



Ottawa, Friday, November 19, 1993

Inquiry No.: NQ-93-002

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

**PREFORMED FIBREGLASS PIPE INSULATION WITH A VAPOUR
BARRIER, ORIGINATING IN OR EXPORTED FROM THE
UNITED STATES OF AMERICA**

FINDING

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry following the issuance by the Deputy Minister of National Revenue for Customs and Excise of a preliminary determination of dumping dated July 22, 1993, and of a final determination of dumping dated October 20, 1993, respecting the importation into Canada of preformed fibreglass pipe insulation with a vapour barrier, originating in or exported from the United States of America.

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

The Canadian International Trade Tribunal also finds that the dumping in Canada of the aforementioned goods, originating in or exported from the United States of America, did not contravene paragraph 42(1)(b) of the *Special Import Measures Act*.

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

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

The statement of reasons will be issued within 15 days.

Inquiry No.: NO-93-002

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	October 25 to 29, 1993
Date of Finding:	November 19, 1993
Tribunal Members:	Robert C. Coates, Q.C., Presiding Member Sidney A. Fraleigh, Member Desmond Hallissey, Member
Director of Research:	Peter Welsh
Research Manager:	Don Shires
Research Officer:	Paule Couët
Economist:	Simon Glance
Counsel for the Tribunal:	John L. Syme
Statistical Officer:	Nynon Burroughs
Registration and Distribution Officer:	Pierrette Hébert
Participants:	G.P. (Patt) MacPherson Brian J. Barr Suzette C. Cousineau for Manson Insulation Inc. (Manufacturer) Peter Clark Chris Hines John Haime for Owens-Corning Fiberglas Canada Inc. Owens-Corning Fiberglas Corporation C.J. Michael Flavell, Q.C. Geoffrey C. Kubrick Paul M. Lalonde for Manville Canada, Inc. Schuller International, Inc. Allan H. Turnbull Paul D. Burns for Knauf Fiber Glass GmbH W. Jack Millar James H. Warnock for Glass-Cell Fabricators Ltd.

- 2 -

Milos Barutciski
for Director of Investigation and Research,
Competition Act
Bureau of Competition Policy

D. William Mutch, Q.C.
for Master Insulators' Association
of Ontario Inc.

Richard G. Dearden
Randall J. Hofley
for Thermal Insulation Association
of Canada

Ross D. Lewis
President
Plastic & Allied Building Products Ltd.

(Importers/Exporters/Others)



Ottawa, Monday, December 6, 1993

Inquiry No.: NQ-93-002

**PREFORMED FIBREGLASS PIPE INSULATION WITH A VAPOUR
BARRIER, ORIGINATING IN OR EXPORTED FROM THE
UNITED STATES OF AMERICA**

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

DECISION: The Canadian International Trade Tribunal has found that the dumping in Canada of preformed fibreglass pipe insulation with a vapour barrier, originating in or exported from the United States of America, has caused, is causing and is likely to cause material injury to the production in Canada of like goods. The Tribunal has also found that the dumping in Canada of the aforementioned goods, originating in or exported from the United States of America, did not contravene paragraph 42(1)(b) of the *Special Import Measures Act*.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	October 25 to 29, 1993
Date of Finding:	November 19, 1993
Date of Reasons:	December 6, 1993
Tribunal Members:	Robert C. Coates, Q.C., Presiding Member Sidney A. Fraleigh, Member Desmond Hallissey, Member
Director of Research:	Peter Welsh
Research Manager:	Don Shires
Research Officer:	Paule Couët
Economist:	Simon Glance
Counsel for the Tribunal:	John L. Syme
Statistical Officer:	Nynon Burroughs
Registration and Distribution Officer:	Pierrette Hébert
Participants:	G.P. (Patt) MacPherson Brian J. Barr Suzette C. Cousineau for Manson Insulation Inc. (Manufacturer)

Peter Clark
Chris Hines
John Haime
for Owens-Corning Fiberglas Canada Inc.
Owens-Corning Fiberglas Corporation

C.J. Michael Flavell, Q.C.
Geoffrey C. Kubrick
Paul M. Lalonde
for Manville Canada, Inc.
Schuller International, Inc.

Allan H. Turnbull
Paul D. Burns
for Knauf Fiber Glass GmbH

W. Jack Millar
James H. Warnock
for Glass-Cell Fabricators Ltd.

Milos Barutciski
for Director of Investigation and Research,
Competition Act
Bureau of Competition Policy

D. William Mutch, Q.C.
for Master Insulators' Association
of Ontario Inc.

Richard G. Dearden
Randall J. Hofley
for Thermal Insulation Association
of Canada

Ross D. Lewis
President
Plastic & Allied Building Products Ltd.

(Importers/Exporters/Others)

Witnesses:

Keith F. Eaman
Chairman
CertainTeed Manson

David Stagg
Assistant Controller
Manson Insulation Inc.

William M. Fluhmann, P.Eng.
Vice-President
Manson Insulation Inc.

William G. Edwards
Controller
Manson Insulation Inc.

Bill Haun
General Sales Manager
Crossroads C&I

Dennis Olson
Branch Manager
Crossroads C&I

Daniel Desbiens
Co-Chairman
Sales & Marketing
Georges Nadeau Inc.

Paul Pani
President
Multi-Glass Insulation Ltd.

Michael R. Harrison
Vice-President & General Manager
Schuller International, Inc.

David C. Skelly
Business Manager
Industrial/Commercial Insulations
Schuller International, Inc.

E.W (Wes) van der Lee
Territory Manager
Western Canada
Mechanical Insulations Division
Manville Canada, Inc.
An Affiliate of Schuller International, Inc.

William Black III
Sr. Vice-President
Sales & Marketing
Knauf Fiber Glass GmbH

George Faulkner
President
Systems Supply Northern Limited

Robert Ouellette
President
Isolation Dispro Inc.

Alan D. Booth
Vice-President
Insulation Division
Owens-Corning World Headquarters

David C. Mader
Business Unit Manager
Mechanical & Wall
Owens-Corning Fiberglas Canada Inc.

Derek J. Holden
President & C.E.O.
Owens-Corning Fiberglas Canada Inc.

Robert Lacoste
Sales & Marketing Manager
Isofab Inc.

G.W. (Bill) Strickland
Vice-President
Alberta Operations
Steels Industrial Products

Robert McNamara
Manager
Maritime Insulation Ltd.

George W. (William) Gilley
Vice-President
Glass-Cell Fabricators Ltd.

Roman K. Przybycien
President
Insul-Coustic Inc.

Address all communications to:

Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7



Ottawa, Monday, December 6, 1993

Inquiry No.: NQ-93-002

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

**PREFORMED FIBREGLASS PIPE INSULATION WITH A VAPOUR
BARRIER, ORIGINATING IN OR EXPORTED FROM THE
UNITED STATES OF AMERICA**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
 SIDNEY A. FRALEIGH, Member
 DESMOND HALLISSEY, Member

STATEMENT OF REASONS

CONDUCT OF THE INQUIRY

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*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 July 22, 1993, and of a final determination of dumping dated October 20, 1993, respecting the importation into Canada of preformed fibreglass pipe insulation with a vapour barrier, originating in or exported from the United States of America.

The notices of preliminary and final determinations of dumping were published in Part I of the August 7 and November 13, 1993, editions of the Canada Gazette, respectively. The Tribunal's notice of commencement of inquiry issued on July 30, 1993, was published in Part I of the August 7, 1993, 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, 1990, to June 30, 1993. From the replies to the questionnaires and other sources, the Tribunal 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. On October 7, 1993, the Tribunal denied a request by the Director of Investigation and Research, *Competition Act*, Bureau of Competition Policy (the Director), for access for himself and his staff to the protected exhibits.

