



Ottawa, Wednesday, July 20, 1994

**Inquiry No.: NQ-93-006**

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

**BLACK GRANITE MEMORIALS OF ALL SIZES AND SHAPES  
AND BLACK GRANITE SLABS IN THICKNESSES EQUAL TO OR GREATER  
THAN THREE INCHES, ORIGINATING IN OR EXPORTED FROM INDIA**

**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 of a preliminary determination of dumping and subsidizing dated March 22, 1994, and of a final determination of dumping and subsidizing dated June 17, 1994, respecting the importation into Canada of black granite memorials of all sizes and shapes and black granite slabs in thicknesses equal to or greater than three inches, originating in or exported from India.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada and subsidizing of the aforementioned goods, originating in or exported from India, have caused, are causing and are likely to cause material injury to the production in Canada of like goods.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Desmond Hallissey

Desmond Hallissey  
Member

Michel P. Granger

Michel P. Granger  
Secretary

The statement of reasons will be issued within 15 days.

**Inquiry No.: NQ-93-006**

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: June 20 to 23, 1994

Date of Finding: July 20, 1994

Tribunal Members: Charles A. Gracey, Presiding Member  
Raynald Guay, Member  
Desmond Hallissey, Member

Director of Research: Sandy Greig

Research Managers: Don Shires  
Richard Cossette

Economist: Simon Glance

Statistical Officer: Margaret Saumweber

Counsel for the Tribunal: David M. Attwater

Registration and  
Distribution Officer: Joël Joyal

**Participants:**

for James P. McIlroy  
Canadian Granite Association

**(Complainant)**

Stuart E. Hendin, Q.C.  
James W. Touhey, Q.C.  
Brian Munro  
for Kilvington Brothers Limited  
Taygor Granite Imports Inc.  
Mafer Inc.  
Government of India  
Gem Granites  
Ontario Monument Builders Association

for Mark D. Nordman  
Granite Resources Corp.  
Amman Granites

for Kimberley L.D. Cook  
Wyatt S. Holyk  
M S International, Inc.  
Monuments India, Division of Granite  
(India) Pvt. Ltd.  
Oriental Select Granites Pvt. Ltd.  
Enterprising Enterprises

**(Importers/Exporters/Others)**



Ottawa, Thursday, August 4, 1994

**Inquiry No.: NQ-93-006**

**BLACK GRANITE MEMORIALS OF ALL SIZES AND SHAPES  
AND BLACK GRANITE SLABS IN THICKNESSES EQUAL TO OR GREATER  
THAN THREE INCHES, ORIGINATING IN OR EXPORTED FROM INDIA**

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

**DECISION:** The Canadian International Trade Tribunal hereby finds that the dumping in Canada and subsidizing of black granite memorials of all sizes and shapes and black granite slabs in thicknesses equal to or greater than three inches, originating in or exported from India, have caused, are causing and are likely to cause material injury to the production in Canada of like goods.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	June 20 to 23, 1994
Date of Finding:	July 20, 1994
Date of Reasons:	August 4, 1994
Tribunal Members:	Charles A. Gracey, Presiding Member Raynald Guay, Member Desmond Hallissey, Member
Director of Research:	Sandy Greig
Research Managers:	Don Shires Richard Cossette
Economist:	Simon Glance
Statistical Officer:	Margaret Saumweber
Counsel for the Tribunal:	David M. Attwater
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James W. Touhey, Q.C.  
Brian Munro  
Kilvington Brothers Limited  
Taygor Granite Imports Inc.  
Mafer Inc.  
Government of India  
Gem Granites  
Ontario Monument Builders Association

for Mark D. Nordman  
Granite Resources Corp.  
Amman Granites

for Kimberley L.D. Cook  
Wyatt S. Holyk  
M S International, Inc.  
Monuments India, Division of Granite  
(India) Pvt. Ltd.  
Oriental Select Granites Pvt. Ltd.  
Enterprising Enterprises

**(Exporters/Importers/Others)**

**Witnesses:**

Arthur LaPenna  
President, Dominion Granite Ltd.  
President, Canadian Granite Association

Peter Pakalski  
President  
Granite Resources Corp.

Ted Haydon  
President, Rock of Ages Canada Ltd.  
Vice-President, Canadian Granite  
Association

Robert L. Youngs  
General Manager  
Kilvington Brothers Limited

John Matthews  
Sales Manager  
Tingley Monuments Limited

Brian O'Brine  
President  
Kirkpatrick & O'Brine Ltd.

Holly Reeson  
Branch Service Representative  
Remco Memorials Ltd.

Douglas King  
President/Owner  
Smith Monument Co. Ltd.

Terry Huzarski  
Senior Program Officer  
Anti-dumping and Countervailing  
Division  
Department of National Revenue

Emery Grenier  
President  
Lepitre Granite Works Ltd.

Manu Shah  
President  
M S International, Inc.

Frank St-Pierre  
President  
Mafer Inc.

Garth S. Nelson  
President  
The Stone Centre

R. Veeramani  
Chairman  
Gem Granites

Jim Strain  
General Manager  
Taygor Granite Imports Inc.

Address all communications to:

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



Ottawa, Thursday, August 4, 1994

**Inquiry No.: NQ-93-006**

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

**BLACK GRANITE MEMORIALS OF ALL SIZES AND SHAPES  
AND BLACK GRANITE SLABS IN THICKNESSES EQUAL TO OR GREATER  
THAN THREE INCHES, ORIGINATING IN OR EXPORTED FROM INDIA**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
RAYNALD GUAY, Member  
DESMOND HALLISSEY, Member

**STATEMENT OF REASONS**

**CONDUCT OF THE INQUIRY**

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*<sup>1</sup> (SIMA), has conducted an inquiry following the issuance by the Deputy Minister of National Revenue (the Deputy Minister) of a preliminary determination of dumping and subsidizing<sup>2</sup> dated March 22, 1994, respecting the importation into Canada of black granite memorials of all sizes and shapes and black granite slabs in thicknesses equal to or greater than three inches, originating in or exported from India (the subject goods). In the preliminary determination, the Deputy Minister joined the dumping investigation and the subsidy investigation pursuant to section 38 of the *Special Import Measures Regulations*.<sup>3</sup> On June 17, 1994, the Deputy Minister made a final determination of dumping and subsidizing<sup>4</sup> respecting the subject goods.

On March 28, 1994, the Tribunal issued a notice of commencement of inquiry.<sup>5</sup> As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian producers, importers and purchasers of the subject goods, requesting production, financial, import and market information, as well as other information, covering the period from January 1, 1990, to the end of the first quarter of 1994. From the replies to the questionnaires and other sources, the Tribunal research staff prepared public and protected pre-hearing staff reports.

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 filed a declaration and undertaking with the Tribunal.

1. R.S.C. 1985, c. S-15.
2. *Canada Gazette* Part I, Vol. 128, No. 14, April 2, 1994, at 2013-14.
3. SOR/84-927, November 22, 1984, *Canada Gazette* Part II, Vol. 118, No. 25 at 4286.
4. *Supra*, note 2, No. 27, July 2, 1994, at 3210.
5. *Supra*, note 2, No. 15, April 9, 1994, at 2116-17.

Public and *in camera* hearings were held in Ottawa, Ontario, from June 20 to 23, 1994. The complainant, the Canadian Granite Association (the CGA), was represented by counsel at the hearing. Gem Granites (Gem), Monuments India, Division of Granite (India) Pvt. Ltd. (Monuments India), Enterprising Enterprises, Granite Resources Corp. (Granite Resources), M S International, Inc. (M S International), Amman Granites (Amman), Oriental Select Granites Pvt. Ltd. (Oriental Select) (exporters), Taygor Granite Imports Inc. (Taygor), Mafer Inc. (Mafer) (importers), Kilvington Brothers Limited (Kilvington) (retailer), the Ontario Monument Builders Association (the OMBA) and the Government of India were also represented by counsel at the hearing.

On July 20, 1994, the Tribunal issued a finding that the dumping in Canada and subsidizing of black granite memorials of all sizes and shapes and black granite slabs in thicknesses equal to or greater than three inches, originating in or exported from India, have caused, are causing and are likely to cause material injury to the production in Canada of like goods.

## **PRODUCT**

### **Product Definition**

The product that is the subject of this inquiry is described by the Deputy Minister in the preliminary determination of dumping and subsidizing as black granite memorials of all sizes and shapes and black granite slabs in thicknesses equal to or greater than three inches, originating in or exported from India.

A commercial definition provided by the complainant defines granite as "a natural hard stone, that can be cut, sawn or polished, or undergo any combination of these processes, and can receive any type of finish which modifies the original finish."<sup>6</sup>

The term "memorials" includes "granite tombstones, bases, slants, upright sloping dies, hickies, tablets, wings, vases, crosses, grave markers and pieces which, when assembled, can be utilized as a memorial."<sup>7</sup> The subject goods are most commonly referred to as jet black memorials. Trade names used in the industry include "Absolute Black," "India Black," "Premium Plus Black," "Premium Black" and "Star Black." The principal sources of black granite blocks used in the domestic production of memorials and slabs are South Africa and Zimbabwe.

The two primary categories of memorials<sup>8</sup> are upright monuments and flat markers. Upright monuments are specified by their dimensions, polish and finish type, and top profile. Dimensions are normally given as width, thickness and height. Popular sizes include 30 in. x 6 in. x 24 in.<sup>9</sup> and 30 in. x 8 in. x 24 in. A monument has

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6. Department of National Revenue, Final Determination of Dumping and Subsidizing, June 17, 1994, Statement of Reasons, Tribunal Exhibit NQ-93-006-4, Administrative Record, Vol. 1 at 54.8.

7. *Ibid.* at 54.9.

8. The term "memorials" is a generic term covering upright monuments, flat markers and other memorials. The terms "memorials" and "monuments" are used interchangeably in the industry to mean upright memorials.

