

Ottawa, Friday, July 29, 1994

**Inquiry No.: NQ-93-007**

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

**CERTAIN CORROSION-RESISTANT STEEL SHEET PRODUCTS,  
ORIGINATING IN OR EXPORTED FROM AUSTRALIA, BRAZIL,  
FRANCE, THE FEDERAL REPUBLIC OF GERMANY, JAPAN,  
THE REPUBLIC OF KOREA, NEW ZEALAND, SPAIN, SWEDEN,  
THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA**

### **FINDING**

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry following the issuance by the Deputy Minister of National Revenue of a preliminary determination of dumping dated March 31, 1994, and of a final determination of dumping dated June 29, 1994, respecting the importation into Canada of flat-rolled steel sheet products of a thickness not exceeding 0.176 in. (4.47 mm), coated or plated with zinc or an alloy wherein zinc and iron are the predominant metals, excluding automotive exposed qualities designed for and used in the manufacture of outer body components for motor vehicles, originating in or exported from Australia, Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden, the United Kingdom and the United States of America.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of flat-rolled steel sheet products of a thickness not exceeding 0.176 in. (4.47 mm), coated or plated with zinc or an alloy wherein zinc and iron are the predominant metals, excluding automotive exposed qualities designed for and used in the manufacture of outer body components for motor vehicles, hereinafter referred to as "corrosion-resistant steel sheet products," originating in or exported from Australia, Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden and the United Kingdom, has caused, is causing and is likely to cause material injury to the production in Canada of like goods, excluding:

- (i) corrosion-resistant steel sheet products, with a zinc iron first coating applied either electrolytically or by a hot-dipped process and an iron rich flash coating imposed electrolytically, known as Durgrip-E or Durexcelite, and exported from Japan by Nippon Steel Corporation, for use in the manufacture of motor vehicles;
- (ii) corrosion-resistant steel sheet products, produced by the electrogalvanizing process, for use in the manufacture of motor vehicles.

In accordance with subsections 43(1) and 43(1.01) of the *Special Import Measures Act*, the Canadian International Trade Tribunal finds that the dumping in Canada of flat-rolled steel sheet products of a thickness not exceeding 0.176 in. (4.47 mm), coated or plated with zinc or an alloy wherein zinc and iron are the predominant metals, excluding automotive exposed qualities designed for and used in the manufacture of outer body components for motor vehicles, hereinafter referred to as "corrosion-resistant steel sheet products," originating in or exported from the United States of America, has caused, is causing and is likely to cause material injury to the production in Canada of like goods, excluding:

- (i) cold-rolled steel coil which has been cleaned and electrogalvanized in accordance with ASTM Standard A591, the surface of which has been burnished with a system of 3-M Scotch-Brite rolls producing a polished or bright appearance, zinc weight both sides single spot 7.6-45.8 g/sq. m, known as Tribrite, and exported from the United States of America by Triumph Industries, A Division of The Triumph Group Operations, Inc.;
- (ii) cold-rolled steel coil which has been cleaned and electrogalvanized in accordance with ASTM Standard A591, the surface of which may or may not be burnished and which has been roll-coated with a clear, continuous film composed of metal chromates and phosphates producing a clear, lacquered appearance, zinc weight both sides single spot 7.6-45.8 g/sq. m, and chromate coating 3-4 mg/sq. ft. each side, known as Triclear, and exported from the United States of America by Triumph Industries, A Division of The Triumph Group Operations, Inc.;
- (iii) cold-rolled steel coil which has been cleaned and electrogalvanized in accordance with ASTM Standard A591, the surface of which is roll-coated with a continuous film composed of chromium chromates and oxides producing a green/gold appearance, zinc weight both sides single spot 7.6-45.8 g/sq. m, and chromate coating, as Chrome, of approximately 30 mg/sq. ft., known as Trichrome, and exported from the United States of America by Triumph Industries, A Division of The Triumph Group Operations, Inc.;
- (iv) corrosion-resistant steel sheet products exported from the United States of America for painting or printing by Metal Koting Continuous Colour Coat Limited and re-exported from Canada, provided that title to such goods as imported, further processed and re-exported from Canada remains with the U.S. exporters, and provided that such goods are not sold in Canada, but are re-exported;
- (v) corrosion-resistant steel sheet products, produced by the electrogalvanizing process, for use in the manufacture of motor vehicles.

Anthony T. Eyton

Anthony T. Eyton  
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member

Michel P. Granger

Michel P. Granger  
Secretary

The statement of reasons will be issued within 15 days.

**Inquiry No.: NQ-93-007**

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	June 27 to 30, 1994 July 4 to 8, 1994 July 11 and 12, 1994 July 14 and 15, 1994
Date of Finding:	July 29, 1994
Tribunal Members:	Anthony T. Eyton, Presiding Member Arthur B. Trudeau, Member Robert C. Coates, Q.C., Member
Director of Research:	Selik Shainfarber
Principal Research Officer:	John O'Neill
Research Officers:	Paule Couët Shiu-Yeu Li Anis Mahli
Economist:	Simon Glance
Statistical Officer:	Nynon Burroughs
Counsel for the Tribunal:	Debra P. Steger Joël J. Robichaud
Registration and Distribution Officers:	Pierrette Hébert Margaret Fisher
<b>Participants:</b>	Steven K. D'Arcy Tracy S. Peters Alexander D. Givens, Q.C. for Dofasco Inc.  <b>(Complainant)</b>  Riyaz Dattu David I.W. Hamer Anthony C.L. Bond John W. Boscariol for Stelco Inc.  <b>(Complainant)</b>

Ronald C. Cheng  
Gregory O. Somers  
Jonathan Blakey  
for Sorevco

**(Manufacturer)**

Peter Clark  
for British Steel Canada Inc.

**(Importer)**

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

**(Importer/Exporter)**

Darrel H. Pearson  
for Triumph Industries, A Division of  
The Triumph Group Operations, Inc.

**(Exporter)**

Brenda C. Swick-Martin  
Teresa A. Troester  
Wyatt Holyk  
Daniel W. Romanko  
for Companhia Siderùrgica Nacional

**(Exporter)**

Donald J. Goodwin  
Dawn L. Miller  
for Altos Hornos de Vizcaya, S.A.

**(Exporter)**

Donald J. Goodwin  
for BHP Steel Australia (JLA) Pty. Ltd.  
BHP New Zealand Steel Limited

**(Exporters)**

Donald J. Goodwin  
for Dongbu Steel Co., Ltd.  
Union Steel Mfg. Co., Ltd.

**(Exporters)**

for Donald J. Goodwin  
Pohang Iron & Steel Co., Ltd.

**(Exporter)**

Guy J. Pratte  
Martine Richard  
C. Douglas Arthur  
John Haime  
for Nippon Steel Corporation

**(Exporter)**

C.J. Michael Flavell, Q.C.  
Geoffrey C. Kubrick  
Paul Lalonde  
Leslie Milton  
Chris Hines  
for Bethlehem Steel Export Corporation  
Inland Steel Company  
LTV Steel Company  
USX Corporation

**(Exporters)**

Richard G. Dearden  
Ryan Keon  
for Toyota Motor Manufacturing Canada Inc.

