsel took the position that there are other factors that are injuring Cello which must not be attributed to dumping. It was also submitted that Cello failed to make a case isolating the effects of dumping and demonstrating that dumping has had a material impact compared with the other more structural and chronic factors.

Counsel argued that the market declined substantially between 1989 and 1990 and that construction activity in both the residential and commercial sectors plummeted. The effects of the recession in both sectors had a severe impact on the sale of the subject fittings.

Counsel submitted that, during the 1980s, when Cello generated profits, it did not invest sufficient amounts of capital in upgrading its production equipment in order to expand its product line. When the recession hit in the early 1990s, Cello continued to rely heavily on U.S. imports. Any market-share opportunities available to Cello in 1991 and 1992 were filled by increasing imports from the United States rather than by domestic production. While it was acknowledged that there were market disruptions in 1992, it was counsel's position that, once the problem was identified, Nibco took the necessary action to rectify the situation. Since the latter part of 1992, prices have risen sharply and they have stabilized in 1993. It was submitted by counsel that, if Cello suffered any injury, it was in the past. As prices have returned to traditional levels in 1993, imports will not pose a threat to Cello in the future.

It was also submitted that the evidence concerning lost accounts was not convincing. With respect to the Ideal Plumbing account, counsel referred to sales which were allegedly lost by Cello to Nibco, especially in 1989 and 1990. This loss by Cello occurred during a period preceding the Deputy Minister's period of investigation. It was counsel's view that dumping cannot be presumed to have occurred during that time. Furthermore, counsel asserted that the documentation provided by the witness for Ideal Plumbing indicated that the decision to change suppliers was unrelated to dumping. It was also in evidence that reduced purchases by Ideal Plumbing during the years 1990 to 1992 were the result of the recession.

On the question of material retardation, counsel suggested that there was no evidence supplied by Cello to support its claim. In fact, the business plans prepared in 1992 and 1993 by Cello made no reference to dumping or retardation, but highlighted a shortfall in production capability.

Counsel requested that, if the Tribunal finds that the importation of the subject goods by Nibco is causing material injury to the production in Canada of like goods, it would be appropriate for the Tribunal to exclude from its finding all the copper fittings which are not produced in Canada. Counsel also requested that copper fittings for the ACR applications be excluded from any injury finding. It was submitted that these products are sold using different sizing, a different price list and different packaging. It is a market not directly serviced by Cello. While Cello claimed that its products may go to wholesalers, which in turn sell to this market, it did not submit any supporting evidence.

Amcast/Elkhart - Importer/Exporter

Counsel for Amcast and Elkhart cited several internal causes of injury to Cello that sever any potential causal link between dumping and material injury. They suggested that Cello's concern with profit taking, as opposed to reinvesting in the

company, shows a lack of capital commitment and long-term view. It was Amcast's position that this lack of significant capital investment left Cello with a low level of capacity and a dependence on imports to fill out its product line. In counsel's view, Cello had the means to reinvest in capital equipment in 1990 or earlier, which would have enabled it to make fittings domestically. Instead, it chose not to take that route and continued to buy much of its requirements for fittings from other domestic and U.S. producers.

Counsel emphasized the link between the recession and certain structural changes in the fittings market, referring specifically to Emco's closure and Streamline's conversion to the production of metric fittings in 1991, as well as to certain strategic alliance programs being pursued by the major wholesalers. They argued that the recession also had a direct negative impact on Cello's performance in cast sales as the drainage market and sales of cast fittings to that market were hit disproportionately hard in the downturn. Counsel argued that Cello's purchase of a cast operation was a strategic error, particularly at a time when the industry was converting to wrought fittings. They suggested that each of these events had a distinct impact on happenings in 1992.

With respect to the question of exclusions, counsel argued that there was strong evidence of no reasonable prospect for the development of an adapter program by Cello and that any fittings that Cello says it will develop in the next 18 months should not be protected. Also, counsel argued that fittings specifically designed or destined for ACR applications should be excluded from the finding since Cello has no involvement in that marketplace and no capacity to produce those goods.