9. A monument of this size would have a volume of 2.5 cu. ft.

essentially a rectangular shape and has, therefore, six surfaces. Monuments may be polished on two, three or five surfaces; hence the terms P2, P3 and P5. A P2 monument would be polished on its two largest surfaces, front and back. A P3 monument would also have a polished top, and a P5 monument would have all five exposed surfaces polished. The unpolished exposed surfaces on monuments are chiselled to give the surface a natural rock appearance referred to as "rock pitch." Thus, monuments are described first by the number of polished surfaces, P2, P3 or P5, and, for those with rock pitch surfaces, the additional designation of "balance rock pitch" (BRP) is provided, for example, P2 BRP. The bottom (bed) of all monuments is sawn to ensure a flat surface.

There are three broad categories of memorial profiles: common, modified common and special shapes. According to the CGA, roughly 65 percent of the domestic industry's sales of black granite memorials are common profiles, that is, with a flat or serpentine top. Approximately 25 percent of sales are modified common profiles that have some value-adding features, such as shaped corners. The balance of black granite memorial sales are special shapes, for example, stacked hearts and the book of life.

Flat markers are generally 3 in. thick and are designated by their length, width and height. The most common flat marker size is 24 in. x 12 in. x 3 in.

The memorials subject to this inquiry are referred to as polished blanks. The memorials are finished except for the engraving or etching and are sold in that form. Engraving is a service that producers or importers may provide or arrange to have done for a customer, but it is a separate transaction that is not included in the wholesale selling price of a memorial. Imported memorials arrive in Canada as finished blanks and are engraved locally.

Slabs are defined as "rectangular pieces of granite with at least two sides roughly trimmed, cut, sawn or polished."<sup>10</sup> Slabs used in the production of monuments are cut from blocks into thicknesses ranging from 3 in. to 12 in. As the most popular monument thicknesses are 6 in. and 8 in., these are also the most common slab thicknesses.

Granite product quality is assessed in terms of fineness of grain, colour, consistency of colour, polish lustre, strength, durability, density, water absorption and contrast.

Domestic producers and importers sell to retail monument outlets or cemeteries, which in turn sell to consumers. Prices are set using published list prices, from which a number of discounts are offered.

### **Production Process**

The production of black granite memorials begins with the cutting of large blocks of granite<sup>11</sup> into slabs. Computer-controlled diamond saws determine the mix of slab

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10. *Supra*, note 6 at 54.9.

11. Blocks are not subject goods.



thicknesses that may be obtained from a single block with the least amount of waste.<sup>12</sup> The granite slabs are polished on the front and back surfaces with machines known as "bridge polishers" which move over the surface of the slab. A few producers still use stationary polishing machines under which the slabs move.

The memorial profiles that utilize the maximum amount of the polished slab are drawn on the surface of the slab, which is eventually the front of the memorial, and the slab is then split into the desired sizes with a hydraulic splitter. The next stages in the process vary depending on the type of finish that the completed memorial will have and on its intended profile, as previously explained. At the completion of this stage of the process, the product is referred to as a polished blank.

The final stage in finishing a granite memorial is the engraving, which is done by using a full-size, rubber-like stencil of the artwork and family name(s). The stencil is applied to the face of the polished blank and the pattern is sandblasted into the surface. Diamond etching and other custom work may be required depending upon the customer's specifications.

The same production process applies to the production of flat markers, except that the back of the slab is not polished, as it becomes the bottom when it is installed in the cemetery.

## **DOMESTIC INDUSTRY**

Domestic producers can be divided into three main categories: primary producers, granite processors and secondary producers.

Primary producers are involved in all stages of memorial production. These producers import blocks of black granite from which they produce slabs and, ultimately, memorials. Presently, there are 16 primary producers of memorials in Canada, which account for approximately 87 percent of the domestic production of granite memorials and slabs.<sup>13</sup> They are concentrated in Beebe, Quebec. The majority of these producers are privately owned companies. The exception is Rock of Ages Canada Ltd. (Rock of Ages), which is a wholly owned subsidiary of Rock of Ages Corporation of Barre, Vermont.

Some primary producers are integrated and operate their own quarries and retail outlets. Three primary producers that operate their own retail outlets are Heritage Memorials Limited of Windsor, Nova Scotia, Nelson Monuments Ltd. (Nelson) of Sussex, New Brunswick, and Tingley Monuments Limited of Amherst, Nova Scotia. A fourth primary producer, Imperial Granite Inc. (Imperial), is owned by a large retailer, Remco Memorials Ltd. (Remco) of Regina, Saskatchewan.

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12. Wire saws are also used to cut blocks of granite into slabs, but these are steadily being replaced by more sophisticated diamond saws.

13. Department of National Revenue, Preliminary Determination of Dumping and Subsidizing, March 22, 1994, Statement of Reasons, Tribunal Exhibit NQ-93-006-1, Administrative Record, Vol. 1 at 12-13.

Three of the primary producers, Rock of Ages, Dominion Granite Ltd. (Dominion) and Adu Granite Inc. (Adu), import black granite memorials from India through a wholly owned importer, Memorial Imports (Memorial).

Granite processors saw blocks into slabs that they supply to memorial producers. There are two granite processors, both located in Beebe: Granite Center Beebe Inc. and Polishing Center Beebe Inc. Granite Center Beebe Inc. is the largest producer of slabs in Canada for sales to third parties.

Secondary producers consist of memorial retailers that generally take up the production process at the slab-polishing stage and retail the finished memorials. Secondary producers/retailers are mainly located in the province of Quebec and the Maritimes.

### **EXPORTERS AND IMPORTERS**

During the Deputy Minister's investigation, 13 exporters of the subject goods located in India and 3 exporters located in the United States were identified. The leading exporters were represented by counsel at the hearing. The Deputy Minister also identified 13 importers during the investigation. The leading importer during the period of investigation was Memorial. Memorial was established jointly, in 1990, by Rock of Ages, Dominion and Adu, which are members of the CGA. It was established to import black granite memorials from India for sale by the three participating producers to retail customers in the domestic market. Memorial entered into an exclusive supply arrangement with M S International, a U.S.-based exporter that secured the subject goods on behalf of Memorial primarily from three Indian exporters: Monuments India, Enterprising Enterprises and Oriental Select. In 1994, Memorial ceased operations. Rock of Ages began importing on its own behalf in the first quarter of 1994. The Deputy Minister also identified Imperial as an importer of the subject goods.

The following companies are the major independent importers (not related to any producer): (1) Mafer and Taygor that are the exclusive Canadian importers from Gem; (2) SITA Associates (SITA) that deals with a variety of exporters, but imports primarily from Amman; (3) Marchesi Marblecraft Ltd. that imports from Kwality Monuments and specializes in flat markers; (4) Cold Spring Granite (Canada) Ltd. (Cold Spring Canada) that is a non-resident importer located in Cold Spring, Minnesota, that buys imported product from its parent company, Cold Spring Granite Company (U.S. Cold Spring), that it acquires from Granite Resources, a U.S. importer of the subject goods;<sup>14</sup> and (5) Granite Resources that has been an importer since 1990, taking orders from Canadian customers that it fills with purchases from Amman.

The balance of the named importers are largely retailers, some of which have polishing or engraving machinery that enables them to finish polished blanks for sale in their own retail outlets.

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14. Although U.S. Cold Spring is identified as a U.S. exporter in the final determination of dumping and subsidizing, the subject goods that it sells to Cold Spring Canada remain of Indian origin, as there is no value added in the United States.

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

The period of investigation into dumping and subsidizing covered imports of the subject goods from January 1 to June 30, 1993. Normal values were determined pursuant to paragraph 19(b) of SIMA using the aggregate of the cost of production, an amount for administrative, selling and other costs, and an amount for profit.<sup>15</sup> The Deputy Minister reviewed 99.8 percent of the subject goods shipped to Canada during the period of investigation. Of the goods reviewed, 34.5 percent were found to have been dumped at a weighted average margin of dumping of 27.9 percent. For exporters where insufficient information was provided to the Department of National Revenue (Revenue Canada) to determine normal values, the amount of anti-dumping duty will be equal to 48.6 percent<sup>16</sup> of the export price.

The Deputy Minister determined that 11 subsidy programs were available to Indian exporters during the period from January 1, 1992, to August 31, 1993, based on information provided by exporters and the Government of India. Three exporters<sup>17</sup> provided sufficient information to calculate an amount of subsidy from each program for each exporter's shipments to Canada during the period of investigation. Of the 11 subsidy programs available, only 6 were utilized by exporters. The weighted average subsidy calculated for the three exporters that provided complete information was 35.4 percent of the F.O.B. India selling price or \$0.207/lb.<sup>18</sup> Of the 6 subsidy programs from which the three named exporters received a benefit, 2 programs accounted for over 90 percent of the total subsidy. These programs were the Import Duty Exemptions Available to Export Orientated Units (EOUs) and the Income Tax Exemption on Export Earnings. The amount of subsidy for exporters that did not provide complete information was determined to be equal to 50.4 percent of the F.O.B. India selling price or \$0.350/lb.<sup>18</sup>

## **POSITION OF PARTIES**

### **Domestic Industry**

Counsel for the complainant submitted that the dumping and subsidizing of the subject goods have caused, are causing and are likely to cause material injury to the production in Canada of like goods. The complainant's case centred on three major points: (1) the actual and potential volumes of the dumped and subsidized imports into Canada; (2) the effects of the dumped and subsidized imports on like goods produced

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15. There was a lack of sales to the Indian domestic market due to different traditional practices in India and because all of the Indian exporters that responded to the Department of National Revenue's request for information were designated as export orientated units that are required to export virtually all of their production.

16. This percentage is the highest margin of dumping found in the final determination of dumping and subsidizing expressed as a percentage of the export price.

17. Monuments India, Gem and Enterprising Enterprises.

18. The weighted average subsidy of \$0.207/lb. is equal to \$40.36/cu. ft. based on a conversion factor of 195 lbs/cu. ft. The maximum subsidy of \$0.350/lb. is equal to \$68.25/cu. ft. For a monument of 2.5 cu. ft., the subsidies would be \$100.00 and \$170.00, respectively.

and sold in Canada; and (3) the injurious impact of the dumped and subsidized imports on the production in Canada of like goods.