**(End User/Automotive)**

Marc Hubel  
Standby Electronics Corporation

**(End User/Fabricator)**

Ottawa, Monday, August 15, 1994

**Inquiry No.: NQ-93-007**

**CERTAIN CORROSION-RESISTANT STEEL SHEET PRODUCTS,  
ORIGINATING IN OR EXPORTED FROM AUSTRALIA, BRAZIL,  
FRANCE, THE FEDERAL REPUBLIC OF GERMANY, JAPAN,  
THE REPUBLIC OF KOREA, NEW ZEALAND, SPAIN, SWEDEN,  
THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA**

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

**DECISION:** The Canadian International Trade Tribunal hereby finds that the dumping in Canada of flat-rolled steel sheet products of a thickness not exceeding 0.176 in. (4.47 mm), coated or plated with zinc or an alloy wherein zinc and iron are the predominant metals, excluding automotive exposed qualities designed for and used in the manufacture of outer body components for motor vehicles, originating in or exported from Australia, Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden, the United Kingdom and the United States of America, with certain exclusions, has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

Place of Hearing and  
Pre-Hearing Conference:

Ottawa, Ontario

Date of Pre-Hearing Conference:  
Dates of Hearing:

June 20, 1994  
June 27 to 30, 1994  
July 4 to 8, 1994  
July 11 and 12, 1994  
July 14 and 15, 1994

Date of Finding:  
Date of Reasons:

July 29, 1994  
August 15, 1994

Tribunal Members:

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Arthur B. Trudeau, Member  
Robert C. Coates, Q.C., Member

Director of Research:

Selik Shainfarber

Principal Research Officer:

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Registration and  
Distribution Officers: Pierrette Hébert  
Margaret Fisher

**Participants:** Steven K. D'Arcy  
Tracy S. Peters  
Alexander D. Givens, Q.C.  
for Dofasco Inc.

**(Complainant)**

Riyaz Dattu  
David I.W. Hamer  
Anthony C.L. Bond  
John W. Boscariol  
for Stelco Inc.

**(Complainant)**

Ronald C. Cheng  
Gregory O. Somers  
Jonathan Blakey  
for Sorevco and Company Limited

**(Manufacturer)**

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Chris Hines  
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Inland Steel Company  
LTV Steel Company, Inc.  
USX Corporation, U.S. Steel Group

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Richard G. Dearden  
Ryan Keon  
for Toyota Motor Manufacturing Canada Inc.

**(End User/Automotive)**

Marc Hubel  
Vice-President  
Product Development  
Standby Electronics Corporation

**(End User/Fabricator)**

**Witnesses:**

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Robert C. Varah  
Director  
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Dennis G. Martin  
Manager  
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William E. Mann  
Manager Operations  
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Edward Roberts  
Purchasing Manager - Metallic  
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Purchasing Manager  
Fedmet Inc.,  
Flat Rolled Division

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Sorevco and Company Limited

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Manager  
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T. H. E. Jones  
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Ann Jacques  
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Michel Therrien  
Manager - Marketing and Sales  
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Georges Chartrand  
Sales Manager  
British Steel Canada Inc.

Donald C. Fraser  
President  
BHP Steel Canada Inc.

JP (Joo Pyo) Chae  
General Manager  
Pacific Union Steel America Co.  
A Division of Union Steel America, Inc.

Mindy S. Fleishman  
Manager, Marketing and International  
Trade  
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John B. Drescher  
Manager of Sales  
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Canada Ltd.

Gerald C. Brown (Retired)  
Former Manager, Sales  
Bethlehem Steel Export Co. of  
Canada Ltd.

John B. Vail  
Marketing Manager  
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Claudio Toshio Higuchi Kuroba  
General Manager - Market Planning  
Companhia Siderúrgica Nacional

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Marc Hubel  
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Ottawa, Ontario  
K1A 0G7

Ottawa, Monday, August 15, 1994

**Inquiry No.: NQ-93-007**

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THE REPUBLIC OF KOREA, NEW ZEALAND, SPAIN, SWEDEN,  
THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA**

TRIBUNAL: ANTHONY T. EYTON, Presiding Member  
ARTHUR B. TRUDEAU, Member  
ROBERT C. COATES, Q.C., Member

### **STATEMENT OF REASONS**

#### **CONDUCT OF THE INQUIRY**

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*<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<sup>2</sup> dated March 31, 1994, respecting the importation into Canada of flat-rolled steel sheet products of a thickness not exceeding 0.176 in. (4.47 mm), coated or plated with zinc or an alloy wherein zinc and iron are the predominant metals, excluding automotive exposed qualities designed for and used in the manufacture of outer body components for motor vehicles, originating in or exported from Australia, Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden, the United Kingdom and the United States of America (the subject goods). On June 29, 1994, the Deputy Minister made a final determination of dumping<sup>3</sup> respecting the subject goods.

On April 5, 1994, the Tribunal issued a notice of commencement of inquiry.<sup>4</sup> As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian producers, importers and purchasers, as well as foreign producers of the subject goods, requesting production, financial, import and market information, as well as other information, covering the period from January 1, 1990, to March 31, 1994. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports, as well as public and protected pricing reports.

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

2. *Canada Gazette* Part I, Vol. 128, No. 16, April 16, 1994, at 2170-71.

3. *Ibid.*, No. 29, July 16, 1994, at 3324.

4. *Supra*, note 2 at 2179-80.

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.

A pre-hearing conference was held in Ottawa, Ontario, on June 20, 1994, as well as public and *in camera* hearings, which were held from June 27 to July 15, 1994. The complainants, Dofasco Inc. (Dofasco) and Stelco Inc. (Stelco), as well as Sorevco and Company Limited (Sorevco), a third Canadian producer that supported the complaint, were represented by counsel at the hearing, as were numerous exporters, importers and end users.

On July 29, 1994, the Tribunal issued a finding that the dumping in Canada of flat-rolled steel sheet products of a thickness not exceeding 0.176 in. (4.47 mm), coated or plated with zinc or an alloy wherein zinc and iron are the predominant metals, excluding automotive exposed qualities designed for and used in the manufacture of outer body components for motor vehicles, originating in or exported from Australia, Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden, the United Kingdom and the United States of America, with certain exclusions, has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

## **PRODUCTS**

### **Product Definition**

The products that are the subject of this inquiry are described by the Deputy Minister in the preliminary determination of dumping as flat-rolled steel sheet products of a thickness not exceeding 0.176 in. (4.47 mm), coated or plated with zinc or an alloy wherein zinc and iron are the predominant metals, excluding automotive exposed qualities designed for and used in the manufacture of outer body components for motor vehicles, originating in or exported from Australia, Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden, the United Kingdom and the United States of America.

The products that are the subject of this inquiry are commonly referred to as galvanized (free zinc coating) or galvanized (zinc-iron alloy coating) steel sheet. The subject products include corrosion-resistant steel sheet in cut lengths and coils (wound successively in superimposed layers or in spirally oscillated coils) whether the coating or plating is applied by the hot-dipped or electrogalvanizing process.

Corrosion-resistant steel sheet is produced usually from cold-rolled carbon steel sheet and sometimes from hot-rolled carbon steel sheet. However, minor additions of certain elements such as titanium or boron during the steel-making process enable the steel to be classified as an alloy steel. Therefore, corrosion-resistant steel produced from either carbon steel or alloy steel is considered to be subject to this inquiry.

For greater clarity, the following products are excluded from the subject goods:

- steel sheet that is coated or plated with zinc in combination with nickel, silicon or aluminum;
- galvanized products that have been pre-painted or coated with other finishes such as lacquers or varnishes; and
- galvanized armouring tape, which is narrow flat steel tape of 3 in. or less, that has been coated by a final operation with zinc by either the hot-dipped or electrogalvanizing process so that all surfaces, including the edges, are coated.

Also specifically excluded from the class of goods under inquiry are corrosion-resistant steel sheet products of automotive exposed qualities, which are of "surface critical auto-exposed qualities," designed for and used in the manufacture of outer body components for motor vehicles. However, corrosion-resistant steel sheet products for use in unexposed automotive applications, such as inner door and tailgate panels, floors, inner trunk lids, etc., are included in the goods subject to this inquiry.