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

Public and *in camera* hearings were held in Ottawa, Ontario, from October 25 to 29, 1993. The complainant, Manson Insulation Inc. (Manson), was represented by counsel, submitted evidence and made arguments in support of a finding of injury. Counsel for Owens-Corning Fiberglas Canada Inc. (Fiberglas), an importer; Owens-Corning Fiberglas Corporation (Owens-Corning), an exporter; Manville Canada, Inc. (Manville), an importer; Schuller International, Inc. (Schuller), an exporter; Knauf Fiber Glass GmbH (Knauf), an exporter; and Glass-Cell Fabricators Ltd. (Glass-Cell), a distributor, all submitted evidence and made arguments in support of a finding of no injury. The Director was represented by counsel and made arguments in support of a finding of no injury. Plastic & Allied Building Products Ltd., a distributor, made a submission, but did not give evidence in support of that submission.

On August 27, 1993, the Director informed the Tribunal of his intention to make public interest representations pursuant to section 45 of SIMA. Subsequently, the Director, the Master Insulators' Association of Ontario Inc. and the Thermal Insulation Association of Canada informed the Tribunal of their intention to make public interest submissions. On September 29, 1993, the Tribunal informed counsel and parties that it would give parties this opportunity if there were a finding of injury. It indicated that it would inform parties accordingly of the procedure to be followed. On November 24, 1993, the Tribunal informed parties of that procedure.

PRODUCT

The product that is the subject of this inquiry is described by the Deputy Minister in the preliminary determination of dumping as preformed fibreglass pipe insulation with a vapour barrier, originating in or exported from the United States of America. Preformed pipe insulation is produced both with and without a vapour barrier. However, only pipe insulation with a vapour barrier was the subject of this inquiry.

Preformed pipe insulation is made of fine glass fibre insulating wool which is formed into a tubular shape of predetermined inside diameter and wall thickness. There are two production processes used to produce fibreglass: the flame attenuated process and the rotary process. The domestic industry uses the flame attenuated process of manufacturing glass fibre wool. This process involves melting glass marbles and blowing the resulting molten glass wire into fibres which are gathered on a wire mesh conveyor belt to form a batt or sheet to which a thermo-setting resin is applied. The fibreglass sheet is wound into a cylindrical form on mandrels. The semi-finished product is conveyed through an oven where the thermo-setting resin gives it permanent rigidity. The preformed material is then covered with a vapour barrier (jacket) which is typically made of a metallized polyester film which is reinforced with fibreglass yarn and kraft paper.

In the rotary process, the molten glass is held in a bowl which is spinning, and this action forces the glass through holes in the side of the bowl (spinner) where it is cooled by forced air and blown into fibre form.

In the domestic market, the subject goods range in size from 0.5 to 24.0 in. inside diameter (the pipe size that it is to cover) and have a wall thickness which starts at 0.5 in. and increases by 0.5-in. increments to 4.0 in.

Preformed fibreglass pipe insulation is used to insulate piping systems in both commercial and institutional construction projects requiring insulation for process control,

energy conservation or personal protection. The vapour barrier provides protection against moisture gaining access to the insulation and piping materials. Pipe insulation with a vapour barrier accounts for 80 percent of all pipe insulation applications in commercial and institutional buildings.

DOMESTIC INDUSTRY

Manson is the sole manufacturer of the subject goods in Canada. It is a wholly owned subsidiary of The Manson Group Ltd. (Manson Group).

Manson has produced the subject goods at its plant in Brossard, Quebec, since 1986. Manville produced the subject goods in Brossard from 1972 to February 1986, when the Manson Group purchased Manville's inventory and manufacturing assets. At the same time, Manson assumed the supply role for former Manville distributors.

The terms of sale of Manville's assets prohibited Manville and its U.S. parent company from selling certain insulation products, including the subject goods, in Canada for a period of five years and prohibited Manson from exporting the same goods to the United States for the same period ending January 31, 1991. The terms of sale also included an agreement whereby Schuller supplies Manson with the glass marbles which are the key raw material in the flame attenuated process used at the Brossard facility. That supply agreement is currently in force.

Fiberglas manufactured preformed fibreglass pipe insulation in Sarnia, Ontario, until April 1990, when production of the subject goods was terminated and moved to the Owens-Corning production facility in the United States.

In 1989-90, Manson and Fiberglas proposed to form a joint venture, known as Manoc, to produce and distribute insulation products, including the subject goods, for the North American market. In 1990, the parties decided not to proceed with the proposal after review and concern expressed by the Director.

Manson recently entered into a joint venture with CertainTeed Corp. (CertainTeed), a U.S. manufacturer of insulation products, including the subject goods. The venture involved the establishment of CertainTeed Manson (CTM). Since April 1993, CTM has been responsible for marketing the Manson- and CertainTeed-produced subject goods in Canada and the United States.

EXPORTERS AND IMPORTERS

During his investigation, the Deputy Minister identified four exporters of the subject goods from the United States. They are Schuller, Owens-Corning, Knauf and CertainTeed.

The Deputy Minister also identified 14 importers during his investigation, all importing from the United States. There are two categories of importers active in the Canadian market: Fiberglas, a wholly owned subsidiary of Owens-Corning, and Manville, a wholly owned subsidiary of Schuller, import the subject goods and then sell them to their respective exclusive distributors, while the Knauf- and CertainTeed-produced subject goods are imported directly by their Canadian distributors. Some Canadian contractors and distributors also imported the subject goods from U.S. distributors prior to, and in the early parts of, the period of inquiry.

DISTRIBUTION AND MARKETING

The subject goods are essentially a commodity product. There is a high level of interchangeability in end use between the domestically manufactured and imported products. Particular manufacturers' products have been specified on projects, usually in response to installers' preference for a particular type of vapour barrier closure.

The domestic and imported subject goods are distributed in Canada through regional distributors that source the products from either the domestic manufacturer, an exporter or an importer. Canadian distributors usually deal with only one pipe insulation supplier, whereas U.S. distributors carry a number of suppliers' pipe insulation products. Canadian distributors market the product to insulation contractors and other users. Distributors generally carry a wide range of insulation products and accessories. Testimony indicates that sales of the subject pipe insulation may account for approximately 5 to 15 percent of distributors' total sales.

The distribution network for the subject goods in Canada has undergone a number of changes since 1986, as certain distributors chose to align themselves with a new supplier or moved to a new supplier as a result of mergers and acquisitions. Changes occurred after Manville's departure from the Canadian market in 1986 and the resulting acquisition of Manville's former distribution network by Manson. More changes ensued following Manville's reentry into the Canadian market in 1991, as distributors elected to join, or rejoin in some cases, Manville's distribution network. The loss of a distributor usually entails a corresponding loss of market share for its supplier, that will typically take steps to recover the lost market share.

In Western Canada, there were numerous distributor movements. Manson inherited a distributor from Manville, Crossroads Distributors Inc. (Crossroads), and a contractor/distributor, Fuller Austin. The Manson Group acquired Crossroads in 1987 and, in the same period, Manson ceased to deal directly with Fuller Austin. The latter was unsuccessful in establishing a direct source for the subject goods until 1991, when Manville returned to the market and designated Fuller Bartells Distribution (Bartells), an associate of Fuller Austin, as its distributor for Western Canada. Manson also inherited Wallace Construction Specialties Ltd. (Wallace) from Manville. Manson terminated Wallace's distributorship in 1989. Wallace began importing from CertainTeed in 1992. In August 1992, C&I Commercial and Industrial Insulation Specialists Inc. (C&I), a Knauf distributor, merged with Crossroads. Knauf replaced C&I with a new distributor, Nu-West Construction Products Inc.