Regarding the volume of imports, counsel argued that the actual volume of imports from India had risen significantly over the 1990-92 period. While Indian imports declined by 30 percent in 1993 over 1992, the level of imports still constituted a level that was 22 percent higher than in 1991. As to the potential volume of imports from India, counsel argued that there exists a fairly large and growing number of exporters and importers of the products, shipping not only directly from India but also through the United States. In counsel's view, because Indian producers have no home market for the subject goods, they must find export markets for these products. This explains why EOUs are such an important element in this inquiry. Counsel also referred to the plans of certain exporters, such as Granite Resources, to expand their sales of memorials in Canada and to the numerous overtures received by Remco from prospective exporters and agents to form business ventures in Canada for the purpose of marketing granite memorials in Canada.

Regarding the price effects of the dumped and subsidized imports, counsel argued that the evidence at the average and individual price levels was unequivocal. Quoting from the Public Pricing Report prepared by the staff of the Tribunal, counsel noted the large margins of price undercutting by Indian importers in 1992, 1993 and the first quarter of 1994. Regarding average prices, counsel referred to the large margins of price undercutting over the period, noting that imports increased by 75 percent in 1992, the year in which Indian imports undercut domestic prices by a margin of 39 percent. As specific examples of price undercutting by Indian importers, counsel referred to price offerings by Taygor and Granite Resources. Counsel added that firms such as SITA and others were aggressively undercutting both Taygor's and Mafer's prices, forcing them to react, thus creating a market in which highly aggressive price undercutting prevailed. The prices and offerings of dumped and subsidized goods imported by the various importers in Canada are, in counsel's view, causing injury to CGA members. As well, it was argued that the price lists and other price evidence submitted by the complainant demonstrate that the subject imports have caused significant price suppression and depression.

Counsel argued that the injury sustained by CGA members on their production of like goods took the form of a loss of market share, reduced sales, loss of profits, reduced employment activity and an inability to finance investments. Regarding market share, counsel noted that the importation of finished memorials by certain domestic producers was a short-term strategy to maintain market share in competition with Indian imports. Nonetheless, this strategy was only partially successful, as the domestic industry's sales from imports only partially offset its declining share from sales of domestically produced black granite memorials and slabs. Respecting reduced sales, reference was made to examples of lost volume to Indian suppliers in the questionnaire responses of CGA members. The adverse impact of the dumped and subsidized goods is reflected in the financial results of CGA members. As regards employment activity, counsel argued that person-hours worked were a good indicator of the impact of Indian imports.

Counsel further argued that the export policy of the Government of India put CGA members in a double bind. First, it encouraged a flood of Indian imports into Canada, which were found to be dumped and subsidized in 1993. Second, Canadian

producers were confronted with policies that discouraged the export of blocks and slabs by making a very high value-added requirement a condition of getting the benefits of the EOU.

In his rebuttal argument, counsel submitted that the domestic market for black granite memorials and slabs was a distinct market from the broader market for all memorials and slabs, noting the different demand trends in these two markets. Regarding market share gains by domestic producers, counsel argued that price depression was the reason that the domestic industry recaptured some of the market share lost previously. In addressing the argument that quality was driving the market, counsel argued that price was driving the market and that this was evident in the large market gains achieved by imports in 1992 when prices of such imports undercut domestic prices by 39 percent. Counsel further argued that the calculations of reduced subsidies and the impact of adding the subsidy margin to the price of Indian imports raised by opposing counsel were based on questionable assumptions and arithmetic. Finally, regarding producer requests for exclusions, counsel noted that exporter exclusions are only granted in narrow circumstances and that the injury claimed is country-specific and not company-specific.

### **Exporters and Importers**

Counsel for the exporters and importers argued that any injury suffered by the domestic industry was caused by factors unrelated to the dumping and subsidizing.

### **M S International, Monuments India, Oriental Select and Enterprising Enterprises**

Counsel argued that the reason that the subject goods have been so successful in penetrating the Canadian market is because they are high-quality products, being offered at very competitive prices. Counsel submitted that the reason that the price of Indian imports is lower than the price of domestically produced memorials is related to an inherent cost advantage enjoyed by Indian producers. The cost advantage stems from lower material, labour and overhead costs.<sup>19</sup> Counsel submitted that, after reducing the cost advantage by the amount of the subsidy, the remaining net cost advantage explains why the Indian products are selling at lower prices in Canada. The subsidy, when looked at in this context, is completely immaterial. Counsel argued that the subsidy has declined because the current Indian import duty rates are lower than those used by Revenue Canada to determine the amount of the subsidy.

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19. Exporter's Exhibit I-3A (protected), Administrative Record, Vol. 12; Exporter's Exhibit L-1 (protected) at 13, Administrative Record, Vol. 12; and Transcript of In Camera Argument, June 23, 1994, at 3-4. Counsel compared the domestic industry's average cost per cubic foot for material, labour and overhead to that reported by Enterprising Enterprises to Revenue Canada and determined that Enterprising Enterprises had a lower unit cost for each input. Counsel subtracted the countervailing duty applicable to Enterprising Enterprises from its total cost advantage to determine the net cost advantage in dollars per cubic foot that Enterprising Enterprises has over the domestic industry. Counsel converted the net cost advantage per cubic foot to a dollars-per-monument basis using a conversion factor of 2.5 cu. ft./monument.

Counsel submitted that the reason that the complainant does not purchase Indian blocks is, by its own evidence, due to its production equipment being geared to produce memorials from larger blocks that come from sheet rock quarries. The quarries in India have a different formation and yield smaller blocks. Counsel argued that it is not economically viable for the domestic industry to produce memorials from those small blocks.

Counsel submitted that the evidence does not support a finding of likelihood of injury. It was submitted that, since 1992, Indian import duty rates on consumables<sup>20</sup> for use in producing the subject goods have declined by approximately 57 percent and that this declining trend will likely continue. On this basis, counsel argued that the subsidy level is decreasing dramatically and estimated that it will decline from a weighted average of 35.4 percent<sup>21</sup> to 23.5 percent based on current Indian import duty rates. Furthermore, counsel argued that, with respect to future benefits from import duty exemptions arising from imports of machinery, the evidence shows that there is ample Indian-made production machinery available in India and that future imports of machinery are speculative.

Counsel also submitted that domestic producers and related parties that are importers of the subject goods should be excluded from the domestic industry. Counsel argued that, by virtue of their high volume of imports, Rock of Ages, Dominion, Adu, Nelson and Imperial should be excluded by the Tribunal from the domestic industry whose production is the subject of the Tribunal's injury analysis.

Counsel submitted that slabs should be treated as a separate class of like goods from memorials and contended that there was no evidence of injury caused by slab imports. In the alternative, it was submitted that slabs should be excluded from any finding of material injury, once again, because there was no evidence of injury caused by slab imports.

Finally, counsel requested an exclusion from any finding of material injury for M S International, as it supplied the subject goods only to the domestic industry.

### **Granite Resources and Amman**

Counsel noted the testimony of retailers that Indian black granite is a superior granite. For that reason, counsel submitted that the goods produced in Canada are not identical in all respects to goods produced from Indian black granite.

Counsel also submitted that the class of goods should not be defined by colour. He argued that black granite memorials compete with all other colours of memorials, that

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20. Counsel submitted that 67 percent of the total subsidy was attributable to the import duty exemption on consumables available to EOUs.

21. This rate is the weighted average subsidy that would apply to Enterprising Enterprises and Monuments India, as they provided sufficient information to enable Revenue Canada to determine the amount of subsidy that they received. M S International and Oriental Select did not provide sufficient information to Revenue Canada; therefore, they are subject to the higher weighted average countervailing duty of 50.4 percent.

the same customers are being sought, that they have the same end use function, that they fulfil the same need and that they can be substituted one for the other. He also submitted that producers do not keep separate records for black memorials, that the production facility is the same for black memorials, that the same machinery is used to produce all colours of memorials and that there is no distinction in their capital investments for black and other coloured granite.

Counsel argued that the evidence did not support a finding of material injury. He submitted that, over the period of inquiry, there was an increase in production of black granite memorials, an increase in sales from domestic production, a slight reduction in market share, increased employment and a decline in person-hours worked which, counsel submitted, suggests an increase in productivity. Counsel submitted that the income statements that show annual financial losses are unreliable. Counsel also noted that the members of the CGA identified no specific investments that were hindered or retarded. Furthermore, counsel argued that the domestic industry recognized that the demand for black granite memorials was increasing and started importing to take advantage of the opportunity.

Counsel submitted that, in order to determine the issue of causation, the Tribunal must look at how the domestic market would have reacted if the subject goods had been sold at non-dumped and non-subsidized prices. Counsel contended that, "even at non-dumped and non-subsidized prices, the domestic market for the like goods would not have looked any different in the past, and will not react any differently in the future."<sup>22</sup>

It was submitted that Indian producers have a natural cost advantage and that, even when the subsidy (applicable duty) is added to the selling price of the subject memorials, they are still priced lower than the domestic industry's memorials. In an aid to argument, counsel submitted three price comparisons in support of his argument.

On the basis of these price comparisons, counsel argued that it is the Indian cost advantage and not the subsidy that is the reason for the lower Indian prices.

### **Gem, Taygor, Mafer, Kilvington and the OMBA**

Counsel contended that importers, Taygor and Mafer, and their export supplier, Gem, have not injured the domestic industry.

Counsel submitted that the circumstances facing the domestic industry and its response are explained in a speech by Mr. Kurt Swenson, President of Rock of Ages Corporation, the parent company of Rock of Ages.<sup>23</sup> It was opined that sales of upright granite monuments in North America would not expand and may decline in volume and average size due to changes in the marketplace. In these circumstances, Rock of Ages Corporation entered into a joint venture, in 1988, with certain Indian suppliers to produce, on its behalf, red and black finished granite memorials.

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22. Revised public submission of Granite Resources, Exporter's Exhibit H-1A at 15, Administrative Record, Vol. 11.