### **Production Process**

There are two processes used to apply the coating to the steel substrate: the hot-dipped process and the electrogalvanizing process.

In the hot-dipped process, the steel substrate is first cleaned so that the zinc will adhere to it better. Next, the substrate enters a continuous annealing furnace, where it is heated to the temperature necessary to develop the desired metallurgical properties of the final product. The substrate is then transferred to a molten zinc-coating bath. As the steel emerges from the bath, an air, nitrogen or steam wipe is used to control the thickness of the zinc coating. The galvanized steel is then cooled in a cooling tower. In some cases, the galvanized steel is further processed into galvanized steel sheet.

The first step in producing galvanized steel sheet is to reduce the thickness of the zinc coating on the galvanized steel sheet. With "wipe-coat galvanizing," the coated sheet is wiped with thick pads as it emerges from the molten zinc-coating bath. Alternatively, the thickness coating can be reduced with an air/nitrogen wiping process. The galvanized steel sheet then passes through a galvanizing furnace, where the heat causes iron from the steel sheet to combine with the zinc coating, giving a thin zinc-iron alloy coating. The thinner coating on galvanized steel sheet results in a product that is easier to weld and paint than galvanized steel sheet.

In the electrogalvanizing process, as the charged steel passes through a plating bath, the opposite electrical charges cause the zinc solution to coat the steel. Cold-rolled steel coils are batch annealed in multi-stack furnaces or in off-line continuous annealing processes, often skin passing on a temper mill, before being electrogalvanized with a thin coating of zinc on a continuous processing line.

The subject goods<sup>5</sup> are produced to conform to certain ASTM,<sup>6</sup> SAE<sup>7</sup> and proprietary end-user specifications. The specification variables include the quality<sup>8</sup> of the steel substrate, the nominal thickness of the finished product, the width of the product and the coating weight.<sup>9</sup> Some of the more common specifications of the subject goods are:

- Commercial Quality (CQ) ASTM A526. Sheet of this quality is suitable for bending, roll forming or simple drawing applications.
- Lockforming Quality (LFQ) ASTM A527. Sheet of this quality is intended primarily for use in fabrication of products where the materials are subject to machine lockforming.
- Helical Quality. Sheet of this quality is used to fabricate helical corrugated steel pipe (also known as lockformed spiral pipe or culverts).
- Drawing Quality (DQ) ASTM A528. Sheet of this quality has a greater degree of ductility and is more consistent in performance than either commercial-quality sheet or lockforming-quality sheet.
- Deep Drawing Quality—Special Killed (DDQSK) ASTM A642. Sheet of this quality is intended for use in fabricating parts where the draw or formation is more difficult and where aging is a hazard. On the other hand, extra deep drawing-quality sheet—special killed (EDDQSK) is used for applications requiring extra deep drawing or severe forming.
- Structural Quality (STR QUAL) ASTM A446. Sheet of this quality is used in applications where mechanical properties or values such as yield strength, tensile strength, elongation value and hardness tests beyond commercial bend tests are required.

The corrosion-resistant steel sheet subject to this inquiry is commonly used in the production of certain motor vehicle components (such as inner body panels, exhaust systems and structural members), farm buildings, grain bins, culverts, garden sheds, roofing material, siding, floor decks, roof decks, wall studs, drywall corner beads, doors, door frames and ducting, and other heating and cooling applications, flashing, hardware products and appliance components. Electrogalvanized products are primarily used in automotive applications, but are also used in some construction applications.

## **Marketing and Distribution**

From time to time, the domestic producers issue price lists for the subject goods that give what are referred to in the trade as "book prices" for individual specifications and sizes of corrosion-resistant steel sheet, as well as discounts for volume purchases and additional charges for small volume purchases. These book prices are F.O.B. mill and thus do not include transportation to the customer's facility.

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5. For ease of reference in this Statement of Reasons, the subject imported goods and the like goods produced in Canada will hereinafter be referred to as "the subject goods."

6. American Society for Testing and Materials.

7. Society of Automotive Engineers.

8. The quality refers to the suitability and integrity of the steel for its intended purpose.

9. The coating weight is designated in either ounces per square foot (imperial) or grams per square metre (metric). Two of the more common imperial coating designations are G90 (Z275) and G60 (Z180).

The market for the subject goods consists of three principal sectors: the automotive sector, which comprises motor vehicle manufacturers, as well as parts manufacturers or stampers; steel service centres, which resell the subject goods to other users; and producers and fabricators, which use the subject goods to manufacture non-automotive products, for example, culverts, studding products and doors.

The automotive sector usually contracts with steel mills to supply steel for specific parts on a model-year basis, with the motor vehicle manufacturer or fabricator specifying the characteristics of the corrosion-resistant steel sheet (for example, coating weight, grade of steel, nominal thickness). Producers must be "certified," as being able to provide the corrosion-resistant steel sheet for a particular part. The certification process can take between six months and two years to complete, during which time the mill provides samples of steel sheet for testing to ensure that the steel sheet meets the metallurgical specifications and can be successfully formed into the required part.

Steel service centres generally purchase their steel sheet supplies on an as-required basis, with orders being placed three weeks to four months in advance of requirements. More common products can be sourced in less time than more specialized products.

Non-automotive end users purchase both on an as-required basis and through contracts. Contract prices tend to be set for a period of three months.

In 1993, sales of the subject goods were divided relatively evenly among the three market sectors. However, from 1990 to 1993, sales to steel service centres and the automotive sector increased by approximately 7 and 5 percentage points, respectively, while those to non-automotive end users decreased by 12 percentage points.

## **DOMESTIC INDUSTRY**

The Canadian corrosion-resistant steel sheet industry consists of four producers: Dofasco, Stelco, Sorevco and Metal Koting Continuous Colour Coat Limited (CCC).

Dofasco was founded in 1912 and is one of Canada's largest integrated steel producers. It produces, among other products, sheet and coils of hot- and cold-rolled steel, galvanized, galvannealed and galvalume<sup>10</sup> steel, and tin-plated, chromium-coated and electric motor lamination steels. Dofasco produces the subject goods at its Hamilton, Ontario, plant and at the DNN Galvanizing Corporation (DNN) facility<sup>11</sup> located in Windsor, Ontario. DNN, which is a joint venture between Dofasco, National Steel Corporation of the United States and NKK Corporation of Japan, began operations in 1993.

Stelco was established in 1910 and is another large integrated producer of a wide range of steel products. The subject goods are manufactured from hot-rolled steel sheet that is produced at Lake Erie Works in Nanticoke, Ontario, and at Hilton Works in Hamilton, Ontario. All cold-rolling and coating take place at Hilton Works. In 1991,

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10. Corrosion-resistant steel sheet with an aluminum and zinc coating. Galvalume products are not subject goods.

11. The production facilities of DNN will be hereinafter referred to as "the DNN line."



Stelco set up the production facilities of Z-Line Company (Z-Line) at Hilton Works.<sup>12</sup> Z-Line is a joint venture that is 60 percent owned by Stelco and 40 percent owned by Mitsubishi Corporation.

Since 1991, Sorevco produces corrosion-resistant steel sheet at its facility located in Côteau-du-Lac, Quebec. Sorevco is a joint venture of Dofasco and Sidbec-Dosco Inc., in which each partner owns 50 percent of the company. Unlike Dofasco and Stelco, Sorevco purchases all of its cold-rolled substrate material from other steel producers, principally, its two owners.

The subject goods are generally available from Canadian producers in nominal product thicknesses from 0.010 in. to 0.176 in., in widths from 24 in. to 72 in. and in a wide variety of galvanized or galvanized coating weights.