Mechanical Contractors Association of Canada (MCA)

A representative of MCA appeared before the Tribunal during the hearing to inform it of a situation whereby some of its members were notified, in early July 1993, of a significant price increase on the subject goods to compensate for provisional duties being applied on imports by Revenue Canada.

According to the representative of MCA, some contractors who were not using standard Canadian Construction Association or Canadian Construction Documents Committee contracts, which generally provide for unexpected increases in costs, had entered into contracts at pre-July prices and would have to absorb the price increases for these contracts.

REASONS FOR DECISION

Section 42 of SIMA requires the Tribunal to determine whether dumping of the subject goods, as found by the Deputy Minister, 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.

Domestic Industry

Paragraph 42(3)(*a*) of SIMA directs the Tribunal to take fully into account the provisions of paragraph 1(i) of Article 4 of the Code, which states as follows:

> *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, except that*
>
> *(i) when producers are related[8] to the exporters or importers or are themselves importers of the allegedly dumped product, the industry may be interpreted as referring to the rest of the producers.*

While the Tribunal must be guided by paragraph 1 of Article 4 of the Code in considering the question of the definition of domestic industry, the use of the word "may" in paragraph 1(i) indicates that it is within the discretion of the Tribunal to exclude or not from the definition of domestic industry producers who are related to exporters or importers, or who are themselves importers of dumped goods.

The Tribunal notes that its predecessors have consistently been reluctant to exclude domestic producers importing dumped goods, and it has refused to exercise its discretion in favour of such exclusions when to do so would effectively deny the existence of a domestic industry. In particular, the Canadian Import Tribunal stated the following in *Gasoline Powered Chain Saws*:[9]

> *The discretion granted to the [Canadian Import] Tribunal by reference to Article 4 of the Code in paragraph 42(3)(a) of the Act must be exercised in such a way as to give effect to the purpose of the Code and the Act as it is applicable in a Canadian setting. The Canadian economy is characterized by a relatively concentrated industrial structure where, given the small number of participants in many industries, the presence of foreign-owned firms and the important flow of international trade, the role of foreign affiliates and the consequential impact of their activities on Canadian economic life are potentially far greater than in other industrialized nations.*
>
> ...
>
> *To refuse to the complainant ... the right to allege and establish likelihood of material injury from dumping by its parent company ... would not only deny the existence of a domestic industry and deprive domestic producers of their right to protection against injurious dumping on the ground that any future injury would be self-inflicted, but it would also not recognize the realities of the interaction and strong competition among multinational enterprises which plan their industrial and marketing strategy on a worldwide basis.*

In *Bottoming Materials*, the Anti-dumping Tribunal also decided not to exclude from the definition of domestic industry a producer that was importing dumped goods, since the effect of such an exclusion would have been to deny the existence of an industry. Counsel for Nibco submitted that the determination of the Anti-dumping Tribunal not to exclude the producer might have been different had the volume of the producer's dumped imports been greater, or if these imports were not defensive in origin. However, the Tribunal notes that the comments of the Anti-dumping Tribunal

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8. An understanding among Parties should be developed defining the word "related" as used in this Code.
9. *Supra*, note 4 at 8-9.

concerning the volume of dumped imports and the motivation to purchase dumped imports were made in relation to the issue of causality, and not in relation to the issue of exclusions from the definition of domestic industry.

Like its predecessors in *Gasoline Powered Chain Saws* and *Bottoming Materials*, the Tribunal is not prepared to exclude Cello from the definition of domestic industry in this inquiry on the basis that it is an importer of dumped goods since to do so would, in effect, be denying that there is a domestic industry, and Cello would not have a remedy against dumping of the subject goods.