23. Exporter's Exhibit F-1 (protected), Appendix 1A, Administrative Record, Vol. 12.

Counsel argued that there was an increase in the demand for Indian black granite memorials that was driven by the superior quality of the subject goods exported by Gem. They submitted that the market was looking for price and quality and that Gem was selling a superior product at an excellent price. Counsel submitted that the domestic industry decided to participate in supplying some of that new demand. However, the domestic industry could not compete using its own production because it was not economical for it to import Indian black granite blocks for production into memorials in Canada. Consequently, certain of the larger domestic memorial producers formed Memorial and entered into an exclusive supply arrangement with M S International to import Indian black granite memorials.

Counsel argued that others observed the growth in demand and began to import the subject goods. Consequently, the total volume of imports increased over the period of inquiry. Counsel contended that market prices were suppressed by the combined growth in producers' and other importers' imports and the ensuing competition between these two groups of importers.

However, counsel argued that while other importers' imports increased, Taygor's and Mafer's imports from Gem did not expand, but remained relatively stable over the period of inquiry. They also argued that 1992 was not a critical year in terms of Gem's exports, as there was no change in the volume imported. Furthermore, counsel argued that there was no evidence of price suppression by Gem products, as the selling prices of Taygor and Mafer were at the high end of the range of importers'<sup>24</sup> prices, and that their selling prices did not decline over the period of inquiry. As well, it was argued that the prices of Gem's memorials sold by Taygor and Mafer did not undercut domestic prices. In this regard, counsel argued that Taygor's and Mafer's average prices were comparable to Rock of Ages' average prices for sales from imports. Counsel also noted that Gem's memorials were being imported into Canada by Mafer long before domestic producers began to import and that Mafer's prices have remained stable.

Counsel argued that the domestic industry has not lost market share, but has retained it through aggressive marketing and by importing from India in accordance with Mr. Swenson's strategy. Counsel noted that the combined imports of Taygor and Mafer remained stable because of Gem's export policy, which is to limit its exports to an amount that does not exceed 5 percent of the Canadian granite memorial market.

Counsel submitted that Dominion and Rock of Ages have acknowledged that they were not injured by Gem's exports of the subject goods and, in support, pointed to the testimonies of Messrs. Arthur LaPenna and Brian O'Brine.

Respecting the recession, counsel submitted that it was simple common sense to conclude that the recession had a negative impact on the domestic industry.

Counsel argued that the countervailing duty will not have any real effect and will not help Canadian producers. In this regard, reference was made to the submissions of counsel for M S International.

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24. Non-producer importers.



Counsel argued that Gem's exports would not be injurious to the domestic industry in the future by virtue of Gem's commitment to limit its exports to 5 percent of the Canadian market for black granite memorials. In this regard, counsel pointed to the testimony of Mr. R. Veeramani of Gem, in which he offered to give an undertaking to the Tribunal to limit Gem's exports to the level noted above.

Finally, counsel requested that Gem be excluded from any finding of material injury on two grounds. First, counsel argued that Gem's black granite memorials are superior to those supplied by other exporters. Second, counsel argued that an exclusion was justified in view of Gem's policy of limiting the amount of its exports of the subject goods and Mr. Veeramani's offer to give an undertaking to that effect.

### **ECONOMIC INDICATORS**

The following table summarizes some of the key economic indicators for this inquiry.

<b>ECONOMIC INDICATORS</b>				
	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>
<b>Apparent Market</b>				
Volume (cu. ft.)	34,175	32,851	36,997	39,053
Percent Change	-	(4)	13	6
<b>Market Share</b>				
Domestic Production (%)	81	78	70	78
Total Imports (%)	19	22	30	22
<b>Market Share Percentage Points Gained or (Lost) Compared to 1990 Market Share</b>				
Domestic Production	-	(3)	(11)	(3)
Producers' Imports	-	0	1	0
Importers' Imports	-	3	10	3
<b>Profitability</b>				
Pre-Tax Income to Net Sales (%)	(2)	(3)	(4)	(11)
<b>Average Prices (\$/cu. ft.)</b>				
Producers' Sales from Production	233	221	244	232
Importers' Sales	188	168	148	191
<b>Direct Employment</b>				
Direct Hours Worked (000)	30	25	29	30
Capacity Utilization (Index 1990=100)	49.6	40.7	41.1	40.6
	100	80	90	100

The apparent market for black granite memorials and slabs declined by 4 percent in 1991, then increased annually in 1992 and 1993, rising from 32,851 cu. ft. in 1991 to 39,053 cu. ft. in 1993, a 19-percent increase over the period.

In 1990, sales from domestic production accounted for 81 percent of the apparent market. This share declined to 78 percent in 1991 and to 70 percent in 1992, but rose to 78 percent in 1993.

In 1990, sales from imports by firms whose principal business is production (producers' imports) and sales from imports by firms whose principal business is importing (importers' imports) accounted for 19 percent of the apparent market. In 1991, total imports captured an additional 3 percentage points of market share. Importers' imports accounted for all of the increase in that year. By 1992, total imports had captured an additional 11 percentage points of market share compared to the 1990 level. Of the 11 percentage points of increased market share, importers' imports accounted for 10 percentage points and producers' imports for 1 percentage point. The market share held by total imports decreased in 1993, but remained 3 percentage points above the 1990 level. Importers' imports accounted for all of that increase.

The average price of sales from domestic production fell in 1991, rose in 1992 and then fell again in 1993. The average price in 1993 was almost the same as that in 1990. The average price of sales of imports declined in 1991 and 1992. The average price then rose in 1993 to just above the 1990 level.

In 1991, the importers' average price was 24 percent below the producers' average price of sales from domestic production. The difference in prices was greatest in 1992 when the importers' average price was 39 percent below the producers' average price. In 1993, the difference narrowed to 18 percent below the producers' average selling price in that year.

The domestic industry's pre-tax income to net sales ratio gradually worsened in 1991 and 1992.<sup>25</sup> In 1993, there was a marked deterioration in this measure of financial performance, with the domestic industry losing 11 percent on sales.

Comparing 1990 to 1993, direct employment was the same, but direct hours of work fell by close to 20 percent. Capacity utilization at the beginning and at the end of the period of inquiry was at the same level, but was considerably reduced in 1991 and 1992.

### **Developments in Canada and in India**

Historically, granite memorials have been produced in Canada from available stone. Canadian onyx was the principal dark granite available. As international sourcing became economical, the domestic industry began to import darker, finer-grained black granite blocks, initially from Europe.<sup>26</sup> In the early 1980s, European prices increased

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25. This income statement consolidates the returns of five firms representing close to half of the domestic sales value from production reported in the Tribunal pre-hearing staff report.

26. Public Pre-Hearing Staff Report, May 26, 1994, Tribunal Exhibit NQ-93-006-6, Administrative Record, Vol. 1 at 65. Historically, Finland, Norway and Sweden have been suppliers of granite blocks to Canadian producers of memorials, but have been displaced by more price-competitive sources.

and, in response, the domestic industry began importing black granite blocks from South Africa and India.

During the late 1980s and early 1990s, the Indian industry evolved to become a supplier of finished memorials to the Canadian market. The domestic industry essentially stopped sourcing blocks from India. Witnesses for the domestic industry testified that, because of the subsidies available to Indian producers of value-added granite products in India, the price spread between imported Indian black granite blocks and finished memorials narrowed. It narrowed to the point that domestic producers could no longer compete with Indian finished memorials using Indian blocks in the production of domestic black granite memorials. In addition, domestic producers indicated that Indian blocks were smaller and of more irregular shape than South African or Zimbabwean blocks and not as suitable for their production equipment, which is designed for sawing and polishing larger blocks than those which were available from India. The domestic industry turned to South Africa as its principal source of black granite. In 1992, high-quality and lower-priced black granite blocks became available from Zimbabwe,<sup>27</sup> and the domestic industry added that country as a second source of supply. However, an industry witness explained that domestic producers did not shift all of their purchases from South Africa to Zimbabwe because Zimbabwe was a new and untested supplier.

The evolution of the Indian granite industry from an exporter of blocks to a supplier of finished memorials to the Canadian market can be explained by a number of factors.

The Government of India provides a number of subsidies<sup>28</sup> to industries that are eligible for EOU designation. EOUs are required to export 100 percent of their production and achieve a minimum "value-addition,"<sup>29</sup> which in the case of the granite industry is an average of 45 percent. The availability of these subsidies encouraged the Indian granite industry to meet the EOU requirements and, in so doing, to increase the portion of its output accounted for by the higher value-added finished memorials. The EOU program will continue until at least March 31, 1997, as indicated in a publication issued by the Government of India's Ministry of Commerce entitled "Export and Import Policy: 1 April 1992 — 31 March 1997."

The evolution of the Indian polished granite industry was aided by importers such as Mafer and Taygor through their efforts to develop alternate sources of supply for black granite memorials. They worked closely with the Indian industry to help it produce a quality product for the Canadian market.

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27. Transcript of In Camera Hearing, Vol. 1, June 21, 1994, at 126.

28. The Deputy Minister's final determination of dumping and subsidizing identified six programs from which Indian exporters of the subject goods received countervailable benefits. Of these, the import duty exemptions and the income tax exemption on export earnings accounted for over 90 percent of the weighted average subsidy determined by the Deputy Minister.

29. Manufacturer's Exhibit A-1, Appendix 3, Administrative Record, Vol. 9. The value added equals the F.O.B. value minus the sum of all imported inputs, the value of all payments made in foreign exchange by way of commission, royalty, fees or other charges and the value of all indigenous inputs purchased, that is, raw materials, intermediates, components, consumables, parts and packing materials.

These developments greatly affected the marketing of memorials in Canada and the sourcing of memorials by retailers. An industry witness noted that, in the past, relatively small amounts of finished granite memorials were imported into Canada by independent retailers, as it was not economical for them to purchase a full container. However, as low-priced finished memorials from India became available, Canadian importers started to purchase containers of Indian imports which they broke down for distribution to various retailers.<sup>30</sup> Thus, small independent retailers were able to acquire imports by purchasing portions of containers of finished Indian memorials.