In Ontario, the main change in the distribution network was the departure of Glass-Cell from Manson to Manville as soon as the no-competition agreement ended on February 1, 1991. Manson acquired A.C. Wild Inc. (Wild) in the first quarter of 1991. Insul-Coustic Inc. (Insul-Coustic) was a distributor for Manson in the Ottawa area from 1986 to early 1992, when it became a distributor for Manville for the province of Quebec and the Ottawa area. In July 1993, the Manson Group acquired Multi-Glass Insulation Ltd. (Multi-Glass), Fiberglas' primary distributor in Ontario. Multi-Glass, Wild and Chemical Valley Insulation Services (1987) Limited (Chemical Valley), another Manson distributor, were merged to form a new distributor operating under the name of Multi-Glass Insulation Ltd.

In Quebec, Manson inherited Georges Nadeau Inc. (Nadeau) from Manville in 1986. In 1991, Nadeau declined Manville's request to represent Manville products in

Quebec. Manville chose Isofab Inc. (Isofab) as its Quebec distributor. In 1991, Fiberglas lost its long-standing Quebec distributor, Val-Royal, when it stopped carrying the subject goods. Fiberglas replaced Val-Royal with Isofab in early 1992, after which Manville took on Insul-Coustic as its distributor in Quebec.

In the Atlantic provinces, Manson's distributor, Scotia Insulations Limited, acquired MGI Eastern Ltd. in 1993, which had been a Knauf distributor since 1988. Maritime Insulation Ltd., a Manville distributor inherited by Manson in 1986, returned to Manville when it reentered the Canadian market. United Insulation Ltd. became a Manville distributor in 1991.

Ontario is the largest regional market for the subject goods, followed by the Prairies and Quebec. The evidence indicates that Manson's largest regional market was Ontario, with the Prairies and Quebec ranking second and third. Manville's sales were concentrated in Ontario, while Fiberglas' largest regional market was Ontario, followed by the Prairies and the Atlantic provinces which account for similar shares of total sales. Prior to 1993, British Columbia was Knauf's largest market, followed closely by the Prairies and Ontario. In 1993, Ontario was Knauf's largest regional market. CertainTeed's sales are centred in British Columbia, followed by the Prairies.

Pricing Practices

Suppliers' selling prices to distributors for both domestic and imported pipe insulation are expressed as discounts from a generally common list price. The size of the discount varies depending on market conditions. It is an industry standard practice that prices are always freight prepaid, delivered to destination in rail or truckload quantities.

There are two categories of business in the market for the subject goods: day-to-day (replacement) work and contract (major installation) work. Prices for day-to-day work are generally established using a pre-set and known discount range. Contract work is subject to a competitive bidding process. In either case, distributors receive a discount off the list price from their supplier (domestic manufacturer, exporter or importer) which is the basis for setting their own discount level to contractors.

The contract bidding process tends to involve a number of stages. Initially, insulation contractors, in the process of preparing their bids to secure an installation contract, request bids from distributors to supply the subject pipe coverings and other insulation products required. It is generally agreed in the industry that a distributor must be competitive in its pricing of the subject goods in order to secure the contract to supply all of the insulation products required for a project.

Distributors generally provide price quotations to a number of competing contractors. After one of the contractors is awarded the installation contract, that contractor requests a second price quotation from distributors. A third request for price quotations is often made. Some distributors, having reduced their own margins during the first two rounds, request special discounts, price concessions or special terms from their suppliers to enable them to submit a competitive price. In this third and final phase, the evidence confirms that suppliers regularly provide assistance to their distributors in the form of special price quotations on specific projects. In this way, suppliers ultimately determine what the price will be in a competitive bidding situation.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION

On July 16, 1993, the Deputy Minister terminated price undertakings which had been accepted from Schuller, Owens-Corning and Knauf on June 18, 1993. On July 22, 1993, the Deputy Minister made a preliminary determination of dumping respecting the subject preformed fibreglass pipe insulation originating in or exported from the United States. On October 20, 1993, the Deputy Minister made a final determination of dumping respecting the subject goods. The period of investigation covered imports of the subject pipe insulation which entered Canada from October 1, 1991, to December 31, 1992. The Deputy Minister calculated margins of dumping for three periods: October 1 to November 30, 1991; April 1 to May 31, 1992; and November 1 to December 31, 1992.

The Deputy Minister found that 99 percent of the subject goods reviewed had been dumped at a weighted average margin of dumping of 38 percent, with a range from 1 to 99 percent. The results of the investigation, for all exports, are shown in the following table.

MARGINS OF DUMPING		
Period Reviewed	Goods Dumped¹ (%)	Weighted Average Margin of Dumping (%)
October 1 to November 30, 1991	96.9	28
April 1 to May 31, 1992	99.6	38
November 1 to December 31, 1992	100.0	45
<u>Total for the periods reviewed</u>	98.9	38

1. As a percentage of imports reviewed.

Source: Department of National Revenue, Customs and Excise, Final Determination of Dumping, Statement of Reasons, October 20, 1993.

POSITION OF PARTIES

Manson — Manufacturer

Manson took the position that it had been, was being and was likely to be materially injured by the dumping of the subject goods and that the dumping was causing retardation.

Counsel for Manson argued that material injury to their client manifested itself in the form of lost domestic sales, loss of market share, price erosion and reduced sales revenue.

Counsel submitted that there was a narrow price range within which the domestic manufacturer competes with importers for business at the contractor level and that any supplier offering prices outside this range is not competitive. Counsel argued that, if it were not for the large margins of dumping, the importers would not have been competitive.

Counsel dismissed the alleged monopolistic conduct of Manson, its allegedly poor treatment of distributors, the emotional impact brought forth by the acquisition of distributors, the impact of the recession and the assertion that Manson led prices down. On the question of losing contracts to higher-priced imports, counsel suggested that the only way that the importers could compete, even at a premium price, was because of the large margins of dumping.

Counsel submitted that the dumping caused Manson to postpone the addition of a third production line at its Brossard facility. Consequently, counsel requested that the Tribunal make a finding of retardation.

Finally, although not requested by Manson, counsel submitted that the increase in imports, in the first half of 1993, was sufficient to warrant a finding of massive dumping.

Owens-Corning/Fiberglas — Exporter/Importer

Counsel for Owens-Corning and Fiberglas submitted that exports by Owens-Corning had not caused, were not causing and were not likely to cause injury to the production in Canada of like goods. Counsel submitted that Owens-Corning's rationalization of its production of the subject and non-subject goods in North America was an important net benefit to Canada, that it did not lead prices down and that it is being hampered by the loss of its principal distributor in Ontario to Manson.

Counsel argued that pressure on prices was not due to import competition, but due to the perception by the distributors that the market was in a recession and to the internal competition among distributors through reducing their own margins in the bidding process. They also suggested that Manville's return to the Canadian market and the potential price consequences of this reentry were to be expected. Counsel submitted that there is evidence pointing to aggressive pricing by Manson.

Counsel also submitted that the joint venture with CertainTeed transforms Manson's status from local manufacturer to a participant within a global world-class company with access to world-class technology and resources. The creation of CTM is a new and important development in the industry, and it cannot be assumed that Manson's situation will be the same in the future. Counsel focused on a similar situation faced by the Canadian Import Tribunal in its decision in *Carbon Steel Seamless Pipe*,² where the facts on the new venture were limited and did not permit a thorough analysis on the implications for production in Canada.

Regarding the issue of massive dumping, counsel argued that there is ample evidence that distributors, expecting a price undertaking, purchased and imported

2. *Subsidized Carbon Steel Seamless Pipe Originating in or Exported From Brazil*, Inquiry No. CIT-8-86, March 12, 1987.

product to meet existing contracts and that that accounted for the increase in imports. Counsel submitted that there could not be injury due to retardation of the establishment of production, as production of the subject goods in Canada is already established.