Dofasco, Stelco and Sorevco use only the hot-dipped process of producing corrosion-resistant steel sheet.

At its facility in Rexdale, Ontario, CCC produces primarily coated and laminated steel sheet from corrosion-resistant steel sheet, with only small quantities of corrosion-resistant steel sheet being sold directly in the market. CCC uses the electrogalvanizing process of producing corrosion-resistant steel sheet. CCC is an independent company, not owned by any of the other Canadian producers. However, its owners have pledged 60 percent of its shares as security against financing provided by Stelco.<sup>13</sup>

The domestic industry is by far the largest supplier of the subject goods in all regions of Canada with the exception of British Columbia where, in 1993, the market was served almost equally by domestic producers and importers of corrosion-resistant steel sheet.

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

The period of investigation into dumping covered imports of the subject goods from January 1 to June 30, 1993. In the final determination of dumping, the Deputy Minister identified 145 exporters and 118 importers of the subject goods.

There were 122 exporters from the United States, including large integrated mills such as LTV Steel Company, Inc., USX Corporation, U.S. Steel Group, Bethlehem Steel Export Corporation and Inland Steel Company. There was only one exporter identified during the Deputy Minister's period of investigation for each of Australia, Brazil, France, New Zealand, Spain, Sweden and the United Kingdom. Several exporters or potential exporters to Canada were identified from the Federal Republic of Germany, Japan and the Republic of Korea.

Table 1 summarizes the margins of dumping found by the Deputy Minister for each exporter investigated.

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12. The production facilities of Z-Line will be hereinafter referred to as "the Z-Line."

13. Transcript of Public Hearing, Vol. 4, June 30, 1994, at 498.

**Table 1**

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

<b>Country</b>	<b>Exporter<sup>1</sup></b>	<b>Goods Dumped (%)</b>	<b>Weighted Average Margin of Dumping<sup>2</sup> (%)</b>
Australia	John Lysaght (Australia) Limited	100.0	32.7
Brazil	Companhia Siderúrgica Nacional	100.0	51.4
Federal Republic of Germany	Preussag Handel GmbH	100.0	60.8
France	Sollac et Daval, Aciers d'Usinor et de Sacilor	100.0	32.8
Japan	Mitsubishi Corporation	100.0	60.8
Republic of Korea	Dongbu Steel Co., Ltd.	100.0	12.5
	Pohang Coated Steel Co., Ltd. (POCOS)/Ssangyong Inc.	100.0	15.4
	Pohang Iron & Steel Co., Ltd. (POSCO)/Ssangyong Inc.	100.0	8.9
New Zealand	BHP New Zealand Steel Limited	100.0	32.1
Spain	Altos Hornos de Vizcaya, S.A.	100.0	28.4
Sweden <sup>3</sup>	Preussag Handel GmbH	100.0	60.8
United Kingdom	British Steel plc	100.0	23.5
United States	Advance Steel Inc.	100.0	60.8
	American Steel Products Company	100.0	12.0
	Bethlehem Steel Export Corporation	0.0	0.0
	City Steel Processing	100.0	60.8
	Expert Metal Services	100.0	60.8
	Form-Tech Steel Inc.	100.0	60.8
	Inland Steel Company	94.7	8.1
	LTV Steel Company, Inc.	83.5	13.2
	Majestic Steel Service Inc.	100.0	60.8
	Maksteel Service Center, Div. of Makagon Industries Ltd.	100.0	60.8
	Michigan Steel Processing Inc.	0.0	0.0
	MST Steel Corp.	100.0	48.4
	NexTech	100.0	60.8
	Pinole Point Steel Company	100.0	60.8
	Riverview Steel Co. Ltd.	100.0	60.8
	Rod Metals Inc.	100.0	60.8
	Steeler Inc.	100.0	60.8
	Triumph Industries, A Division of The Triumph Group Operations, Inc.	71.2	2.4
	USS-POSCO Industries (UPI)	100.0	60.8
	USX Corporation, U.S. Steel Group	65.0	4.2
	Wheeling Corrugating Company, Division of Wheeling-Pittsburgh Steel Corporation	100.0	60.8

**Notes:**

1. The margins of dumping were determined for exporters which were required to provide information and for those which made a voluntary submission to the Department of National Revenue.

2. The weighted average margins of dumping are expressed as a percentage of normal values.

3. During the period of investigation, all subject goods originating in Sweden were shipped to Canada from the Federal Republic of Germany by Preussag Handel GmbH.

Source: Department of National Revenue, Final Determination of Dumping, June 29, 1994, Statement of Reasons, Tribunal Exhibit NQ-93-007-4, Administrative Record, Vol. 1 at 164-66.

## **SUMMARY OF POSITION OF PARTIES**

### **Domestic Industry**

#### **Dofasco, Stelco and Sorevco**

Arguments were made by counsel for Dofasco, Stelco and Sorevco. In brief, they argued that the domestic industry's problems are primarily, although not exclusively, a result of price erosion and suppression caused by U.S. and offshore imports. Counsel for Stelco pointed to the decline in the price of the subject goods from 1989 to 1992 as being one of unprecedented magnitude for the domestic industry. Counsel for Dofasco stated that the company experienced a dramatic drop in its net income per ton as a direct result of price erosion and suppression caused by imports. Counsel for Sorevco claimed that the company was restrained from achieving a reasonable rate of return within a reasonable period of time because of the presence of imports from the subject countries.

It was argued that the Tribunal has a long-standing and uncontested tradition of applying the principle of cumulation in its considerations of whether dumping has caused material injury, and that, in this case, all subject countries have contributed to the domestic industry's injury.

Counsel noted the substantial additions to world-wide, steel-making capacity in recent years, as the economies of most of the subject countries experienced recessions of varying severity, and argued that, in order to maintain high capacity utilization in the face of declining domestic demand, producers in the subject countries turned more and more to export markets, including Canada. They argued that the price erosion in the current case began in 1990, first with imports from the United States, followed by imports from the other subject countries. The subject goods were described as being essentially commodity products and, as such, it was argued that the sale of these goods is very sensitive to price. Counsel alleged that the knowledge of low-priced offers or sales to particular steel service centres or end users tends to spread quickly to other service centres and end users, thereby putting downward pressure on prices in the market in general.

Counsel also noted that price declines of the subject goods occurred largely at accounts where there was competition from imports and that prices remained relatively stable at accounts where there was no import competition. In addition, in the last quarter of 1992, the price of corrosion-resistant steel was higher than the price of cold-rolled steel and, by the fourth quarter of 1993, the price of cold-rolled steel was higher than the price of corrosion-resistant steel. It was argued that this was a result of the injury finding made by the Tribunal in the *Cold-Rolled Steel Sheet* case.<sup>14</sup> Similarly, in this case, the price increases in 1993 were not related to greater activity in the market, but, rather, to the market's knowledge of a pending anti-dumping action. Counsel also argued that material injury can still be suffered in an expanding market with rising prices if domestic producers are unable to take full advantage of new productive capacity because of the presence of dumped imports.

Counsel noted that the Tribunal's pricing survey revealed that imports were more often lower priced than comparable domestic products. They argued that the

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14. *Certain Cold-Rolled Steel Sheet Originating in or Exported from the Federal Republic of Germany, France, Italy, the United Kingdom and the United States of America*, Inquiry No. NQ-92-009, Finding, July 29, 1993, Statement of Reasons, August 13, 1993.

non-dumping factors had a minimal impact on the domestic industry. During the 1981-84 recession, the domestic industry was able to increase its prices for the subject goods; however, it was unable to do so in the more recent 1991-92 recession. Similarly, counsel for Stelco noted that following the 1981 strike, Stelco was able to increase its prices for the subject goods; however, it was unable to do so after the 1990 strike. This price suppression was due to the continued presence of dumped imports and not to the recession or the strike at Stelco.