Finally, witnesses for the domestic industry and retailers gave evidence that, since 1992, a large number of brokers representing Indian exporters have been approaching retailers to promote Indian memorial sales at very low prices, some comparable to the prices that domestic producers had formerly paid for slabs imported from India.<sup>31</sup>

### **REASONS FOR DECISION**

Section 42 of SIMA requires the Tribunal to determine whether the dumping or subsidizing of the subject goods, as found by the Deputy Minister, has caused, is causing or is likely to cause material injury to the production in Canada of like goods. In arriving at its decision in the present inquiry, the Tribunal must first determine which goods constitute like goods to the subject goods. The Tribunal must then be satisfied that the domestic industry, which is the subject of this inquiry, constitutes a major proportion of the total domestic production of like goods. Finally, it must be determined whether the domestic industry has suffered from, or is threatened with, material injury and whether there is a causal link between the material injury suffered and the dumping and subsidizing of the subject goods. In the event of a finding of material injury, the Tribunal must then consider requests for exclusions from the finding.

#### **Like Goods**

In determining what constitutes like goods, the Tribunal is confronted with two issues. First, it must determine which domestically produced goods are like goods to the subject goods as defined by the Deputy Minister. Second, the Tribunal must determine whether memorials and slabs are separate classes of like goods.

Subsection 2(1) of SIMA defines "like goods," in relation to any other 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.*

With regard to determining what constitutes like goods, counsel for Granite Resources and Amman submitted that there are no domestically produced like goods that are identical in all respects to the subject goods as defined by the Deputy Minister. It

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30. Preliminary submission of the CGA, Manufacturer's Exhibit A-1 at 6, Administrative Record, Vol. 9.

31. Public statement of Mr. Arthur LaPenna, Manufacturer's Exhibit A-3 at 2, Administrative Record, Vol. 9.

was submitted, however, that the uses and other characteristics of all colours of domestically produced granite memorials and slabs closely resemble the subject goods.<sup>32</sup> Thus, like goods should include all colours of granite memorials and slabs. In contradiction, counsel for the CGA argued that there is a unique market for black granite memorials and slabs that is distinct from that for the other coloured goods in the broader market. Therefore, domestically produced like goods should be restricted to black granite memorials and slabs.

In answering the question of whether goods are like goods in relation to each other, the Tribunal takes market considerations into account, as well as a comparison of the physical characteristics of the goods. In *Sarco Canada Limited v. The Anti-dumping Tribunal*,<sup>33</sup> the Federal Court of Appeal accepted the Anti-dumping Tribunal's (the ADT) approach to the analysis of like goods, where the ADT stated that,

*the question of whether goods are "like" is to be determined by market considerations. Do they compete directly with one another? Are the same consumers being sought? Do they have the same end-use functionally? Do they fulfill the same need? Can they be substituted one for the other?*<sup>34</sup>

The ADT also considered the physical characteristics, including similarities and dissimilarities of the goods, in determining whether they were like goods to each other.

The ADT focused on the degree of substitutability between the imported goods and the domestically produced goods. If goods were seen to be readily substitutable one for the other, there was an inclination to consider them like goods. However, the ADT recognized that "in some cases, dissimilarity in the physical appearance of goods, which are functionally alike, can be such as to create entirely different markets."<sup>35</sup> The Tribunal is of the opinion that goods that occupy different markets, though there may be some competition between those goods because of functional similarity, tend not to be like goods.<sup>36</sup>

The testimony of several witnesses was to the effect that only South African and Zimbabwean black granites were of comparable quality to Indian granite.<sup>37</sup> Black granites from South Africa and Zimbabwe are pure black and of a fine grain.

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32. Reference was made to *Sarco Canada Limited v. The Anti-dumping Tribunal*, [1979] 1 F.C. 247.

33. *Ibid.*

34. *Ibid.* at 251-52.

35. *Ibid.* at 252.

36. See, for example, *Gasoline Powered Chain Saws, Having an Engine Displacement of 2.5 Cubic Inches or Less, Manufactured by McCulloch Corporation, Los Angeles, California, and Beard-Poulan, A Division of Emerson Electric Company, Shreveport, Louisiana, United States of America*, Anti-dumping Tribunal, Inquiry No. ADT-5-76, Finding, August 10, 1976, Statement of Reasons, August 25, 1976, where the ADT distinguished between competing chain saws with different displacements, in part, on the basis that they occupied different markets.

37. Transcript of Public Hearing, Vol. 1, June 20, 1994, at 119, 122 and 130; Transcript of In Camera Hearing, Vol. 1, June 20 and 21, 1994, at 56; and Transcript of Public Hearing, Vol. 1, June 20, 1994, at 280.

These granites are darker in colour and finer in grain than lighter granites such as Brits Blue and Canadian onyx. The greater contrast of pure black granite and the finer grain allow for a wider range of good-quality design and lettering by sandblasting.<sup>38</sup> In addition, etching, which is becoming an increasingly popular way of decorating a memorial, is best accomplished with pure black granite, which provides greater contrast.<sup>39</sup> The Tribunal also received evidence that Canadian onyx, because it contains iron, tends to fade over time.<sup>40</sup>

The Tribunal heard from several witnesses that pure black granite memorials have historically been some of the most expensive granite memorials available in the Canadian market.<sup>41</sup> The strong preference for black granite memorials is associated with various ethnic groups<sup>42</sup> and certain geographic regions of the country, such as the Maritimes and Western Canada.<sup>43</sup> Evidence before the Tribunal indicated that fairly significant increases in the price of black granite would be required to overcome these preferences and induce consumers to switch to the lighter Brits Blue.<sup>44</sup> This preference among certain consumers for black granite memorials is evident in the higher prices paid for such memorials. Testimony from sellers of memorials was that, when faced with a price that is considered too high, consumers who prefer black granite were more likely to purchase a smaller black granite memorial than to switch to a less expensive memorial of a lighter or different colour of granite.<sup>45</sup>

Based on the physical and market characteristics of South African and Zimbabwean black granites, the Tribunal concluded that memorials and slabs produced from these granites were like goods to black granite memorials and slabs from India. In addition, the Tribunal concluded that the physical and market characteristics of memorials and slabs of lighter or different colours of granite are sufficiently different from those of the subject goods that they are not like goods to the subject goods. Therefore, domestically produced like goods include only memorials and slabs produced from South African and Zimbabwean black granites.

With regard to the second issue, if black granite memorials and black granite slabs are not like goods to each other, they would be considered separate classes of like goods. Under such circumstances, the Tribunal would inquire into whether the dumping and subsidizing of each class of goods had caused, were causing or were likely to cause material injury to the production in Canada of like goods of that class.<sup>46</sup>

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38. Transcript of Public Hearing, Vol. 2, June 21, 1994, at 312-13.

39. *Ibid.* at 311 and 383-85.

40. *Ibid.* at 311 and 385.

41. Transcript of Public Hearing, Vol. 1, June 20, 1994, at 103-07 and 281-82; and Protected Pre-Hearing Staff Report, May 26, 1994, Tribunal Exhibit NQ-93-006-7 (protected), Table 28, Administrative Record, Vol. 2 at 97.

42. Protected Pre-Hearing Staff Report, May 26, 1994, Tribunal Exhibit NQ-93-006-7 (protected), Table 28, Administrative Record, Vol. 2 at 97.

43. Transcript of Public Hearing, Vol. 2, June 21, 1994, at 305.

44. *Ibid.* at 308-09; and *supra*, note 42.

45. Transcript of Public Hearing, Vol. 1, June 20, 1994, at 283; and *supra*, note 42.

46. See, for example, *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd.*, [1982] 2 F.C. 283 (Court of Appeal).

The evidence before the Tribunal is that a black granite slab is the principal component from which a black granite memorial is produced. Black granite slabs are cut to a thickness to facilitate memorial production and have no other commercial utility. Black granite slabs also represent a significant portion of the total cost of producing black granite memorials. As both black granite memorials and black granite slabs have physical characteristics that are identical or that closely resemble each other and both occupy the same stream of commerce, the Tribunal views them as like goods to each other. The Tribunal notes that it has regularly found that a finished product and its principal component or input represent a single class of like goods.<sup>47</sup>

### **Domestic Industry**

Subsection 42(3) of SIMA directs the Tribunal to take fully into account the provisions of paragraph 1 of Article 4 of the GATT Anti-Dumping Code<sup>48</sup> in a dumping case and paragraph 7 of Article 6 of the Code on Subsidies and Countervailing Duties<sup>49</sup> in a subsidy case. Paragraph 1(i) of Article 4 of the Anti-Dumping Code states:

*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 [footnote omitted] 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.*

This is repeated at paragraph 5 of Article 6 of the Code on Subsidies and Countervailing Duties.

Counsel for several exporters argued for the exclusion, from the domestic industry, of those domestic producers that were importers of the subject goods. It was submitted that those domestic producers imported a high percentage of the subject goods and have contributed to establishing a demand for the subject goods in the domestic market.

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47. See, for example, *Photo Albums with Self-Adhesive Leaves, Imported Together or Separately, and Self-Adhesive Leaves, Originating in or Exported from Indonesia, Thailand and the Philippines*, Canadian International Trade Tribunal, Inquiry No. NQ-90-003, Finding, January 2, 1991, Statement of Reasons, January 17, 1991; *Single Row Tapered Roller Bearings, Including Cups and Cone Assemblies, in the Sizes from 1.000 Inch (25.4 mm) up to and Including 6.625 Inches (168.275 mm) Outside Diameter, Originating in or Exported from Japan*, Canadian International Trade Tribunal, Inquiry No. NQ-91-007, Finding, July 9, 1992, Statement of Reasons, July 24, 1992; and *Bicycles and Frames Originating in or Exported from Taiwan and the People's Republic of China*, Canadian International Trade Tribunal, Inquiry No. NQ-92-002, Finding, December 14, 1992, Statement of Reasons, December 29, 1992.

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

49. *Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade*, signed in Geneva on April 12, 1979.

The Tribunal has discretion to exclude certain domestic producers if they are themselves importers of the subject goods. In reviewing the evidence on the record, the Tribunal observes that the domestic producers were not the first to import the subject goods into Canada. The Tribunal believes that the domestic producers imported these goods as a defensive response to the low-priced Indian imports into the domestic market in order to maintain market share. In addition, these imports represented only a small proportion of the domestic industry's total sales. As such, the Tribunal concludes that it would not be appropriate to exclude those domestic producers that were themselves importers of the subject goods from the domestic industry for purposes of its injury analysis.