Counsel for Owens-Corning and Fiberglas argued that, in the event of a finding of injury, the Tribunal should grant their clients exclusions, as they had proved, on the balance of probabilities, that they had not caused injury to the complainant.

Manville/Schuller — Importer/Exporter

Counsel for Manville and Schuller argued that the problems suffered by Manson resulted, in large part, from its own actions. The systematic purchase of distributors by Manson and the associated removal of other distributors, in addition to the Manoc proposal, were perceived as an attempt by Manson to dominate the market and raised concerns in the marketplace. In addition, the anti-dumping proceedings initiated by Manson hurt the venture between Manson and CertainTeed, as the latter can no longer export to Canada and rationalization cannot take place. Also, the slow reaction of Manson in raising prices following the undertakings contributed to its problems. On the question of injury due to massive dumping, counsel argued that distributors increased their imports in order to meet previous contractual obligations to their customers at pre-set prices.

Counsel referred to the Tribunal's decision in *Carpeting*³ to state that dumping in and of itself has to be shown to be the cause of material injury and that there has to be something better than anecdotal arguments about lost sales and lost accounts. Counsel submitted that no argument was presented by the complainant regarding the alleged loss of distributors. In any case, counsel submitted that any loss of distributors was due to reasons other than pricing. Counsel also submitted that the evidence concerning accounts lost to Manville was not convincing and that any accounts which may have been lost were not due to lower pricing, as Manville's prices were higher than, or similar to, those offered by the complainant. In fact, counsel suggested that there was no evidence that Manville had, at any given time, reduced prices in a manner to hurt Manson and that price pressures occurring in the market after Manville's return were not driven by Manville, but by Manson fighting Manville's incursion into the market and reacting to the loss of Glass-Cell. Counsel asserted that there is no injury when, irrespective of margins of dumping, any lost business or contracts are not due to pricing.

Counsel argued that, based on injury factors such as employment, capacity and capacity utilization, there is no basis for past and present injury. Counsel submitted that any future injury would be due to a finding of injury which would inhibit Manson's ability to rationalize its production.

Counsel for Manville and Schuller argued that, in the event of a finding of injury, the Tribunal should grant their clients exclusions, as they had proved, on the balance of probabilities, that they had not caused injury to the complainant.

3. *Machine Tufted Carpeting Originating in or Exported From the United States of America*, Inquiry No. NQ-91-006, April 21, 1992.

Knauf — Exporter

Counsel for Knauf argued that imports by their client had not caused, were not causing and were not likely to cause material injury to Manson. They also submitted that any injury which may exist had been caused by factors unrelated to dumping, including the recession, the instability in the market created by the acquisition of distributors by the complainant, the loss of volume and market share due to distributor changes, and Manville's reentry into the Canadian market and the resulting effects on market shares.

On the question of lost accounts, counsel argued that they were lost not because of lower prices but because of factors other than price, especially when the exporters matched Manson's price. By contrast, counsel submitted that their client lost projects to the complainant on the basis of price. Counsel suggested that price pressure was applied by Manson in order to increase volume and capacity utilization.

On the question of investment retardation, counsel submitted that there was no evidence to conclude that there had been any injury due to the absence of evidence of detailed plans.

Glass-Cell — Distributor

Counsel for Glass-Cell argued that a finding of injury would have a significant impact on distributors. Regarding allegations of injury, counsel submitted that the departure of Glass-Cell was not due to dumping or to any other price consideration. A number of other factors, including concerns raised by the acquisition of distributors, the Manoc proposal and the intrusion of Manson into Glass-Cell territory, were sources of disenchantment for Glass-Cell, resulting in its decision to move to Manville. With respect to lost distributors and lost projects, counsel suggested that the loss was caused by Manson's own actions. Counsel submitted that no case could be made regarding injury due to massive importations.

Director of Investigation and Research

The Director appeared pursuant to section 125 of the *Competition Act*.⁴ He limited his submissions and examination to the issue of material injury. Counsel submitted that the Director opposes a finding of injury.

Counsel suggested that CTM could use duty-paid CertainTeed imports and, subsequently, set a blended price which would be lower than that of any other imported product. He also added that there was no evidence of such a plan, but that it was possible and, as such, that it should be considered by the Tribunal in its deliberations respecting future injury.

Counsel submitted that events which took place before the period of inquiry, such as the fall in prices which occurred before any evidence of dumping had been found and the reasons for such a fall, should be considered by the Tribunal in its deliberations. He also submitted that the impact of Manville's reentry is unrelated to dumping and that Manson's acquisitions and alliances with distributors and the resulting sense of alienation felt by distributors, in fact, facilitated Manville's reentry and, as such, are not related to dumping.

4. R.S.C. 1985, c. C-34.

ECONOMIC INDICATORS

The market for preformed fibreglass pipe insulation with a vapour barrier was basically flat from 1990 into the first half of 1993. The market had been at much higher levels in the late 1980s. Market levels shown in the Tribunal staff report are indicative of actual market activity in 1991 and 1992. Because some importers did not report their import sales in 1990, the Tribunal has concluded that the total market sales reported underestimated the level of activity in that year. Consequently, the Tribunal is of the view that there was little or no change in the market between 1990 and 1991.

ECONOMIC INDICATORS			
	1991	1992	Jan.-June¹ 1993
Domestic Sales Volume ² (% change)	(43)	(4)	(20)
Domestic Sales Plus CTM Sales from Imports (% change)	(43)	(4)	(7)
Sales from Imports ³ (000 lin. ft.)	12,629	12,662	8,869
Sales from Imports (% change)	102	0	48
Average Prices to Distributors:			
Average Domestic Prices ⁴ (% change)	4.1	(21.6)	(7.1)
Average Import Prices (% change)	(19.6)	(16.4)	(8.1)
Average Import Prices (\$/lin. ft.)	0.86	0.72	0.68
Domestic Production ⁵ (% change)	17	18	(18)
Direct Employment (% change)	0	(3)	(8)
<u>Capacity Utilization Rate</u> (%)	16	18	(10)

1. Percentage change figures in this column relate to the period from January to June 1992.
 2. Sales from domestic production, including Manson sales, CTM sales in the second quarter of 1993 and Fibreglas sales from inventory after April 1990.
 3. Excludes CTM sales from imports.
 4. Average prices for Manson and CTM sales from domestic production only.
 5. Manson's production only. Fibreglas stopped producing in Canada in April 1990.
 Source: Tribunal Staff Report.

In contrast, the Tribunal data show the market increasing in 1993. However, witnesses testified that this had not occurred and provided data on non-residential building permits to support that view. The Tribunal is of the view that the market did not improve. During 1991 and 1992, sales to distributors reflected the actual level of use of fibreglass pipe insulation. However, in the spring of 1993, this was not the case. Distributors increased their imports of pipe insulation in anticipation of the Deputy Minister accepting price undertakings, that were expected in June 1993, from the major U.S. exporters. Exporters confirmed that they had made advance sales to meet distributors' price commitments to contractors. At the beginning of July 1993, inventories in the distribution system were higher than would be warranted by the underlying level of construction activity suggested by building permit statistics.

The domestic industry's sales declined sharply between 1990 and 1991, levelled in 1992 and then declined again in the first half of 1993. In April 1990, Fiberglas ceased production of fibreglass pipe insulation in Canada. This cessation explains a significant part of the decline in domestic industry sales in 1991. In the first quarter of 1993, Manson's sales in Canada consisted entirely of production from its Brossard plant. However, in the second quarter of 1993, some of Manson's sales from domestic production were replaced by CTM imports from CertainTeed in the United States. Thus, some of the decline in sales from domestic production in the first half of 1993 was offset by imports from CertainTeed by CTM.