It was argued that the Z-Line and DNN line were built to meet the needs of the automotive sector and, thus, had not led to any overcapacity. In Sorevco's first year of operation, output was significantly less than the volume of imports from the subject countries; therefore, it was argued that Sorevco was not the cause of the Canadian industry's problems. Counsel argued that there was no correlation between import volumes and fluctuations in the U.S.-Canadian dollar exchange rate, and that, therefore, this factor was not a cause of the domestic industry's injury. Counsel noted that the injury was not caused by sales of secondary products. Rather, the domestic industry suffered injury with respect to sales of secondary products, since the prices of these products were tied to the prices of prime products, which were affected by dumped imports.

Counsel alleged that there was clear evidence of a propensity to dump on the part of the subject countries and that there was, therefore, a likelihood of injury. For example, many of these countries were found to have injuriously dumped steel in Canada in the past, and all of the countries had significant weighted average margins of dumping. There was also clear evidence of source switching on the part of the importers. Counsel argued that corrosion-resistant steel sheet products were beginning to enter Canada from a number of non-subject countries. Moreover, world-wide excess steel capacity indicated the likelihood of continued dumping of the subject goods in Canada.

Finally, counsel for Stelco argued that the Tribunal should not exclude corrosion-resistant steel sheet products, produced by the electrogalvanized process, for use in the manufacture of motor vehicles, as Stelco supplies a substitute for electrogalvanized steel products for use in unexposed automotive applications.

## **Exporters, Importers and Other Parties**

### **Toyota**

Counsel for Toyota Motor Manufacturing Canada Inc. (Toyota) requested that the subject goods produced by Nippon Steel Corporation in Japan and used in the production of motor vehicles in Canada be excluded from any finding of material injury, on the basis that these products are not produced in Canada.

### **Nippon**

Counsel for Nippon Steel Corporation (Nippon) noted that sales of the subject goods contributed substantially to Dofasco's profitability. Any injury suffered by the domestic industry was due to other factors, such as the effects of the most recent recession. Counsel noted that during the 1981-84 recession, the selling prices of all steel products, including the subject goods, rose, whereas during the early 1990s recession, the prices of all steel products fell. Counsel argued that Stelco's internal problems were the real cause of its injury, and noted that Sorevco, a new player in the market, had more or less tripled its volume of sales since its inception in 1991.

Counsel conceded that the domestic industry does not have to show that each country independently caused material injury and that the Tribunal can cumulate the effects of dumping. However, the domestic industry must demonstrate that each country contributed to the injury. Counsel argued that this was not done with respect to dumped imports from Japan. Exports of the subject goods from Japan were of minuscule quantities and were priced higher than domestic products. It was, therefore, impossible for them to be the cause of material injury to the domestic producers. Although substantial excess capacity existed in Japan in the last two to three years, there was no huge increase in exports to Canada. Thus, the concerns of the domestic industry about overcapacity and future injury were unwarranted.

Counsel requested an exclusion for corrosion-resistant steel sheet products known as Durgrip-E and Durexcelite in the event of an injury finding on the basis that these products are not produced in Canada.

### **Triumph Industries**

Counsel for Triumph Industries, A Division of The Triumph Group Operations, Inc. (Triumph Industries) requested that the company be excluded from any finding of material injury by the Tribunal. Triumph Industries had a negligible margin of dumping, and was not the subject of any allegations of unfair pricing or lost sales by the domestic industry. Counsel also requested an exclusion for corrosion-resistant steel sheet products known as Tribrite, Triclear and Trichrome from an injury finding on the basis that these products are not produced in Canada.

### **Francosteel and Sollac and Daval**

Counsel for Francosteel Canada Inc. (Francosteel) and Sollac et Daval, Aciers d'Usinor et de Sacilor (Sollac and Daval) argued that the domestic industry did not suffer any material injury in light of the fact that the economic indicators showed positive trends in favour of the domestic industry. Factors such as the total market for the subject goods, the Canadian producers' share of the domestic market, the domestic industry's production capacity and selling prices were all increasing. The domestic industry's capacity utilization remained healthy and its profitability was improving. Moreover, it was difficult for the Tribunal to have a complete and comprehensive picture of the financial performance of the domestic industry because the complainants did not provide sufficient information concerning the introduction of the Z-Line, the DNN line and Sorevco.

During the period of inquiry, the domestic industry increased its production capacity three times, representing a faster rate of growth than anywhere else in the world. This occurred in the midst of a recession and at a time of restructuring for the domestic industry, which included the creation of a new Canadian producer, Sorevco. Counsel argued that this phenomenon placed downward pressure on domestic prices.

The evidence of witnesses for the exporters clearly established that there was no extensive global excess capacity of the subject goods and that there was no threat of future injury. France, in particular, did not contribute to any injury suffered by the domestic industry. More specifically, the Tribunal's pricing survey showed that Sollac and Daval and Francosteel did not lead Canadian prices downward, but, rather, that they tried to set their prices at domestic price levels, allowing for the discrepancy in lead times. Counsel argued that import sources cannot be cumulated together for the purposes of finding injury simply because they happened to be present in the Canadian market.

### **BHP New Zealand, BHP Australia, AHV, Dongbu and POSCO**

Counsel for BHP New Zealand Steel Limited (BHP New Zealand), BHP Steel Australia (JLA) Pty. Ltd. (BHP Australia), Altos Hornos de Vizcaya, S.A. (AHV), Dongbu Steel Co., Ltd. (Dongbu) and Pohang Iron & Steel Co., Ltd. (POSCO) argued that the recession, aggressive marketing by Stelco in seeking to increase its cash flow to meet a severe financial crisis and the entry of Sorevco into the market were responsible for the decline in prices in the Canadian market from 1990 to 1992. Counsel argued that there were very few specific allegations of price erosion or suppression against New Zealand, Australia, the Republic of Korea and Spain.

Counsel argued that these four countries did not contribute to any injury suffered by the domestic industry. More specifically, none of them had any intention of becoming a primary source of supply for any Canadian customer. All of their exports to Canada were and would continue to be *de minimis*. BHP New Zealand withdrew from the Canadian market in 1992 because of low prices and the reconstruction and recommissioning of its galvanizing line, which was converted into a galvanizing/galvalume line. It was submitted that the Republic of Korea was unable to increase exports to Canada because of an increase in domestic demand, which absorbed any additional production. Finally, Spain did not cause any material injury, but rather lost customers to Sorevco because of the latter's lower prices.

### **CSN**

Counsel for Companhia Siderúrgica Nacional (CSN) argued that all of the relevant economic indicators clearly show that the domestic industry has not suffered, is not suffering and is not likely to suffer injury. There is no legal requirement that the Tribunal cumulate all of the subject countries in its injury analysis. The circumstances surrounding Brazilian imports set Brazil apart from the other countries and warranted that it not be cumulated by the Tribunal in its analysis. The Tribunal must find that the dumped imports, in and of themselves, have caused material injury to the domestic industry.

In this case, there has not been a significant increase in the volume of imports from all of the subject countries, more particularly from Brazil, one of the requirements of the GATT Anti-Dumping Code<sup>15</sup> (the Code) in determining injury. Rather, the Public Pre-Hearing Staff Report shows that the volume of the subject imports has declined over the period of inquiry. Further, there has not been substantiated evidence of price underselling, price suppression or lost sales caused by imports from Brazil. The relatively few allegations against Brazil were vague and speculative, with no allegations involving transactions later than January 1992. CSN is a small, responsible player whose exports to Canada have been sold only in British Columbia, at decreasing volumes from 1990 to 1993. Moreover, the domestic industry has not placed any priority on supplying the subject goods to the western Canadian market.