In assessing injury, the Tribunal must be satisfied that the domestic industry, which is the subject of this inquiry, constitutes a major proportion of the total domestic production of like goods. Members of the CGA that are primary producers alone account for approximately 87 percent of domestic production of all granite memorials and slabs. For its injury analysis, the Tribunal has relied on production figures, prices, sales and financial data from firms representing a significant proportion of the production of CGA members. As there is no evidence to suggest that the CGA does not account for a similar proportion of the domestic production of black granite memorials and slabs, the Tribunal is satisfied that it has assessed injury against a major proportion of total domestic production of like goods.

### **Effects of Indian Imports**

In assessing the effects of dumped and subsidized imports from India on the production of like goods in Canada, the Tribunal did not attempt to isolate the separate effects of the dumping and subsidizing. The Tribunal considers that the domestic industry responded to imports priced at less than fair value. Whether the unfairly traded goods resulted from dumping or subsidizing was not relevant to the response. Indeed, there was no evidence submitted nor argument advanced that the domestic industry responded separately and independently to the fact of dumping and to the fact of subsidizing. To attempt to separate and measure that response between that portion related to dumping and that portion related to subsidizing would, in the Tribunal's view, be an arbitrary analytical exercise.

### **Market Share and Prices**

In determining whether any injury resulted from the dumping and subsidizing of the subject goods, the Tribunal reviewed the key economic indicators over the 1990-93 period and, in some cases, in the first quarter of 1994. In volume terms, the apparent market for black granite memorials and slabs decreased by 4 percent in 1991 from 1990, but then grew by 19 percent over the 1992-93 period.

The period of inquiry can be divided into two distinct periods in order to describe the domestic industry's reaction to the imported goods. From 1990 to 1992, sales of imports from India increased by 69 percent, with the major share of this increase occurring in 1992 (86 percent). As a result, total imports from India captured 11 percentage points of market share. The Tribunal notes that the market share held by the domestic industry from sales from its own imports remained relatively constant over this period. Thus, the domestic producers' decline in market share from sales from domestic production was almost exclusively attributable to the market share gains by



importers' imports. In volume terms, the domestic producers' sales from domestic production decreased by 7 percent between 1990 and 1991, with a significant portion of this decrease due to its loss of market share. While sales volume from domestic production remained roughly the same in 1992 as in 1991, the domestic producers did not participate in the growth of the market for black granite memorials and slabs. Moreover, the volume sold from domestic production in 1992 was some 6 percent below the volume sold in 1990.

During this period, the average selling price of importers' imports was consistently below that of the domestically produced like goods. For example, in 1991, the price differential was 24 percent in favour of Indian imports. This differential grew to 39 percent in 1992. In this regard, the Tribunal notes that the largest market share loss for domestic producers took place in 1992. The Tribunal has no doubt that the major reason for this rapid expansion in market share gains and sales volume over this period by Indian imports was their availability in the marketplace at very low prices.

In 1993, the domestic industry adopted new strategies to arrest the growth in imports that had taken place in 1991 and 1992. One such strategy was to maintain prices on the sales of finished monuments and markers produced from both South African and Zimbabwean blocks.<sup>50</sup> Another strategy was to produce and sell increased amounts of finished memorials from Zimbabwean granite. This granite is less expensive than South African granite, and memorials made from Zimbabwean granite sell for less than those made from South African granite.

The effect of holding prices and selling more of the less expensive memorials was to reduce the average selling price of Canadian-made like goods.<sup>51</sup> At the same time, the average price of the imported product increased,<sup>52</sup> and the domestic industry recovered part of the market share lost over the two previous years. However, at 78 percent, the market share held by domestic production in 1993 was less than that held by domestic production in 1990 (81 percent).

The Tribunal has considered the complainant's argument that the domestic industry suffered price suppression and erosion because of the dumped and subsidized imports. In assessing the validity of the complainant's allegations of price suppression and erosion, the Tribunal examined the evidence regarding specific and average pricing and the activity of Indian importers and suppliers in the marketplace.

The Tribunal examined the specific price information contained in the pricing report prepared by the Tribunal staff. This report analyzed the price trends and relative price levels of domestic and Indian imports of black granite monuments and markers from two perspectives: (1) a selling price survey forwarded to major producers and importers of the goods requesting their typical and best net selling prices for 1992 and 1993; and (2) a purchaser's questionnaire sent to major retailers of memorials and to

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50. There was also some evidence of reduced prices and increased discounts filed by certain domestic producers.

51. Producers' average selling price dropped from \$244 in 1992 to \$232 in 1993.

52. The average price of importers' imports increased from \$148 in 1992 to \$191 in 1993.

cemeteries requesting information on their purchases of both domestic and import origin.<sup>53</sup>

The selling price survey showed that prices for the large majority of producers remained static over the 1992-93 period. In fact, one major producer indicated that its prices remained static during the entire 1991-93 period. A general price increase by producers did not take place until the first quarter of 1994.

The selling price survey showed that typical and best selling prices of Indian imports for selected popular monuments and markers consistently undercut selling prices of domestically produced equivalent products using the South African raw material in both 1992 and 1993. The price differential, in many cases, was substantial and ranged from 6 to 49 percent on monuments and from 17 to 96 percent on markers. Prices of Indian imports also frequently undercut prices of domestically produced monuments and markers made from the Zimbabwean raw material, but by lesser margins: from 0 to 37 percent on monuments and from 6 to 42 percent on markers. Price gaps between the Indian products and the domestic products produced from the Zimbabwean or South African raw material were similar in 1992 and 1993.

The purchaser's memorials questionnaire, covering a broader range of products, showed similar price gaps between domestically produced goods and imports of Indian origin. An analysis of relative price levels from a purchasing perspective showed that the price of Indian imports was very often below the price of domestic monuments and markers produced from the South African raw material in 1992, 1993 and the first quarter of 1994, with the difference varying, where applicable, between 3 and 48 percent. As well, there was evidence showing that some importers were selling P2, P3 and P5 monuments at the same price levels. Domestic producers testified that they normally charge price premiums for P3 and P5 monuments over a P2 monument, reflecting the greater labour input required.<sup>54</sup> The purchaser's memorials questionnaire also showed that prices of Indian imports frequently undercut normal available domestic prices of monuments and markers produced from the Zimbabwean raw material by margins of up to 43 percent. The results of the pricing report were not contested by any of the parties during the hearing.

The Tribunal considers that the substantial and continuous price undercutting noted in the pricing report covering very specific products to specific customers offers a compelling explanation of the cause of the static prices of domestic goods over the period noted above.

In brief, the evidence before the Tribunal is of flat or static domestic prices. In this regard, the Tribunal has carefully considered the complainant's argument that the domestic industry suffered price suppression and erosion because of the dumped and subsidized imports. The critical question is whether these static prices represent suppressed prices and/or depressed prices. As for price suppression, the Tribunal considers that a key indicator is whether the traditional spread or margin between prices and costs is being maintained. The information contained in the consolidated income

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53. Because of the impact of freight costs on total price, all prices were on a delivered-to-customer basis. To the extent possible, price comparisons were made on the basis of equivalent-volume purchases and netted of all discounts and allowances.

54. Price lists submitted by the producers, Administrative Record, Vols. 3 and 3A.

statement<sup>55</sup> indicates that this is not the case. The spread between costs per cubic foot and revenues per cubic foot<sup>56</sup> is not being maintained. In fact, the cost of goods sold per cubic foot fell by 4 percent between 1992 and 1993, whereas average revenues per cubic foot fell by almost 7 percent. The Tribunal concludes that the margin contraction is indicative of price suppression. For this reason, the Tribunal concludes that dumped and subsidized imports from India suppressed the prices of like goods in 1993. In the absence of compelling evidence that the prices of memorials made from South African and Zimbabwean black granites were rolled back or more heavily discounted in 1993, the Tribunal does not conclude that there has been price erosion in the domestic marketplace.

Finally, in assessing the cause of the price suppression, the Tribunal examined the market activity of suppliers of Indian goods. It observed that, since 1990, there has been an ever-increasing number of importers and agents actively seeking business and offering very low prices in all major regional markets of Canada. The Tribunal is convinced that the price suppression suffered by domestic producers was caused in large measure by the low-priced imports from India, which were found to have been dumped and subsidized in 1993. It was the constant fact of sales and offers to sell by suppliers and exporters' agents of Indian goods which prevented domestic producers from increasing prices. These players' prices were all undercutting normal domestic prices by varying degrees.

### **Other Indicators of Injury**

Counsel for the CGA argued that the dumped and subsidized goods also caused a loss of profits, reduced employment and an inability to finance investments in plant facilities and equipment.

The Tribunal closely examined the financial performance of the domestic industry over the period of inquiry. The domestic industry's consolidated income statement for sales of like goods shows a pattern of decreasing gross margins and increasing losses over the 1990-93 period. Gross margins decreased by 2 percentage points over the 1990-92 period, with net losses before taxes increasing from 2 to 4 percent of sales. Although the domestic industry recovered, in 1993, part of the market share losses of the two previous years, such market share recovery was costly. Indeed, the inability to increase prices to at least maintain the traditional margin of prices over costs resulted in an increase of net losses in 1993. In fact, net losses before taxes increased to 11 percent of sales in 1993. The Tribunal is convinced that low-priced Indian imports, which were found to have been dumped and subsidized in 1993, played a major role in suppressing producers' prices and harming the financial performance of domestic producers over the period of inquiry.

Domestic producers experienced a reduction of employment in 1991 over 1990, but an increase thereafter. Person-hours dedicated to the production of black granite memorials and slabs also declined sharply in 1991 and remained low over

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55. Protected Pre-Hearing Staff Report, Revised June 14, 1994, Tribunal Exhibit NQ-93-006-7C (protected), Schedule 4, Administrative Record, Vol. 2 at 220.