Having found that Cello should not be excluded from the definition of domestic industry, the Tribunal must determine whether production by Cello, as the complainant in this inquiry, constitutes a major proportion of the total domestic production of like goods. As stated by the Federal Court of Appeal in *Japan Electrical Manufacturers Association et al. v. The Anti-dumping Tribunal*,[10] "the word 'major' as used in para. 4(*a*) [...] is to be construed as being 'significant' rather than in the more precise mathematical sense of more than one-half.[11]" During the Deputy Minister's period of investigation, Cello's share of the domestic production represented both a significant proportion and more than one-half of the total domestic production of like goods. The Tribunal is, therefore, of the view that the requirements of paragraph 1 of Article 4 of the Code are satisfied.

Like Goods

Before considering the question of material injury and retardation, the Tribunal must determine what constitutes production in Canada of like goods as contemplated by section 42 of SIMA.

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

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

The evidence is clear that copper fittings produced in Canada by Cello, Streamline and Bow compete with, have the same end uses as, and can be substituted for, the subject goods. Although there are differences between cast and wrought fittings as identified by counsel for Streamline, the Tribunal heard evidence that many of the fittings required for DWV and pressure applications are available in either wrought or cast, and substitutable for, and in competition with, each other in many applications. Thus, the Tribunal sees no reason to distinguish between cast and wrought fittings, and the Tribunal finds that the domestically produced fittings are like goods to the subject goods.

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10. 12 C.E.R. 260, Court File No. A-1096-84, October 17, 1986.
11. *Ibid*. at 267; also see *McCulloch of Canada Ltd. v. The Anti-dumping Tribunal*, [1978] 1 F.C. 222 at 225 (F.C.A.).

Material Injury

The Canadian market for copper fittings, like those for other Canadian industries, was in the midst of a recession in 1990. The domestic producers, which comprised Cello, Streamline and Emco, held about 60 percent of the market from their own domestic production and close to 20 percent from imports from the exporters named in the Deputy Minister's final determination of dumping. Among the named exporters, Nibco was by far the largest foreign supplier to the Canadian market. Elkhart, which had been servicing the Canadian market through Cello until 1990, began shipping the subject goods to its newly formed Canadian subsidiary, Amcast. Mueller sold relatively small quantities of product to its Canadian subsidiary, Streamline, which, at that time, supplied a large part of the Canadian market from domestic production.

In 1991, there were major structural changes in the domestic market which culminated in a scramble by the various suppliers to maintain or to capture additional market share. Streamline decided to reduce its domestic production of imperial fittings and to concentrate on the production of metric fittings for the European market. Streamline replaced much of its production for the domestic market with imports from its U.S. parent, Mueller. Emco, which produced both cast and wrought fittings, ceased producing fittings in June 1991. The assets of Emco's production facility were purchased by Bow, which resumed production of a short line of wrought fittings in July of that year. As a consequence of Emco's discontinuation of cast production, Cello emerged as the sole domestic producer of these fittings.

These developments resulted in a decline in domestic production of 41 percent. Cello increased its production during 1991 in order to fill part of the void which was created as a result of the developments at Streamline and Emco. The remainder of the demand left unfilled by Streamline and Emco was, for the most part, supplied through increased imports from Elkhart by Cello and Amcast. Streamline, which had increased its imports from Mueller to serve the domestic market, nonetheless lost significant market share. Nibco, through its wholly owned subsidiary, Nibco Canada Inc., and its distributor, C.B. Supplies Limited, also shared growth in this market and continued to be by far the largest U.S. supplier of the subject goods.

Although market volume increased by 16 percent in 1991, the value of the market remained static, reflecting both the intensified price competition among suppliers as well as the decline in the price of copper. While Cello experienced positive results in terms of sales volume and market share, its profitability fell sharply from the previous year. Streamline incurred substantial losses in contrast to favourable results in 1990. Bow, whose results reflected about six months of production, also recorded losses.

The year 1992 was a disastrous one for this industry. The market, while remaining static in terms of volume, dropped by 17 percent in value. Total domestic production declined by 15 percent. However, Cello's production and capacity utilization dropped by 25 percent. Both Streamline and Bow recorded some production improvements.