Sales from imports more than doubled from 1990 to 1991, levelled in 1992 and increased sharply in the first half of 1993. As already noted, the Tribunal considers that its data, as reported, understate the level of imports in 1990. However, Manville's reentry and the completion by Fiberglas of its switch from domestic production to imports accounted for a large part of the increase in imports in 1991. All of the major exporters increased their sales sharply in the first half of 1993.

There were significant changes in market shares between 1990 and the first half of 1993. Manson's share declined sharply from 1990 to 1991, levelled in 1992 and fell further in the first half of 1993. Fiberglas' share of the market declined from 1990 to 1991 and remained flat for the balance of the period of inquiry. Although Knauf's share of the market fluctuated, it increased during the period of inquiry. Upon its reentry in 1991, Manville immediately secured a significant share of the market and increased its share during the period of inquiry.

The Tribunal compiled extensive data on prices for fibreglass pipe insulation. Average prices by domestic manufacturers and exporters and importers are on a delivered-to-distributor basis, that is, prices include freight, which is high for pipe insulation. Prices declined during the period of inquiry through to the end of 1992. The decline in prices was particularly sharp in 1992. It was less steep in the first half of 1993. By then, prices were at much lower levels than in 1990. From 1991 onwards, the data show that average prices for import sales were consistently lower than those for domestic sales.

The Tribunal also examined prices paid by distributors for nine popular sizes of fibreglass pipe insulation from the first quarter of 1991 to the second quarter of 1993. In 1992, distributors' purchases of those sizes accounted for about 40 percent of the total market. These data parallel, for the most part, the basic trends shown by the average price data. They also show sharp quarterly price declines for each of the nine sizes and by the four major suppliers from the first quarter of 1991 through to the second half of 1992. Prices tend to flatten from then through to the first half of 1993. These data also show that, for most of the selected sizes, import prices for every individual exporter were lower than domestic prices.

Manson's production increased strongly from 1990 onwards, peaking in 1992. It declined in the first half of 1993 over the corresponding period of 1992. However, an analysis of Manson's sales data for domestic consumption and export, adjusted for inventory, shows that exports were responsible for the increase in total production and that production for domestic sales in fact declined during the period of inquiry.

Manson's domestic sales revenues declined during the period of inquiry, falling by 35 percent, 24 percent and 30 percent in fiscal 1992⁵ and 1993 and the first four months of fiscal 1994, respectively. Reduced unit costs, and particularly reduced cost of goods sold, from fiscal 1993 onwards gave Manson a strong net profit margin on domestic sales. Even with these cost reductions, there was a halving of its net profit margin in the first four months of fiscal 1994, compared with the corresponding period of the previous fiscal year.

After the no-competition agreement with Manville expired, Manson started exporting to the United States on a large scale. Export sales increased significantly in fiscal 1993 before falling off in the first half of fiscal 1994. Exports amounting to close to the volume of sales in the domestic market appear to have made a significant contribution in reducing unit costs and were thus a factor in maintaining Manson's profitability on domestic sales.

Manson's financial statements for domestic and export sales for the first four months of fiscal 1994 are not likely to be comparable with those of earlier periods. It was then that CTM started selling Manson's production. Sales revenue could be understated or overstated because of the pricing arrangements between Manson and CTM. These can lead to financial transfers between the two firms to offset the difference between the price obtained by CTM and the initial transfer price to CTM.

REASONS FOR DECISION

Section 42 of SIMA requires the Tribunal to determine whether the dumping of the subject goods, as found by the Deputy Minister, has caused, is causing or is likely to cause material injury to the production in Canada of like goods. The Tribunal must be satisfied that the domestic industry, which forms the subject of this inquiry, constitutes at least a major proportion of the total domestic production of preformed fibreglass pipe insulation with a vapour barrier. The Tribunal must also determine which goods are like goods to the imported subject goods. The Tribunal must then determine whether the domestic industry has suffered from, or is threatened with, material injury and whether there is a causal link between the material injury suffered and the dumping of the subject goods.

Domestic Industry

Pursuant to paragraph 42(3)(a) of SIMA, the Tribunal must take fully into account paragraph 1 of Article 4 of the GATT Anti-Dumping Code (the Code),⁶ which sets out the definition of domestic industry. Paragraph 1 of Article 4 of the Code provides that:

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

5. Manson's fiscal year is from March 1 to February 28.

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

The Tribunal finds that this requirement is met in this case because the complainant is the sole domestic manufacturer of preformed fibreglass pipe insulation with a vapour barrier.

Like Goods

For the purposes of determining injury to the domestic industry, the Tribunal has to ascertain what constitutes like goods to the imported subject goods. Subsection 2(1) of SIMA defines like goods, in relation to the imported subject goods, as:

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

The evidence is clear that the pipe insulation with a vapour barrier produced by the complainant competes with, has the same end uses as and can be substituted for the imported subject goods. Therefore, the Tribunal finds that the complainant's preformed fibreglass pipe insulation with a vapour barrier constitutes like goods to the imported subject goods.

There was some discussion during the hearing concerning products which could be used as substitutes for the subject goods. The evidence indicates that calcium silicate insulation, which is used for high-temperature industrial applications, is not a substitute for the subject goods. There was also some discussion about the possibility of substituting mineral wool insulation for the subject goods. The evidence indicates that mineral wool is a product normally considered to be an industrial insulation to be used in applications where a vapour barrier is not required. There was no evidence of any instance where mineral wool with a vapour barrier had competed with the subject goods. The Tribunal is satisfied that mineral wool and calcium silicate are not like goods to the preformed fibreglass pipe insulation with a vapour barrier.

Overview of Issues and Positions of Parties

It is clear that Manson has suffered material injury in the form of price suppression, decreased market share, lost projects and declines in revenue. What is in dispute is whether there is a causal link between the material injury suffered and the dumping as found by the Deputy Minister. If it is to make a finding of injury in this case, the Tribunal must be satisfied that such a link exists.

The Tribunal is of the view that, with respect to causation, there are three principal questions of fact which must be answered. First, to what extent, if at all, did dumping contribute to the sharp decline in prices for preformed pipe insulation which occurred during the period of inquiry? Second, to what extent, if at all, did the dumped subject goods contribute to Manson's loss of market share? And third, to what extent did lower prices and reduced market share contribute to the decline in Manson's revenues?

The Tribunal has examined a number of factors to determine the cause of the decline in prices for the subject goods and of Manson's loss of market share. Factors other than dumped imports may cause injury. In inquiring into the connection between material injury and dumping, the Tribunal must be careful to ensure that any injury, which may have been caused

by other factors, is not attributed to dumping.

Manson attributed its injury to imports, or offers of imports, at dumped prices. Counsel for Manson argued that sales of imports at increasing margins of dumping during the period of inquiry forced Manson to reduce prices in an attempt to maintain its market share. In addition, counsel contended that Manson's largest distributor joined Manville in 1991 because of Manville's lower prices, which, by the fourth quarter of 1991, were at a 23-percent margin of dumping and which were shown to be at increasing margins of dumping through 1992.

Counsel for the exporters and importers argued that demand for the subject preformed fibreglass pipe insulation declined after 1989 in response to recessionary factors, in particular, a decline in new non-residential construction. In these circumstances, market prices for pipe insulation declined. Also, in 1989 and 1990, lower prices in the northeastern United States encouraged Canadian traders, distributors and contractors to take advantage of the Canada/United States price differential that existed at that time and to import the subject goods directly from U.S. distributors. In February 1991, Manville reentered the Canadian market. Counsel contended that Manson's largest distributor moved to Manville for reasons unrelated to price. Manson reacted to the addition of a fourth major supplier to the market by cutting prices. Counsel argued that Manson led prices down from 1991 to the first half of 1993. Exporters and importers were forced to reduce prices in order to remain competitive. Counsel also argued that Manson's restructuring of its distribution network and acquisition of a number of its distributors since 1986 established a feeling of mistrust among its independent distributors that contributed to decisions by a number of them to move to Manville in 1991. Finally, counsel argued that Manson was designating increasing volumes of production to the export market, which would account for any loss of domestic production for domestic consumption.