56. *Ibid.* Costs of goods sold per cubic foot and revenues per cubic foot are derived by dividing total costs and total revenues, respectively, found in the consolidated income statement, by the volume sold in a given year.

the 1991-93 period. Although domestic producers lost market share to Indian imports over 1991 and 1992, it is difficult to determine exactly what effects on employment and person-hours worked such losses had. As noted above, sales from production recovered from 1991 onward, as the market for black granite memorials and slabs expanded. As well, employment and person-hours worked are affected by productivity changes. Therefore, the Tribunal is not convinced that employment and person-hours worked were strong indicators of injury resulting from the dumping and subsidizing of the subject goods.

The Tribunal does not find convincing the assertion that the dumping and subsidizing hindered or retarded the domestic industry's plans to invest in new equipment and facilities. During cross-examination, industry witnesses offered little concrete evidence of an inability to invest in such facilities and equipment due to the dumped and subsidized imports. The failure, here, was not, as argued by counsel for the complainant, that reduced profits had hindered investment, but rather, that the domestic industry failed to identify any major or necessary expenditures that were foregone.

In summing up the effects of the Indian imports, the Tribunal finds that they had a significant and direct negative impact on the domestic industry's volume, market share, prices and financial performance between 1990 and 1993. Furthermore, the Tribunal finds that the dumped and subsidized imports, in 1993, have caused and are causing injury to the domestic industry in the form of price suppression and financial losses.

### **Effects of Other Factors**

The Tribunal must "weigh and balance" the injurious effects of the dumping and subsidizing, as well as the impact of other factors on the domestic industry, and decide on the importance to be given to each.<sup>57</sup> Having found that the dumping and subsidizing of the subject goods have caused and are causing injury to the production in Canada of like goods, the Tribunal considered the evidence concerning other possible causes unrelated to the dumping and subsidizing. The injury caused by other factors cannot be attributed to the dumped and subsidized imports.<sup>58</sup>

Counsel for the exporters and importers argued that the domestic industry imported the subject goods because it saw a market opportunity, could not economically produce the memorials in Canada and had insufficient capacity to produce the memorials. Furthermore, counsel argued that the domestic industry injured itself by importing the subject goods. In considering these arguments, the Tribunal notes that importers were importing Indian memorials before the domestic industry began to import the subject goods. Although it is apparent that the domestic industry displaced some of its production with its own imports, the evidence persuades the Tribunal that the domestic industry's action was defensive in nature, in response to the erosion of its market share and suppression of its prices by the subject imports. The Tribunal also notes that, in each of the years 1991 and 1992, the reduced sales from production compared to 1990 were greater than the increased sales from producers' imports. The Tribunal notes as

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57. See, for example, *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).

58. Paragraph 4 of Article 3 of the Anti-Dumping Code and paragraph 4 of Article 6 of the Code on Subsidies and Countervailing Duties.

well that, from 1990 to 1993, the domestic producers' average selling price for their imports was above the importers' average selling price, and the domestic industry's share of the market from sales of imports remained stable.<sup>59</sup> In the Tribunal's view, the domestic industry's actions were a rational response to the circumstances that it faced.

Counsel for the exporters and importers argued that, even at non-dumped and non-subsidized prices, the domestic market for like goods would not have looked any differently in the past nor would it react any differently in the future. In this regard, counsel argued that Indian producers enjoyed a natural cost advantage over domestic producers due to lower labour and material costs and that any injury suffered by the domestic industry is due to this advantage. Furthermore, counsel argued that the gap between the price of the Indian product and the domestically produced product would not be bridged by the imposition of the applicable duty.<sup>60</sup> In comparison to the effect of the natural cost advantage, the effect of the dumping and subsidizing is immaterial.

Counsel tendered a cost comparison to show that the subsidy accounted for some 25 percent of the total cost advantage of Indian producers. Counsel consequently argued that the addition of the appropriate duty to the F.O.B. India selling price would not offset the selling price advantage that results from the natural cost advantage. The Tribunal notes that the subsidy used in the cost comparison was that applicable to Enterprising Enterprises, which is lower than the weighted average subsidy (\$0.207/lb.) and the maximum subsidy (\$0.350/lb.).

Counsel also put forward three price comparisons<sup>61</sup> to show that, after adding the countervailing duty to the import price, a portion of the original price differential remained, leaving the import price still lower than the domestic price used in the examples. In their analysis, counsel calculated the impact of both the maximum countervailing duty and the lower weighted average countervailing duty noted above.

The Tribunal notes that, in the three price comparisons where the maximum countervailing duty was added, almost the entire price gap was covered in two of those cases. In the third comparison, over half of the price gap was covered. In the price comparisons where the lower countervailing duty was added, about half of the price gap was covered in two cases and about a third in the other comparison.

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59. Protected Pre-Hearing Staff Report, Revised June 20, 1994, Tribunal Exhibit NQ-93-006-7D (protected), Table 6, Administrative Record, Vol. 2 at 235.

60. As provided for under section 10 of SIMA, where both anti-dumping and countervailing duties are to be collected on goods imported into Canada, and the margin of dumping is wholly or partly attributable to an export subsidy, only that portion of the anti-dumping duty which exceeds the amount of the export subsidy is payable.

61. The first price comparison used prices that were reported in the results of the OMBA survey. The survey compared the average purchase price reported for domestic monuments produced from South African granite to the average purchase price for Indian monuments. The second and third price comparisons used typical and best prices for domestic P5, 2 ft. 6 in. x 6 in. x 2 ft. monuments produced from South African granite, taken from the suppliers' selling price survey, and compared them to Granite Resources' price for Jet Black Indian P5, 2 ft. 6 in. x 6 in. x 2 ft. monuments taken from Manufacturer's Exhibit A-2, Appendices 2 and 3, Administrative Record, Vol. 9.

The Tribunal notes that counsel's examples used domestic prices for monuments produced only from South African granite. Furthermore, the Tribunal notes that the price differentials in counsel's examples are all over 25 percent and as high as 40 percent. However, the evidence indicates that there is a range of price differentials between domestic and import prices and that they vary depending on whether the domestic monuments are produced from South African or Zimbabwean granite. Within the range of price differentials, there are many examples where the price gap is 18 percent or lower for domestic product made from South African granite and 15 percent or lower for that made from Zimbabwean granite. Price gaps of this magnitude will be largely bridged by the application of even the lower countervailing duty.

In cases where the price gap between the domestic and the imported product will not be bridged by the applicable duties, the application of the duties will narrow the price difference between the two products, reduce the downward pressure on domestic prices and make the domestic product more attractive in the marketplace. In the Tribunal's view, the price gap between the domestic and the Indian goods need not be bridged completely for the domestic industry to benefit. Furthermore, as stated in *LNK Manufacturing Agencies Inc. v. The Canadian International Trade Tribunal*,<sup>62</sup>

*[d]espite the "substantial difference" between the price of the domestic and imported products, it was found as a fact that the latter exerted downward price pressure on the former; that being so the mere fact that that difference "exceeds the margin of dumping" does not support a finding of no injury.*<sup>63</sup>

The Tribunal heard evidence that there was a preference for Indian black granite memorials because of their superior quality. Counsel for the exporters and importers argued that it was the consumers' preference for the Indian black granite memorials that was driving the events in the domestic marketplace. Counsel for the complainant argued that it was the availability of low-priced dumped and subsidized imports from India that was driving the events in the marketplace.

The quality of a black granite memorial relates to the quality of the granite, for example, blackness and fineness of grain, and to memorial designs. The evidence indicates that the quality of Indian black granite varies from quarry to quarry.<sup>64</sup> In addition, the physical exhibits before the Tribunal show that there is a range of qualities of black granite from India, South Africa and Zimbabwe. The evidence respecting memorial designs indicates that they are created by producers, importers and retailers and that they number in the thousands. Witnesses for two retailers gave evidence of the extensive range of designs that they offer to the public and of their ability to do custom work. The evidence indicates that there are no patents on designs and that the designs of one producer, importer or retailer are easily copied by another, making them generally available to the market. The Tribunal agrees that the quality of black granite and of memorial design are important to the marketplace. However, the evidence does not convince the Tribunal that Indian memorials are superior to

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62. Unreported, Federal Court of Appeal, File No. A-202-89, September 25, 1990.

63. *Ibid.* at 3.

64. Transcript of Public Hearing, Vol. 1, June 20, 1994, at 67 and 69; and Transcript of Public Hearing, Vol. 3, June 22, 1994, at 523.

domestically produced memorials. The evidence indicates that high-quality granite and designs are found both in Indian-made and domestically produced memorials.

The evidence and testimony of a number of witnesses emphasized that consumers have become better informed shoppers and are more price-conscious when purchasing memorials.<sup>65</sup> Witnesses for retailers gave evidence that the selling process has been adjusted to adapt to consumers' greater emphasis on price. The evidence indicates that increased price consciousness by consumers, in response to the recession, led to more marketing and promotion on the basis of price. Witnesses for the domestic industry explained that they were obliged to keep their prices static in response to low-priced Indian imports.

In determining the relative importance of factors other than dumping and subsidizing, the Tribunal notes that, when the price spread between the subject goods and the domestically produced like goods narrowed in 1993, the domestic industry recovered much of the market share that it had lost between 1990 and 1992. In the Tribunal's view, the recent developments in the Canadian market are driven by price and not qualitative factors.

It was argued that the recession caused injury to the domestic industry by reducing the demand for memorials and that the use of alternatives to traditional interment, such as cremation and community mausoleums, has shifted the demand away from memorials. In respect of both of these arguments, the Tribunal notes that the overall domestic market for black granite memorials has grown over the period of inquiry.

Finally, in this case, the Tribunal attaches little weight to fluctuations in currency exchange rates which occurred over the period of inquiry. Counsel for the exporters and importers did not argue that exchange rates were a factor that explained the low import prices over the period of inquiry. As well, there was no clear relationship between importers' selling prices and the value of the Indian rupee between 1992 and 1993.

The Tribunal concludes that, save for some impact due to a natural cost advantage, the factors other than dumping and subsidizing had an insignificant impact on the domestic industry.