Finally, there is no likelihood of injury from Brazil partly because Brazilian home market demand for the subject goods is projected to increase in the next few years. CSN is currently operating at close to full capacity and it has no plans to expand.

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

## **BSC**

Counsel for British Steel Corporation (BSC) argued that the fact that there is dumping does not automatically mean that there is injury. There must be positive evidence to establish a causal link between the dumping and the material injury. The evidence shows that Canadian producers did not lose any market share or suffer any reduction in capacity utilization during the period of inquiry. Any injury was due to other factors, such as the recession, and the fact that, during the period of inquiry, Canadian producers had increased their domestic sales of low-priced, non-prime products and incurred substantial losses.

There was no specific evidence to support a case of material injury against imports from BSC. The domestic industry has been unsuccessful in establishing, through its allegations of price erosion and suppression, that BSC was responsible for bringing down prices. BSC's marketing policies and practices were fair and non-disruptive, and its presence in the marketplace was *de minimis*. Counsel, therefore, urged the Tribunal not to cumulate the United Kingdom in its injury analysis.

There was no evidence of a threat of future injury. This was apparent from Dofasco's 1994 second steel quarter report, which projected a strong demand for the subject goods in 1994. In referring to the Code, counsel asserted that any finding of future injury must not be based on conjecture or remote possibility.

## **Bethlehem, USX, LTV and Inland**

Counsel for Bethlehem Steel Export Corporation (Bethlehem), USX Corporation, U.S. Steel Group (USX), LTV Steel Company, Inc. (LTV) and Inland Steel Company (Inland) argued that what is in the distant past should be discounted by the Tribunal. Moreover, any injury suffered by the domestic industry would have occurred in 1990 and 1991. The domestic industry has not revealed the entire picture in relation to the profitability of the subject goods, especially concerning the income or economic benefits derived from the Z-Line and DNN line. In addition, Sorevco was performing well, despite having been in operation for only three years and having relied heavily on sales to the Quebec construction market, which experienced a severe downturn in 1991 and 1992.

There must be clear evidence of a direct causal link between the material injury and the dumping. It is not sufficient that the dumping be found to be a minor cause of the material injury. It was argued that other factors such as the recession, the strike at Stelco, the fluctuation in exchange rates were the cause of any material injury suffered by the domestic industry.

In a case of price erosion, there must be clear evidence of underselling by exporters. In this case, there has not been convincing evidence of this. The relatively few allegations made by the domestic industry against the four U.S. mills have been refuted to the fullest extent possible, even in light of the limited amount of specific information pertaining to these allegations that could be disclosed to these mills because of the domestic industry's concerns of confidentiality.

The domestic industry's case of future injury is even weaker than its case for past and present injury. The short-term outlook for the domestic industry looks very promising, especially in light of the booming automotive industry. Moreover, both Canadian and U.S. mills are operating at near capacity levels.

Counsel argued that the United States, as well as Bethlehem, USX, LTV and Inland, had not contributed to any injury suffered by the domestic industry and should therefore be excluded from any injury finding by the Tribunal. Counsel also requested an exclusion for corrosion-resistant steel sheet products, produced by the electrogalvanizing process, for use in the manufacture of motor vehicles, on the basis that these products are not produced in Canada.

## **ECONOMIC INDICATORS**

Tables 2 and 3 summarize some of the key economic indicators in this inquiry. Table 2 provides actual figures that are public information, while Table 3 presents confidential data in index form, with 1990 as the base year.

<b>Table 2</b>						
<b>SELECTED ECONOMIC INDICATORS</b>						
	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1993 Q1</b>	<b>1994 Q1</b>
<b>Imports (000 net tons)</b>						
Total Imports	202	181	190	195	32	40
Imports from Subject Countries	200	180	189	189	32	40
Sales from Subject Imports	198	173	183	188	33	38
<b>Domestic Industry</b>						
Employment	1,097	999	957	771	N/A	N/A
Capacity (000 net tons)	1,655	1,797	2,160	2,260	N/A	N/A
<b>Prices (\$/net ton)</b>						
Average Revenue <sup>1</sup>	730	682	636	636	625	668
Average Selling Price <sup>2</sup>	753	713	644	670	649	701
Notes:						
N/A = Not available.						
1. Average revenues earned on the domestic industry's sales of the subject goods.						
2. Composite domestic and import average selling prices for the "bellwether" G90 products as specified in the <u>Public Pricing Report</u> prepared by the Tribunal staff.						
Source: <u>Public Pre-Hearing Staff Report</u> , June 1, 1994, Tribunal Exhibit NQ-93-007-6, Administrative Record, Vol. 1A; and <u>Public Pricing Report</u> , June 7, 1994, Tribunal Exhibit NQ-93-007-23, Administrative Record, Vol. 1A.						

As Table 2 indicates, imports from the subject countries declined from 1990 to 1991, by some 10 percent. In 1992, imports from the subject countries rose by 5 percent and remained constant in 1993. The volume of the subject imports in 1993 was 11,000 net tons lower than what it had been in 1990. However, imports from the subject countries grew by 25 percent in the first quarter of 1994, compared to the first quarter of 1993. Sales from the subject imports followed the same pattern. As shown in Table 2, during the period of inquiry, the number of employees directly involved in the domestic production of the subject goods decreased from almost 1,100 to less than 800, a 30-percent decline.

The industry increased production capacity during each of the three years subsequent to 1990. The capacity increases started with the introduction of Sorevco in the spring of 1991 and the commissioning of Stelco's Z-Line in the summer of that year.



Both companies reported a proportion of the capacities of the new lines during that year, based on the amount of time they were in operation. The full capacities of the two lines were reported for 1992. Dofasco's DNN line became operational in the spring of 1993, and Dofasco reported a proportion of its capacity in that year. During the period of inquiry, Stelco idled its No. 1 Galvanizing Line, due to a lack of orders for products made on this line.

Table 2 also presents two average price series. The average revenue shows the average revenue earned by the domestic industry on its domestic sales of the subject goods during the period of inquiry. The average selling price reflects the average price for the bellwether G90 coating-weight products, as reported to the Tribunal by the domestic industry, importers and end users. Both averages declined in 1991 and 1992 from the 1990 level. However, while the average for the G90 products increased in 1993 and again in the first quarter of 1994, the average revenue reported by the domestic industry remained constant in 1993, before rising in the first quarter of 1994. As of the first quarter of 1994, neither of the average prices had reached the level reported in 1990.

As shown in Table 3, the apparent market decreased by 14 percentage points in 1991, compared to 1990, before recovering by 12 percentage points in 1992. It grew a further 19 percentage points from 1992 to 1993, with the first quarter of 1994 exhibiting continued growth, compared to the same period in 1993. During the four-year period, the total apparent market grew by approximately 17 percent.

INDICES OF SELECTED ECONOMIC INDICATORS						
	1990 <sup>1</sup>	1991	1992	1993	1993 Q1	1994 Q1
Apparent Market	100.0	86.5	98.1	117.1	25.8	29.4
<b>Market Share</b>						
Domestic Industry	100.0	99.9	101.2	103.5	107.5	107.3
Total Imports	100.0	100.6	93.6	83.2	63.0	64.7
Subject Imports	100.0	101.2	94.2	80.8	63.4	65.1
<b>Domestic Industry</b>						
Production	100.0	95.8	122.3	132.3	33.4	32.0
Capacity Utilization	100.0	92.6	100.0	106.2	N/A	N/A
Volume of Sales	100.0	86.3	99.4	121.3	27.8	31.6
Value of Sales	100.0	80.8	86.4	105.3	24.2	29.5
<u>Net Income (Loss) as a % of Sales</u>	9.8	(0.1)	(1.0)	2.5	N/A	N/A

Notes:  
N/A = Not available.  
1. This column provides a base-year index value of 100 for all indicators, including those that, in real terms, are expressed as percentages. The actual 1990 percentages for market share and capacity utilization were less than 100, and should not be confused with the index value indicated.