Changes in Market Conditions

Clearly, Manville's departure from the market in 1986 and, particularly, its return in 1991 were crucial milestones in the evolution of the market for the subject goods in Canada. However, there were other factors which had an impact on the market and, especially, on prices.

In the late 1980s, selling prices in the northeastern United States were substantially lower than Canadian prices for the subject goods. Evidence and testimony confirm that, in 1989 and into 1990, some independent importers acquired the subject goods from U.S. distributors at prices that were lower than those available to supplier-aligned distributors in Canada. Unlike Canadian distributors, U.S. distributors generally carry the products of all U.S. suppliers of the subject goods, and these low prices were available for pipe insulation manufactured by all of the major U.S. manufacturers.

Evidence adduced at the hearing by Glass-Cell established that, in 1990, insulation contractors were pressuring distributors and, through them, all of the major suppliers to lower prices in Canada. Manson's largest distributor at the time, Glass-Cell, requested price concessions. Initially, Manson refused, but agreed to a reduction after Glass-Cell made an importation of Manville products from a U.S. distributor and convinced Manson that low-priced U.S. product was readily available to Canadian distributors. The availability of lower-priced U.S. imports increased price competition in the Canadian market in 1990. Testimony confirms that, during this late 1980s and very early

1990 period, there was downward pressure on Canadian prices for pipe insulation caused by lower-priced imports from U.S. distributors. The Tribunal is satisfied that suppliers in Canada were forced to meet those prices.

This external pressure on prices coincided with a major weakening of the market as a result of the recession. The evidence and testimony of all parties confirm that the market demand in 1990 was significantly lower than it was in the late 1980s. As a consequence of lower demand, price competition increased and prices were lower in 1990 than they had been in the late 1980s. However, there was disagreement among the parties on whether the recession continued to have an impact on demand after 1990 and, if so, on the effect that it had on prices. Exporters argued that the recession continued to suppress demand and, in fact, was a cause of the decline in prices. On the other hand, Manson witnesses testified that growth in demand in the institutional sector, asbestos abatement and removal projects, and insulation upgrade projects substantially offset the apparent decline in demand based on the declining trend in the total value of commercial building permits. In the Tribunal's view, the main effect of the recession was observed in 1990. The confidential market data show that demand did not decline after 1990, but remained flat from 1991 through to the first half of 1993, taking into account the advance purchases by importers in the spring of 1993. The Tribunal finds that the data on building permits could be interpreted to show that there was a steady decline in the market for the subject goods. However, the Tribunal considers the data on building permits to be inconclusive, in light of the testimony that it heard and the data filed regarding sales.

For the Tribunal, competition from imports from U.S. distributors and the recession led to a decline in prices in the late 1980s and in early 1990. However, in the Tribunal's view, the effect of these factors on prices was played out by the end of 1990.

Other factors, including tariff reductions under the *Canada-United States Free Trade Agreement*⁷ (the FTA) and exchange rate fluctuations, may have had some effect on prices in the Canadian market. However, the Tribunal notes that neither the industry nor the exporters attributed any importance to exchange rate fluctuations or the FTA's influence on prices for pipe insulation.

Manville's Reentry in 1991

In February 1991, Manville reentered the Canadian market after a five-year absence and began importing from Schuller in the United States. As the Tribunal has already noted, Manville's reentry was a crucial event, with the number of major suppliers increasing from three to four overnight. Much of the testimony focused on the impact of Manville's reentry. The Tribunal has carefully examined the effects of Manville's reentry on prices for the subject fibreglass pipe insulation, on Manson's market share and on the role of prices in the distributors' decisions to move to Manville. The Tribunal notes that Manville had been planning its reentry into the Canadian market from about 1989. In 1990, Manville conducted an analysis of Canadian prices. Manville testified that it considered servicing the Canadian market by exporting through its U.S. distributors, but concluded that prices in Canada would be driven down by such a strategy. Accordingly, Manville decided, in 1990, to reenter the Canadian market by establishing its own Canadian distribution network.

7. *Canada Treaty Series*, 1989, No. 3 (C.T.S.), signed on January 2, 1988.

Manville engaged in considerable preparatory discussions with distributors. The evidence indicates that discussions were initiated by both Manville and a number of former Manville distributors that approached Manville about becoming distributors. As a result, Manville was able to reenter the market with distributors established in the three major regional markets of Western Canada, Ontario and Quebec. These included: Glass-Cell, that switched from Manson; Bartells, an affiliate of Fuller Austin that was a former Manville distributor; and Isofab, a new distributor in Quebec. Manville was clearly confident that its reentry would be successful and anticipated securing a significant share of the market in 1991 and increasing that share by 1993.

Manville witnesses testified that their strategy was to reenter the Canadian market with minimal disruption to the distribution structure and prices. They said that Manville's pricing strategy was to be competitive with Manson, but not below the domestic manufacturer.

Manson suffered a severe loss of market share when Glass-Cell, its largest distributor, moved to Manville in February 1991. In 1991, Glass-Cell purchased over two million linear feet of the subject pipe insulation from Manville. Given the magnitude of this loss of business, it became important for the Tribunal to determine if Glass-Cell left Manson because of Manville's lower prices.

Witnesses for Glass-Cell and Manville testified that Glass-Cell had held discussions with Manville in 1989 and 1990 about becoming a Manville distributor. In fact, Glass-Cell and Manville had an agreement in principle before Manville returned. The witness for Glass-Cell testified that price was not central to these advance discussions. The Tribunal notes that Glass-Cell also testified that joining Manville would significantly increase its potential market to include virtually all of Ontario. By comparison, if Glass-Cell had remained with Manson, it would have had limited potential for increasing sales in the Ontario market.

Counsel for the exporters and importers contended that distributors left Manson because of its behaviour in the market. They argued that Manson's poor relationship with its distributors, stemming from its acquisitions of independent distributors and the restructuring of its network in Western Canada, encouraged its distributors to switch to Manville as soon as the opportunity arose. Glass-Cell testified that the acquisition of C&I by Crossroads in 1992 was disturbing, but that it was not concerned about Manson attempting to acquire it. Glass-Cell testified that it was concerned about potential incursions into its Toronto market by Chemical Valley, a Manson-owned distributor in Ontario. This concern grew out of having observed Manson's purchase of Crossroads in 1987 and the subsequent extension of that distributor's offices into areas already supplied by existing Manson distributors.

The Tribunal acknowledges that there were many factors involved, in particular, distributors' decisions to join Manville. For example, the Tribunal also heard testimony that, in 1991, Manville was approached by Insul-Coustic, Manson's distributor in eastern Ontario, requesting that it be named Manville's Quebec distributor. Clearly, Insul-Coustic was attempting to obtain direct access to a supply of the subject goods for distribution in the Quebec market. Manson had refused Insul-Coustic the right to sell the Manson subject goods in Quebec some five years earlier. However, it is clear from the evidence and testimony that it is a major business decision for a distributor to change its supplier, and the prices offered by its new supplier are crucial to that decision. Given the

extremely narrow price range in which all participants in the market for the subject goods must compete, the Tribunal is of the view that no distributor would move to a new supplier unless it were confident that the supplier would offer the price support necessary to keep it competitive. Clearly, Glass-Cell would not change its source of supply without having firm assurances that it would be able to compete on price. Manville had every reason to ensure that all its distributors were competitive if its reentry into the market was to be successful. A Schuller witness testified that Manville would support its distributors "through thick and thin." In the Tribunal's view, Manville's commitment to keeping its distributors price competitive was the cornerstone of its appeal to potential distributors and contributed greatly to Manville's ability to quickly establish a national distribution network.