### **Material Injury**

Canadian goods were not price-competitive with the lower-priced Indian goods over the 1990-92 period and, consequently, domestic producers lost considerable market share to the subject imports. Even though they were sustaining annual losses, they were unable to raise their prices sufficiently to offset these losses. In 1993, with the availability of lower-priced Zimbabwean blocks, domestic producers were able to lower their average price by increasing the proportion of their sales of memorials produced using blocks from this source. As well, the industry decided not to increase the price of memorials made from either South African or Zimbabwean granite. This marketing and pricing strategy enabled the industry to recover a part of the market share that it had lost to Indian imports in the previous two years. Had these steps not been taken, the Tribunal

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65. Transcript of Public Hearing, Vol. 1, June 20, 1994, at 59 and 60.

is convinced that the domestic industry would have continued to lose market share in 1993.

However, the lower average prices resulting from this strategy still left a considerable price gap between domestically produced memorials and those imported from India. As a result, the industry experienced a further deterioration in financial performance in 1993. Net losses before taxes amounted to 11 percent of net sales, representing a loss of about \$800,000.<sup>66</sup> This contrasts sharply with the losses of less than \$270,000 in each of the previous three years. The ample evidence and testimony before the Tribunal clearly demonstrate that the low prices required by the domestic industry to achieve sales in competition with the dumped and subsidized imports were a direct cause of the domestic industry's financial losses in 1993.

The Tribunal is of the view, however, that the dumping and subsidizing did not account for all of the loss in 1993. Some portion of that loss was, in the Tribunal's view, accounted for by the natural cost advantage enjoyed by Indian imports in the Canadian market. In this regard, the Tribunal notes that Indian producers had a natural cost advantage over the entire 1990-93 period. In the early part of that period, the domestic industry sustained losses of 2 percent in 1990 and 3 percent in 1991 of net sales. In 1992, when subsidy programs were known to be available to Indian producers, these losses increased to 4 percent of net sales. In 1993, when dumping and subsidizing were found by Revenue Canada, the domestic industry's losses increased to 11 percent of net sales. This represents an incremental loss of some 7 percent of net sales over the loss in 1992. This 7-percent loss, which is in addition to the impact of the natural cost advantage enjoyed by Indian goods and any impact that the subsidies may have had in 1992, is equivalent to a net loss of more than \$500,000.

However, a portion of the \$500,000 loss was accounted for by an increase in the domestic industry's general, selling and administrative expenses and interest expenses per cubic foot in 1993 over 1992. Although it may be reasonable to link some of the increase in these expenses to the dumping and subsidizing, the Tribunal concludes that, even if this increase in general, selling and administrative expenses and interest expenses is fully deducted from the industry's incremental loss in 1993, the remaining loss is of a magnitude sufficient to constitute material injury to a domestic industry with sales from production of some \$7 million in 1993.

In the Tribunal's view, the application of anti-dumping and countervailing duties should allow the domestic industry to improve its competitive position and financial performance. Indeed, if Indian black granite memorials and slabs had not been dumped and subsidized, their 1993 wholesale price could have been substantially higher.

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66. Protected Pre-Hearing Staff Report, Revised June 14, 1994, Tribunal Exhibit NQ-93-006-7C (protected), Schedule 4, Administrative Record, Vol. 2 at 220. This figure and others that follow in this assessment were derived by "grossing up" the value of the losses reported in the consolidated income statement. This income statement consolidates the returns from five firms, representing close to half of the domestic sales value from production reported in the Tribunal pre-hearing staff report.



## **Future Injury**

The Tribunal is also convinced that the continued dumping and subsidizing of black granite memorials and slabs from India are likely to cause material injury to the production in Canada of like goods, unless anti-dumping and countervailing duties are imposed. There exists significant export capability for black granite memorials from India.

Given the Government of India's export-oriented policy which, in the case of the granite industry, encourages value adding and the virtual absence of a home market for memorials in that country, there exists a tremendous incentive to continue exporting large volumes of finished memorials to all export markets, including Canada. The increasing number of players in the marketplace vying for a share of the black granite market and the stated intentions of certain exporters to establish a greater market presence in Canada offer a clear indication as to the expected market behaviour in Canada on the part of suppliers of Indian goods. The Tribunal also finds persuasive the evidence of a large retailer in Western Canada regarding overtures made by certain prospective suppliers or their agents of Indian goods to form business ties with that firm for the purpose of exporting and selling finished memorials to Western Canada.

Counsel for the exporters argued that there was evidence of declining Indian customs duties on consumables into that country, which suggested a decline of the amount of Indian subsidies. The Tribunal notes that the calculations of the effects of the reduced tariff rates were based on numbers not established in evidence. Regardless, the Tribunal observes that, although Indian customs duties are to be reduced, the new rates are still high. As well, the subsidy related to duties on imported machinery is but one component of the subsidy level. Furthermore, this is a case of dumping and subsidizing; the applicable duty is based on the greater of the margin of dumping or the amount of subsidy. For many exporters, to obtain reduced overall duties, both the anti-dumping duty and the countervailing duty may need to be reduced. Finally, to the extent that the customs duties change in India, this will be captured in the Deputy Minister's periodic revisions of the amount of subsidy.

To conclude, all of the factors which gave rise to the domestic industry's material injury in the past and in the present are likely to persist, unless anti-dumping and countervailing duties are imposed.

## **REQUESTS FOR EXCLUSIONS**

Counsel for two exporters requested that, in the event of a finding of material injury, their clients be excluded from the finding. In this regard, the Tribunal notes that it is within its discretion to grant such exclusions.<sup>67</sup> However, the exercise of this discretion must be based on findings of fact and upon considerations relevant to SIMA.

In assessing injury, it is the practice of the Tribunal to consider the cumulative impact of all imports into Canada from a subject country. Accordingly, the Tribunal's injury determination in this inquiry was made not on the basis of exports from any particular exporter, but on the basis of the total imports of the subject goods into Canada.

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67. See, for example, *Hitachi Limited v. The Anti-dumping Tribunal*, [1979] 1 S.C.R. 93.

Counsel for Gem requested an exclusion for their client on the basis that black granite memorials exported by Gem supply a niche market in Canada and that its products are superior in quality and higher-priced than other Indian memorials. In addition, Gem has limited its exports to Canada. As such, Gem's exports have not adversely affected the Canadian market.

The Tribunal notes that only in "exceptional circumstances" or on "rare occasions" will it grant an exporter an exclusion from a finding of injury.<sup>68</sup> As stated in the *Venetian Blinds* case,<sup>69</sup>

*[t]he circumstances in which the Tribunal would exclude one or more exporters from a finding of material injury must be adequately demonstrated and would be exceptional.*<sup>70</sup>

An example of such exceptional circumstances would be "when an exporter is shipping a specific product that is not produced in Canada."<sup>71</sup>

Based on the testimony of several witnesses, the Tribunal is satisfied that the quality and design features of memorials supplied by Gem place them in the upper range of such goods available in Canada. However, these goods are not so unique in physical characteristics and design as to be otherwise unavailable in Canada. As stated above, the Tribunal considers memorials produced from South African and Zimbabwean black granites to be like goods to the black granite memorials from India, including those supplied by Gem. The evidence indicates that many suppliers, including domestic producers, have been offering P5 monuments in standard and special shapes for sale in the Canadian market and that designs are not patented and can be copied by any other producer. The Tribunal notes that the domestic industry did not support the exclusion request by counsel for Gem. Accordingly, the Tribunal is not persuaded that an exclusion for Gem is warranted. As to Gem's commitment to limit its exports to Canada, the Tribunal does not believe that an exclusion is properly granted on this basis.

Counsel for M S International requested an exclusion for their client on the basis that all its sales in Canada have been to domestic producers pursuant to an exclusive supply arrangement. M S International has three suppliers in India whose exports were only minimally subsidized, but not dumped in Canada. In addition, M S International

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68. See, for example, *Certain Stainless Steel Welded Pipe Originating in or Exported from Taiwan*, Canadian International Trade Tribunal, Inquiry No. NQ-91-001, Finding, September 5, 1991, Statement of Reasons, September 20, 1991; and *Stainless Steel Plate, Originating in or Exported from Belgium, the Federal Republic of Germany, France, Italy, Sweden and the United Kingdom*, Anti-dumping Tribunal, Inquiry No. ADT-18-82, Finding, March 29, 1983, Statement of Reasons, April 8, 1983.

69. *Aluminum Coil Stock and Steel Head and Bottom Rails, for Use in the Production of Horizontal Venetian Blinds, Originating in or Exported from Sweden*, Canadian International Trade Tribunal, Inquiry No. NQ-91-004, Finding, February 7, 1992, Statement of Reasons, February 24, 1992.

70. *Ibid.* Statement of Reasons at 12.

71. *Gypsum Board Originating in or Exported from the United States of America*, Canadian International Trade Tribunal, Inquiry No. NQ-92-004, Finding, January 20, 1993, Statement of Reasons, February 4, 1993, at 18.

would self-regulate its imports into Canada, as it has no intention of supplying the entire market. Counsel contended that there would be no injury to domestic producers if the exclusion were granted.

As an alternative to treating slabs as a separate class of like goods, counsel for M S International requested an exclusion for slabs. Counsel submitted that black granite slabs are being imported by domestic producers in small volumes to meet the market for customized work. There is no evidence that imported slabs are causing injury to the domestic industry.

As stated above, the Tribunal finds that the domestic industry imported the subject goods as a defensive response to a suppression of its prices and a loss of market share to low-priced Indian imports that were found to be dumped and subsidized in 1993. It is the Tribunal's view that domestic producers would not have entered into an arrangement with M S International in the absence of low-priced Indian goods in the Canadian market. It is significant that the domestic industry does not support the exclusion request for either M S International or slabs generally. The Tribunal does not consider the exclusion for M S International or slabs to be warranted. The Tribunal reiterates that it considered the effect of Indian imports *en masse* in a cumulative manner, irrespective of the specific source of those imports.

## **CONCLUSION**

For all the foregoing reasons, the Tribunal finds that the dumping in Canada and subsidizing of black granite memorials and black granite slabs, originating in or exported from India, have caused, are causing and are likely to cause material injury to the production in Canada of like goods.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Raynald Guay  
Raynald Guay  
Member

Desmond Hallissey  
Desmond Hallissey  
Member