Source: Public Pre-Hearing Staff Report, June 1, 1994, Tribunal Exhibit NQ-93-007-6, Administrative Record, Vol. 1A; and Public Pricing Report, June 7, 1994, Tribunal Exhibit NQ-93-007-23, Administrative Record, Vol. 1A.

The domestic industry's market share of the apparent market for the subject goods decreased slightly in 1991, then increased in 1992 and 1993. It remained constant in the first quarter of 1994, compared to the first quarter of 1993. The share of the market held by the subject imports rose slightly in 1991, then fell in both 1992 and 1993. The market share held by the subject imports remained relatively constant in the first quarter of 1994, compared to the equivalent period in 1993.

Over the four-year period, the domestic industry's production of the subject goods increased by over 30 percent. The decline in employment, coupled with the increased production of the subject goods, improved the industry's overall productivity. Sales volume reported for the domestic industry declined by 14 percentage points in 1991 compared to 1990, before increasing by 13 percentage points in 1992 and 22 percentage points in 1993. Sales volume has continued to show improvement in the first quarter of 1994, compared to the first quarter of 1993, rising by 4 percentage points over this interim period. The industry's sales value has followed a similar pattern of decline in 1991 and improved thereafter. However, sales value has fallen more steeply than sales volume, and it has improved more slowly. This reflects the lower average unit revenues achieved in the period after 1990. The 1993 sales value is only 5 percent above the reported 1990 level, compared to the 21-percent increase in sales volume during the same period.

As noted in Table 3, in 1990, the domestic industry earned profits of approximately 9.8 percent of the subject goods sales revenue, then incurred losses of 0.1 percent of sales and 1.0 percent of sales in 1991 and 1992, respectively, before returning to profitability in 1993, with profits of approximately 2.5 percent of sales. This reflected a decline in net profits of \$71 per ton in 1991, \$76 per ton in 1992 and \$54 per ton in 1993, compared to the net profits earned in 1990.

## **REASONS FOR DECISION**

Pursuant to section 42 of SIMA, the Tribunal must determine whether the dumping of the imported 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 imported subject goods. The Tribunal must then be satisfied that the domestic industry constitutes a major proportion of 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 of the imported subject goods. In the event of a finding of material injury, the Tribunal must then consider requests for exclusions from the finding.

### **Like Goods**

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

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

Clearly, domestically produced goods meeting the description of the imported subject goods, as defined by the Deputy Minister in the final determination of dumping, constitute like goods that are identical in all respects to the imported subject goods. For

the purposes of this inquiry, the Tribunal finds that corrosion-resistant steel sheet products meeting the description of the Deputy Minister, and produced by the domestic industry in Canada, constitute like goods to the imported subject goods.

The Tribunal also considered the issue of whether galvalume, which is a flat-rolled steel sheet product coated with an alloy wherein aluminum is the predominant metal, and which was not included by the Deputy Minister in the definition of the imported subject goods, should be considered like goods for the purposes of the inquiry.

In *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd.*,<sup>16</sup> the Federal Court of Appeal recognized that, even when there is domestic production of identical goods to the imported subject goods, goods that closely resemble the dumped goods may also constitute like goods because they are in competition with these goods.<sup>17</sup>

In *Sarco Canada Limited v. The Anti-dumping Tribunal*,<sup>18</sup> the Federal Court of Appeal accepted the Anti-dumping Tribunal's approach to the analysis of like goods, where it 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>19</sup>

The Anti-dumping Tribunal also considered the physical characteristics, including similarities and dissimilarities, of the goods in considering whether they were like goods.

On the basis of the evidence, the Tribunal concludes that galvalume cannot be considered like goods to the imported subject goods. Galvalume's higher aluminum content makes it more corrosive resistant than other corrosion-resistant steel sheet products.<sup>20</sup> As such, it is not identical in all respects to the imported subject goods. Galvalume is more expensive than galvanized steel sheet, but cheaper than aluminum products.<sup>21</sup> Although galvalume might compete with galvanized or galvanized steel sheet in certain instances, the evidence indicated that customers who presently use galvalume would switch to an aluminum product before switching to galvanized or galvanized steel sheet. Similarly, in most instances, customers who use galvanized steel sheet would not be willing to change to galvalume.<sup>22</sup> Therefore, the Tribunal is of the view that galvalume does not fulfil the same needs as the imported subject goods, and is not sufficiently substitutable with them to be considered like goods.

## **Domestic Industry**

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

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16. [1982] 2 F.C. 283.

17. *Ibid.* at 287.

18. [1979] 1 F.C. 247.

19. *Ibid.* at 251-52.

20. *Transcript of In Camera Hearing*, Vol. 3, June 30, 1994, at 611-12.

21. *Ibid.*, Vol. 2, June 29, 1994, at 241-42.

22. *Ibid.*; and *Transcript of Public Hearing*, Vol. 3, June 29, 1994, at 407-08 and 411-12.

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

The Tribunal finds that this requirement is met, as the complainants, Dofasco and Stelco, represent approximately 90 percent of the total domestic production of like goods, with most of the balance attributable to Sorevco, a third Canadian producer that supported the complaint. Furthermore, although Dofasco imported small amounts of the subject goods during the period of inquiry, the Tribunal is of the opinion that these volumes are not sufficient to warrant interpreting the domestic industry as referring to the rest of the producers.<sup>23</sup>

### **Material Injury**

Where, as in the present case, the dumping of the subject goods involves more than one exporting country, it has long been the Tribunal's practice, in determining whether the domestic industry has suffered from, or is threatened with, material injury, to analyze the cumulative effect of imports from all subject countries. The rationale for this practice was recently stated by the Tribunal as follows:

*Even when dumped imports from certain sources are small and "cannot be found to have contributed significantly to the plight of the domestic producers when considered separately," it is their cumulative impact combined with all other imports which is to be assessed in considering the question of material injury.*<sup>24</sup>

In the *Polyphase Induction Motors* case, the Tribunal stated the following:

*The principle of cumulation is a well known principle, generally recognized and applied in the administration of anti-dumping and countervailing legislations by the nations actively applying the Codes in international trade.*<sup>25</sup>

Consistent with this reasoning and the Tribunal's extensive past practice, the Tribunal has decided to consider the cumulative effects of dumped imports from all subject countries in its examination of material injury.

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23. Tribunal Exhibit NQ-93-007-12.2C (protected), Administrative Record, Vol. 4A at 87; and Tribunal Exhibit NQ-93-007-5 (protected), Administrative Record, Vol. 2 at 77.03.

24. *Certain Cold-Rolled Steel Sheet Originating in or Exported from the Federal Republic of Germany, France, Italy, the United Kingdom and the United States of America*, Inquiry No. NQ-92-009, Finding, July 29, 1993, Statement of Reasons, August 13, 1993, at 28, citing *Certain Carbon and Alloy Steel Plates Originating in or Exported from Belgium, Brazil, Czechoslovakia, the Federal Republic of Germany, France, the Republic of South Africa, the Republic of Korea, Romania, Spain and the United Kingdom* (1983), 6 C.E.R. 21 at 33-34, Anti-dumping Tribunal, Inquiry No. ADT-10-83, Finding, December 7, 1983, Statement of Reasons, December 29, 1983, at 9-10. See also *Polyphase Induction Motors Originating in or Exported from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America* (1989), 1 T.T.R. 58, Canadian International Trade Tribunal, Inquiry No. CIT-5-88, Finding, April 28, 1989, Statement of Reasons, May 12, 1989.