Imports from the exporters named in the Deputy Minister's final determination of dumping continued their growth pattern in 1992, rising by another 13 percent to almost 75 percent of the market. Much of this growth occurred as a result of increased imports from Nibco, and mostly at the expense of domestic production by Cello.

Amcast's share of imports from Elkhart grew significantly again in 1992, while Cello's imports from Elkhart declined sharply. By 1992, Streamline was importing much more than it was producing in Canada for the domestic market. Streamline maintained its market share, albeit at much lower prices than in the previous year. Of all the market suppliers, Cello lost the most in 1992, and all to imports from the named exporters.

Prices continued their downward spiral in 1992. Fierce price competition drove prices down to a level where imports from the named exporters were found by the Deputy Minister to be dumped by an average of 47 percent during the period of investigation. A comparison of the unit price of imports from each of the exporters to selling prices by related importers reveals that, in 1992, some subject imports were being resold to distributors at a significant loss. This price erosion in 1992 had negative effects on all market participants. Cello incurred losses for the first time during part of the year, while both Streamline and Bow reported significant losses for the year.

There was a dramatic turnaround during the first half of 1993. Production by Cello and Bow increased substantially, notwithstanding a 24-percent drop in overall demand, and imports from the three named exporters plummeted. Following the Deputy Minister's investigation which confirmed dumping margins of between 35 percent and 57 percent on imports from the named exporters during the three-month period of investigation from September 1 to November 30, 1992, prices rose to pre-1990 levels.

The net results of these events were a gain of some 10 points of market share by Cello during the first six months of 1993 over 1992, a decline in the importers' share of the market, significant improvements in financial performance of the three producers and an increase in employment and capacity utilization for Cello and Bow.

In light of the foregoing, the Tribunal finds that the domestic industry in general, and Cello in particular, has suffered material injury, primarily in the form of loss of production and sales, price erosion and loss of profitability.

Causality

The Tribunal is persuaded by the evidence that there is a direct correlation between the dumping found by the Deputy Minister and the material injury to domestic production. The Tribunal is of the view that, were it not for the application of provisional duties, such injury would have continued in 1993. Moreover, in the absence of anti-dumping protection, the Tribunal believes that the production in Canada of like goods would likely be materially injured by dumping.

The material injury suffered by the industry manifested itself primarily in the form of price erosion caused by the dumped imports during 1992 and the consequent impact that such erosion had on the industry's production and sale of the subject copper fittings, and, particularly, on the industry's financial performance. The evidence is clear that the market for the subject goods is a commodity market which is driven almost entirely by price. The Tribunal heard considerable evidence that all of the market participants are constantly aware of the price at which fittings are being traded, and the major buyers often use one producer's/importer's low price to bargain for concessions with other producers/importers. Even when a buyer does not search out lower prices, the evidence of some major distributors was that, once it is known in the market that fittings are being offered at a certain price, many of the other producers/importers will call to offer

the same price or a lower price. The net effect of such behaviour is the minimization of prices in the marketplace.

The Tribunal staff conducted an extensive analysis of price trends covering the period from January 1990 to June 1993, the results of which were very illuminating. Average selling prices for the subject imports declined by 15 percent in 1991 and by a further 17 percent in 1992. It was clear, from the pricing study and from evidence of a number of witnesses appearing at the hearing, that prices were led down by Nibco Canada Inc. and Streamline in 1992. The study revealed that, in 1992, Streamline's and Nibco Canada Inc.'s average selling prices of the subject imports declined by 28 percent and 21 percent, respectively, to a level below the average selling prices of domestic producers and other importers. The study also showed that the average selling prices of imports by Streamline continued to decline in the second half of 1992 compared to the first half of 1992. While Nibco Canada Inc.'s average selling prices remained relatively constant over the same period, they remained below those of all other suppliers. A review of prices for certain high-volume items sold to two large distributors showed a similar pattern.