With these assurances, Glass-Cell was prepared to move to Manville. The evidence confirms that Manville fulfilled its commitment, as its average prices were lower than Manson's prices in 1991. In the Tribunal's view, Glass-Cell left Manson due to price, and this loss of distribution caused a severe reduction in Manson's market share.

Price Erosion

From the first quarter of 1991 through to the second quarter of 1993, the market for the subject goods was characterized by price erosion. Manson's prices declined by over 30 percent during this period. The Tribunal needed to determine the cause of that erosion. The Tribunal agrees with counsel for Manson that Manville failed to achieve its objective of minimal disruption. By February 1991, when Manville reentered the Canadian market, prices were already lower, and the market was significantly more price competitive than was indicated by Manville's 1990 price analysis. Manville's presence exacerbated these circumstances. The three existing major suppliers all reduced prices in a bid to minimize their losses of market share.

The testimony of export suppliers confirms that they had fully expected Manville to reenter the Canadian market at the conclusion of the five-year, no-competition agreement with Manson. All anticipated some loss of business and acknowledged that a response to Manville's challenge was inevitable. However, the testimony of exporters shows that Manville's penetration of the market immediately upon reentering was greater than expected. Faced with the prospect of further losses of market share, competing exporters reduced their prices sharply during 1991. Average import prices declined in 1991 by approximately 20 percent. Average domestic industry selling prices held in 1991. However, in 1992, Manson had to reduce prices sharply to remain competitive, as import prices continued to decline, falling about 16 percent. In the first half of 1993, average import prices and domestic prices continued to decline, although less severely than in the previous period.

Once the exporters reduced their prices, severe price competition ensued, and they were unable to halt the downward spiral of prices. The Tribunal notes the evidence showing that, from 1991 into 1993, attempts by exporters and importers and the domestic manufacturer to sustain price increases failed due to the refusal of competing suppliers to support price increase announcements.

Counsel for Manville argued that Manson was unprepared for Manville's reentry and resorted to price cutting to defend its market share. However, the evidence does not support the argument that Manson led prices down. Prices started to decline rapidly with Manville's reentry in the first quarter of 1991. The evidence reveals that, during the

period of inquiry, average import prices fell by over 44 percent, while Manson's prices fell by over 30 percent. The Tribunal notes that the increasing margins of dumping closely track the declining import prices for the subject goods. The evidence also reveals that, during the entire period of inquiry, average import prices were lower than Manson's average prices. In the Tribunal's view, it is clear that Manson was caught in a decreasing price spiral which was driven by exporters that relentlessly lowered their prices and increased their margins of dumping. The notion that Manson led prices downward is rebutted by the facts that average import prices were consistently lower than those of Manson and that the exporters' price reductions during the period of inquiry were significantly greater than those of Manson.

The analysis of prices of nine popular sizes of fibreglass pipe insulation shows sharp quarterly declines in 1991 and 1992, with prices flattening in the first half of 1993. All suppliers' prices for the nine sizes remained within a narrow range. For most of the nine sizes, import prices were consistently lower than the domestic industry's price during the period.

The parties did not dispute that there was a major decline in prices between the first quarter of 1991 and the second quarter of 1993. According to data on average selling prices for the subject pipe insulation and purchases of the nine popular sizes, the decline in prices over that period exceeded 30 percent. The Tribunal is convinced that the decline in prices was caused by dumped imports. The margins of dumping, as calculated by the Deputy Minister, increased from 28 percent in the third quarter of 1991 to 45 percent in the fourth quarter of 1992. The increase in margins of dumping tracks closely the rate of decline in prices in the market. The key conclusion for the Tribunal is that export prices could only fall to the low levels at which they did because of increasingly large margins of dumping. In order to hold its share of the market, the domestic industry had to reduce its prices well below those that would have prevailed in the absence of dumped imports.

Lost Projects

In this inquiry, there was voluminous evidence and testimony on the bidding for installation contracts. Manson submitted over 20 allegations of business that it lost to three named exporters during the period of inquiry. The exporters and importers responded in submissions and testimony to these allegations. The Tribunal notes that the evidence on lost projects illustrates that preformed fibreglass pipe insulation has the characteristics of a commodity product in that, within each size, the product of different suppliers is fully interchangeable. The Tribunal notes the highly price-sensitive nature of the market for the subject goods. The evidence indicates that, to be competitive, bids on projects had to fall within a narrow price spread of two to five percentage points. Bids outside of that range would not be considered.

The evidence demonstrates not only that Manson lost business to imports but also that project bid prices were a major influence on the downward trend in average prices. As project bids declined, Manson was forced to reduce its prices in order to stay within the narrow competitive price spread. The attempt was not always successful. Manson lost 18 projects to dumped imports over the 1991-93 period. Evidence and testimony respecting 13 of the projects confirm that, in 12 cases, the importer's bid price was lower than Manson's price. One allegation of a lost contract to a lower import price was not contested by any party. In the remaining 5 cases, Manson lost the contract when its bid was matched by an imported product distributor, and the contractor awarded the project

to that distributor. Of the contracts lost to lower-priced imports or matched prices, 9 were allegedly lost to Fiberglas, 7 to Knauf and 2 to Manville distributors. In fiscal year 1993 (March 1992 to February 1993), Manson's sales revenue would have been more than 25 percent higher in the absence of contracts lost to import suppliers.

It appears from the evidence that importers' bid prices on specific projects contributed to a downward pressure on prices. In 1991 and 1992, the successful bid prices on each project in effect lowered the perceived upper limit of the competitive price spread on the next projects to be tendered. In response, players lowered their bids on subsequent projects, which no doubt contributed to the decline in prices during the period of inquiry.

The exporters alleged that Manson, through its distributors, was price aggressive and had taken some projects away from distributors of imported products. The Tribunal has already concluded that Manson did not lead prices down, and the evidence on alleged lost accounts by exporters does not alter this conclusion. These allegations indicate that about half of the contracts (13 out of 27) lost to Manson were on the basis of price. Clearly, Manson was faced with competition from dumped imports. Essentially, it had the choice of meeting or pricing below import prices or losing the business.

The evidence on lost projects demonstrates that Manson lost business to imports at lower prices and that bidding on successive large contracts was a major factor in pushing prices down during the period of inquiry. Exporters were able to compete for these projects at the low prices at which they did only because their imports were dumped at increasingly high margins from 1991 into 1993.

Lost Market Share

In what was essentially a flat market, Manson lost 22 percent⁸ of its market share in 1991. Manson could not recover that lost market share during the period of inquiry due to competition from low-priced dumped imports. The Tribunal found that preformed fibreglass pipe insulation with a vapour barrier is essentially a commodity product. As such, competition for sales is based almost exclusively on price. Given the significance of price in determining sales, the Tribunal is drawn inescapably to the view that lower-priced dumped imports contributed significantly to Manson's loss of market share.

Material Injury

There is evidence, in this case, of injury to Manson in the form of price suppression, decreased market share, lost projects and declining revenues.

Regarding price suppression, the evidence discloses that prices for the subject goods decreased significantly during the period of inquiry. Specifically, average import prices to distributors fell by 20 percent in 1991, 16 percent in 1992 and 8 percent in 1993.

8. The Tribunal concluded previously that, based on all of the evidence before it, the market was flat in 1990 and 1991. Therefore, using the 1991 market volume figure for the 1990 market, Manson's market share in 1990 would be lower than that indicated in the Tribunal's market table. On this basis, there was a 22-percent decline in Manson's market share in 1991.