These price declines were taking place at the same time as unprecedented volumes of the subject goods were being imported by Nibco Canada Inc. and Streamline, virtually all of which were dumped by a considerable margin. The price effect was rapid, as other importers and producers alike sought to maintain their relative market shares. Average selling prices for domestically produced fittings declined by 16 percent in 1992, and Cello's domestic sales from domestic production plummeted by 34 percent.

The evidence of the Tribunal's witnesses and of a former officer of Streamline supports the Tribunal's finding with respect to the volatility of the prices for the subject imports and how it has created downward pressure on the prices for the domestically produced like goods. In the words of a former Streamline official, when questioned concerning the importance of price in getting business, "price was virtually everything." He indicated that, while service is important, a customer will switch suppliers for a penny. Similarly, witnesses from Westburne and Ideal Plumbing noted that, after one supplier changes the price of its fittings, all other suppliers' prices gravitate to that same level within a very short time.

The Deputy Minister found, in his final determination of dumping issued on September 13, 1993, that virtually all of the goods reviewed during the period of investigation had been dumped at weighted average margins of dumping ranging from 35 percent to 57 percent, with a weighted average margin of dumping on the dumped goods of 47 percent. The Tribunal is convinced that, in a commodity market where prices adjust rapidly to align themselves with the lowest price available anywhere in the market, dumping of the magnitude found by the Deputy Minister causes material injury to the domestic production of like goods in Canada.

The Tribunal carefully considered the arguments of counsel concerning the industry's performance during the 1990-93 period. The Tribunal agrees that the recession has had an impact on all aspects of the economy, including the market for solder copper fittings and that, other things being equal, demand was likely curtailed at some time. However, the Tribunal is of the opinion that the recession had its greatest impact on this sector in 1990, at least in terms of its impact on overall market demand. Indeed, the Tribunal believes that it was not the recession but rather the opportunity to produce

metric fittings for the European market that prompted Streamline to curtail its production of the subject copper fittings in Canada. In fact, the market expanded in 1991 and remained at that level in 1992. The evidence indicates that the volumes of both the remaining domestic production and imports were on the upswing in 1991. It was not until 1992, when significant levels of dumping were found by the Deputy Minister, that the volume of the domestic production, and Cello's volume in particular, fell substantially.

With respect to the suggestion that Cello effectively injured itself by not reinvesting in capital equipment on a larger scale, the Tribunal is satisfied that Cello has undertaken a program to upgrade its equipment and to purchase additional equipment to expand its production line, albeit not necessarily always with the very latest in technology. While the timetable and value of the reinvestments may not have been optimal in the eyes of the importers, the Tribunal is persuaded that such new capital acquisitions will undoubtedly increase Cello's capacity and reduce its dependence on imported goods. Moreover, the Tribunal notes that Cello was quite profitable when dumping was not a factor.

All of these events and circumstances confirm a strong correlation between the entry into the domestic market of these low-priced imports and the collapse of price levels, all of which translated directly into significant losses of sales and market share by the producers and financial losses by the industry. In the Tribunal's view, these events demonstrate a clear nexus between the dumping and the material injury suffered by the domestic producers.

With respect to the likelihood of material injury to the domestic production caused by dumping, the Tribunal is satisfied that, in the absence of anti-dumping measures, domestic production is likely to face considerable downward price pressure. Importers and exporters intend to continue to remain competitive in the market, and the Tribunal was given no evidence that there would be constraints in supply. The Tribunal is convinced that the strategic alliances proposed by the major distributors will have a significant impact on the marketing of copper fittings in Canada. However, while the distributors and their chosen suppliers both stand to profit considerably from the exploitation of various economies of scale presented by such alliances, price will continue to dominate the intensely competitive market. The evidence indicates that wholesalers will purchase goods from other suppliers in the event that strategic suppliers become uncompetitive in terms of price. Further, there was evidence that price increases were only adopted following the initiation of the Deputy Minister's investigation.

The Tribunal considered the submissions of counsel concerning the question of retardation to the domestic production by Cello. The Tribunal considers it more appropriate to deal with this issue as it relates to future injury. In this regard, the Tribunal is of the view that there is a likelihood of injury to both the fittings produced by Cello at the time of the hearing and to those fittings which Cello intends to produce within the next 18 months. The Tribunal is persuaded that the production equipment required to produce these additional fittings is in place, and there remains little to purchase in the way of tools and dies. The production of these fittings is, therefore, clearly foreseen and imminent within the intended time frame. Indeed, the evidence shows that production of some of the additional fittings had already commenced or would commence in September 1993. The Tribunal believes that the production of these additional fittings will be particularly vulnerable to future injury caused by continued dumping, since these fittings have traditionally been supplied through imports.

The Tribunal is of the view that Cello's plans for the expansion of its production which are to take effect beyond the next 18 months are uncertain. The plans are at a very early stage of development, and the evidence indicates that Cello has not yet made any formal commitments. The Tribunal, therefore, finds that there is no likelihood of injury with respect to the fittings which Cello plans to produce beyond the next 18 months.

MCA

As regards the situation raised by MCA, the Tribunal recognizes that provisional duties (and final duties resulting from this decision), which are passed onto the contractors by the importers, may result in some hardship for the contractors who did not adequately provide in their contracts for such an eventuality. This, of course, is a normal risk of doing business which cannot be compensated by denying the Canadian industry legitimate and justified protection against such dumped imports.

REQUESTS FOR EXCLUSIONS

Counsel for Cello tabled three lists of goods that: (a) it intends to produce over the next 18 months; (b) it intends to produce within 5 years; and (c) goods it does not intend to produce. Counsel conceded that some exclusions should be granted, but only to those goods that Cello does not plan to produce within the next 5 years. Counsel for the exporters/importers argued that any finding of material injury should be restricted to the specific goods that Cello now produces. In slight variance to this position, counsel for Streamline argued that exclusions could conceivably include goods that Cello claims it will produce in the immediate future, with some exception, namely, adapters, but exclusions ought not to include goods that the complainant claims it intends to produce between 18 months and 5 years in the future.

In the Tribunal's view, the evidence indicates that the subject goods not produced, and which Cello does not intend to produce within the next 18 months, as set out in Appendix A to the finding, have not caused, are not causing and are not likely to cause material injury to the production in Canada of like goods and should therefore be excluded from the Tribunal's finding.

As regards fittings for ACR applications, counsel for Nibco and Amcast argued that, in the event of a finding of material injury, such fittings should be excluded on the grounds that they are different from the subject fittings in areas such as sizes, uses, prices and packaging. It was also submitted that Cello is not involved in this market.

The Tribunal agrees that fittings destined for sale to the ACR market should be excluded from the finding. Cello did not claim it was being injured by imports of these fittings, and it was unclear from the evidence whether any of the domestic producers make them. According to the evidence, the fittings for this market are produced and marketed on the basis of outside dimensions rather than inside dimensions and can be distinguished in this manner. Separate price lists are published for these products, and they have characteristics that are different from regular fittings. Orders are specially packaged and labelled for this market. While testimony provided by the witness for Cello indicates that some of Cello's fittings may have been sold to this market by domestic wholesalers, no confirmation was provided by Cello.

CONCLUSION

In light of the foregoing and based on all the information on record and the evidence adduced at the hearing, the Tribunal concludes that the dumping in Canada of solder joint pressure pipe fittings and solder joint DWV pipe fittings, made of cast copper alloy, wrought copper alloy or wrought copper, in diameters up to 6 in. and the metric equivalent, for use in heating, plumbing and ACR applications, originating in or exported from the United States of America and produced by or on behalf of Elkhart, of Elkhart, Indiana, Nibco, of Elkhart, Indiana, and Mueller, of Wichita, Kansas, their successors and assigns, has caused, is causing and is likely to cause material injury to the production in Canada of like goods, excluding:

(i) the subject goods listed in Appendix A to the finding; and

(ii) the subject goods identified on the basis of outside dimensions and destined for ACR applications.

W. Roy Hines
W. Roy Hines
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Charles A. Gracey
Charles A. Gracey
Member