Over the same period, Manson's average prices for the subject goods fell by over 30 percent. The Tribunal notes that average import prices were lower than Manson's average prices throughout the period of inquiry. The evidence establishes that import prices for the subject goods declined to levels that were only possible because those goods were being dumped. As a result of the low prices of these dumped goods, Manson had to reduce its prices well below the levels that would have existed in the absence of dumping. In the Tribunal's view, had Manson not reduced its prices, it would have lost greater market share than it did.

With respect to market share, the evidence indicates that Manson's share of the market decreased by 22 percent in 1991. Manson has not yet recovered that lost market share. Manson lost a significant portion of that market share when Glass-Cell moved to Manville from Manson when Manville reentered the Canadian market in 1991. The Tribunal is of the view that one of the major reasons for Glass-Cell leaving Manson and joining Manville was its knowledge that Manville would provide it with competitive pricing for the subject goods.

Manson's reduced market share was, in part, the result of unsuccessful bids for contract work. The evidence indicates that Manson lost 18 projects to dumped imports over the 1991-93 period.

Not surprisingly, the fact that Manson lost market share and was forced to lower prices in order to compete with dumped imports resulted in substantial annual declines in Manson's domestic sales revenues. Manson's revenues from domestic sales declined by 15 percent in 1991, 24 percent in 1992 and 9 percent in the first half of 1993.

The Tribunal finds that Manson has been and is being materially injured as a result of price suppression, decreased market share, lost projects and declining revenues.

Counsel for exporters argued that Manson was not injured because its total production increased between 1990 and 1992. For the Tribunal, this increase was largely attributable to increased export business, and in fact, as noted above, production for domestic sales declined during the period of inquiry. In the Tribunal's view, had Manson not increased its exports, imports at dumped prices would have caused even greater injury.

Future Injury

With respect to injury in the future, the Tribunal notes that, while prices appear to have stabilized in the first half of 1993, they still remain low. There is ample evidence of failed attempts to raise prices. There is nothing to suggest that the players in the market will succeed in subsequent attempts to increase prices. The Tribunal is, therefore, of the view that it is likely that, in the absence of a finding of injury, dumped imports will continue to enter Canada and keep prices at suppressed levels.

In June 1993, Manson acquired Multi-Glass, a large former Fiberglas distributor. The Tribunal agrees that this acquisition will assist Manson in recovering its competitive presence in the Ontario market which was lost when Glass-Cell moved to Manville. However, the Tribunal does not believe that Manson's improved presence in the market will protect it from injury from dumped imports in the near future. Based on its observation of the operation of the market for the subject goods in the 1990-93 period, the Tribunal is of the view that exporters are likely to take future price action in response

to Manson's strengthened position in Ontario. The Tribunal is of the view that this price action could further contribute to price instability in the market. These two basic considerations lead the Tribunal to conclude that, in the absence of a finding of injury, injurious dumping will continue in the future to the detriment of the domestic industry.

Massive Dumping

In argument, counsel for the complainant addressed the issue of massive dumping, as contemplated under section 5 and paragraph 42(1)(b) of SIMA. Counsel drew the Tribunal's attention to the fact that imports of the subject goods had increased from 6.0 million linear feet in the first half of 1992 to 8.9 million linear feet in the first half of 1993. However, counsel indicated that they made "no formal recommendation" to the Tribunal with respect to this issue.

Counsel for Schuller, Manville, Owens-Corning and Glass-Cell all argued against a finding of massive dumping. Counsel referred the Tribunal to the testimony of various distributors. They testified that they had purchased greater quantities of the subject goods in the first half of 1993 in order to allow them to fulfil price commitments to their customers under existing contracts. Counsel also pointed out that, before section 5 of SIMA can be invoked, it must appear "necessary to the Tribunal that duty be assessed on the imported goods" in order to prevent the recurrence of the injury that was occasioned by the massive dumping.

The Tribunal is not persuaded that the evidence in this case supports a finding of massive dumping. There are a number of elements that must exist before such a finding can be made. The Tribunal does not intend to enumerate them here or make findings with respect to each element. The Tribunal agrees with the submissions of counsel for the exporters, insofar as those submissions relate to the prevention of a recurrence of injury. In light of the distributors' explanation for the increased levels of imports in the first half of 1993, the Tribunal is of the view that it is not necessary for duty to be imposed retroactively in order to prevent a recurrence of injury.

Retardation

Counsel for the complainant argued that there was "an element" of retardation in this case. In support of this position, they referred the Tribunal to certain portions of Mr. Keith Eaman's evidence, much of which was given *in camera*. Counsel for Owens-Corning submitted that subsection 2(1) of SIMA defines retardation as the retardation of the establishment of the production in Canada of like goods. They argued that, as there is currently production of like goods in Canada, there can be no retardation. Counsel for Knauf argued that the complainant's retardation claim should be dismissed. They submitted that the complainant had failed to adduce any detailed plans which indicated that it had made a decision to move forward with additional capital investment.

The Tribunal is of the view that, in order to succeed in a claim of retardation, a complainant must establish that:

- there has been retardation in relation to the establishment of an industry; and
- it has made a substantial commitment to establish such an industry.

The Tribunal is not satisfied that the complainant has established either of these two elements. With respect to the first element, the Tribunal notes that the complainant currently owns and operates a manufacturing plant in Canada which produces like goods. On the basis of that fact, the Tribunal is of the view that there is, in Canada, a domestic industry which produces like goods. On that ground alone, the complainant's claim of retardation must fail. With respect to the second element, the Tribunal is not persuaded that the complainant has made a substantial commitment to establish an industry or to expand its capacity within the extant domestic industry.

Requests for Exclusions

Counsel for Schuller, Manville and Owens-Corning requested that the Tribunal, in the event of a finding of injury, provide their respective clients with exclusions. In this regard, the Tribunal notes that it is within its discretion to grant such exclusions.⁹ The onus is on the person requesting the exclusion to establish that it is warranted.¹⁰

Counsel for Schuller and Manville argued that the Tribunal should grant their clients exclusions, as they had proved, on the balance of probabilities, that they had not caused injury to the complainant. In requesting an exclusion for Owens-Corning, its counsel adopted the argument advanced by counsel for Schuller and Manville.

The Tribunal has decided against granting exclusions to Schuller, Manville and Owens-Corning. In reaching this decision, the Tribunal considered that:

- the companies all export significant quantities of the subject goods to Canada;
- the margins of dumping and the percentage of the subject goods dumped by each of the companies are high; and
- the companies' collective actions, together with the actions of Knauf, resulted in declines in domestic prices for the subject goods and generally caused material injury to Manson.

CONCLUSION

For the reasons stated above, the Tribunal concludes that the dumping in Canada of preformed fibreglass pipe insulation with a vapour barrier, originating in or exported from the

9. See, e.g. *Hitachi Limited v. The Anti-dumping Tribunal*, [1979] 1 S.C.R. 93; *Sacilor Aciéries v. The Anti-dumping Tribunal* (1985), 9 C.E.R. 210 (Federal Court of Appeal, File No. A-1806-83, June 27, 1985); and Article 1904 Binational Panel, *Certain Dumped Integral Horsepower Induction Motors, One Horsepower (1 HP) to Two Hundred Horsepower (200 HP) Inclusive, with Exceptions, Originating in or Exported from the United States of America*, 4 T.C.T. 7065, September 11, 1991.

10. *Certain Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate, Heat-Treated or Not, Originating in or Exported From Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom, the United States of America and the Former Yugoslav Republic of Macedonia*, Canadian International Trade Tribunal, Inquiry No. NQ-92-007, Statement of Reasons, May 21, 1993.

United states of America, has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

The Tribunal also concludes that the dumping in Canada of the aforementioned goods, originating in or exported from the United States of America, did not contravene paragraph 42(1)(b) of SIMA.

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

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Desmond Hallissey
Desmond Hallissey
Member