25. *Polyphase Induction Motors Originating in or Exported from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America* (1989), 1 T.T.R. 58, Inquiry No. CIT-5-88, Finding, April 28, 1989, Statement of Reasons, May 12, 1989, at 13.

In assessing injury to the domestic industry, the Tribunal took cognizance of Article 3 of the Code, as reflected by rule 61 of the *Canadian International Trade Tribunal Rules*,<sup>26</sup> which provides guidance as to the factors the Tribunal should consider in making a determination of injury. These factors include: the volume of the dumped imports and their effect on prices in the domestic market for like goods; and the consequent impact of these imports on domestic producers of like goods. When examining the impact of the imports, the Tribunal considers the relevant economic factors which, in this case, include: actual or potential declines in output, sales, market share, profits, return on investments or utilization of production capacity; factors affecting domestic prices; and actual and potential negative effects on revenues.

### **Market Characteristics**

The market for corrosion-resistant steel sheet products is an integrated North American market at both the raw material and finished goods trade levels.<sup>27</sup> This means that steel mills and their customers, on both sides of the border, compete against each other for business in a North American context. This is true in all sectors of the subject goods market, but especially so in the automotive sector. This competition is enhanced by the *Canada-United States Free Trade Agreement*<sup>28</sup> and the *North American Free Trade Agreement*<sup>29</sup> and facilitated by the fact that there is a large number of U.S. steel mills and steel service centres within a relatively short distance of the Canada-U.S. border.

The effect of this market integration is that prices in Canada and the United States cannot get seriously out of line with each other, as conditions in the United States can and do readily spill over into the Canadian market.<sup>30</sup> The evidence presented in this case shows that, in 1990 and 1991, conditions in the U.S. market were poor and U.S. prices were depressed. These conditions were being felt in Canada through sales and offers of U.S. products by U.S. mills, steel service centres and brokers.<sup>31</sup> These conditions persisted in the United States until prices started to rise in 1993, coincident with the imposition of anti-dumping measures by the United States against a number of countries, several of which are involved in this case.<sup>32</sup>

The Canadian industry is dominated by two major producers, Dofasco and Stelco, whose sales amount to about 90 percent of total domestic subject goods sales, with most of the balance attributable to Sorevco. According to the evidence, Dofasco and Stelco have traditionally set their book prices for the subject goods at identical or virtually

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26. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

27. *Transcript of Public Hearing*, Vol. 2, June 28, 1994, at 273 and 320, and Vol. 3, June 29, 1994, at 380.

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

29. *North American Free Trade Agreement*, done at Ottawa, Ontario, on December 11 and 17, 1992, at Mexico, D.F., on December 14 and 17, 1992, and at Washington, D.C., on December 8 and 17, 1992 (in force for Canada on January 1, 1994).

30. *Transcript of In Camera Hearing*, Vol. 9, July 11, 1994, at 1467-69; and *Transcript of Public Hearing*, Vol. 2, June 28, 1994, at 320-21 and 358.

31. Manufacturer's Exhibit B-11 (protected), Tab 4, Administrative Record, Vol. 10A.1; and *Transcript of Public Hearing*, Vol. 6, July 5, 1994, at 880-81, Vol. 3, June 29, 1994, at 415 and 422, and Vol. 2, June 28, 1994, at 331.

32. Australia, France, the Federal Republic of Germany, Japan and the Republic of Korea are subject to both the U.S. International Trade Commission injury finding and the Tribunal injury finding concerning corrosion-resistant steel products.

identical levels.<sup>33</sup> If one company took the lead in changing book prices, the other would follow shortly thereafter.<sup>34</sup> Furthermore, whatever the state of the market, the industry historically sold its products in the market at book prices until 1990.<sup>35</sup> Moreover, from 1959 to date, with one brief exception,<sup>36</sup> the industry's average selling prices have never declined.<sup>37</sup> However, from 1990 to 1992, selling prices fell sharply below book prices, contrary to the historical pattern. Since 1993, prices have moved up as the industry has tried to eliminate the margin between the two. The evidence shows that when Sorevco entered the market in 1991, it did so at prevailing market prices,<sup>38</sup> but it also adopted the domestic industry's practice regarding book prices and issued a price list based on that of Dofasco.<sup>39</sup> In this context, witnesses for the domestic industry have testified that Canadian mill prices track each other closely and that competition between mills is based primarily on factors such as service and reliability.<sup>40</sup>

Imports are supplied to the Canadian market from numerous export sources around the world, as evidenced by the list of countries named in this proceeding. Sales and offers of imports occur in all regions of the country and, in Western Canada, they hold substantial market shares.<sup>41</sup> Several witnesses representing importers and exporters testified that they had a long-standing interest in the Canadian market and considered themselves to be a traditional source of supply. In addition to serving customers who are not supplied by Canadian mills, they stated that they serve customers whose principal sources of supply are the Canadian mills, but who are looking for alternate or secondary sources of supply.<sup>42</sup> In several instances, exporter witnesses testified that they did not know to which customers in Canada their products were ultimately sold or what prices these customers paid, because their dealings were exclusively with the traders and brokers who imported their products.<sup>43</sup> From testimonies of importer and exporter witnesses, it was clear that they generally do not issue price lists for corrosion-resistant steel sheet products in Canada, but rather that they react to developments in the market in setting their prices.<sup>44</sup>

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33. Transcript of Public Hearing, Vol. 2, June 28, 1994, at 283-85; and Transcript of In Camera Hearing, Vol. 2, June 29, 1994, at 338-40.

34. Transcript of Public Hearing, June 27, 1994, at 125, and Vol. 2, June 28, 1994, at 284-85.

35. Transcript of Public Hearing, Vol. 3, June 29, 1994, at 404 and 417, and Vol. 8, July 7, 1994, at 1072.

36. Transcript of Public Hearing, Vol. 4, June 30, 1994, at 497. Average selling prices reported by Stelco declined briefly in 1986 due to a surge in imports into Ontario.

37. *Ibid.* at 497-501.

38. Transcript of In Camera Hearing, Vol. 2, June 29, 1994, at 325; and Transcript of Public Hearing, Vol. 3, June 29, 1994, at 413, and Vol. 6, July 5, 1994, at 796-97.

39. Manufacturer's Exhibit C-2, par. 10, Administrative Record, Vol. 9B; and Transcript of Public Hearing, Vol. 6, July 5, 1994, at 825-26.

40. Transcript of Public Hearing, Vol. 2, June 28, 1994, at 321, and Vol. 4, June 30, 1994, at 501.

41. Public Pre-Hearing Staff Report, June 1, 1994, Tribunal Exhibit NQ-93-007-6, Administrative Record, Vol. 1A, Table 10 at 0.34.

42. Importer's Exhibit D-3, par. 29 and 35, Administrative Record, Vol. 11; and Exporters' Exhibit J-2, par. 7, Administrative Record, Vol. 11B.

43. Transcript of Public Hearing, Vol. 9, July 8, 1994, at 1268-69, and Vol. 11, July 12, 1994, at 1695-96; and Transcript of In Camera Hearing, Vol. 10, July 12, 1994, at 1605-06.

44. Transcript of Public Hearing, Vol. 8, July 7, 1994, at 1072-73; and Importer's/Exporter's

### **Analysis of Economic Indicators**

As shown in Table 2, "Selected Economic Indicators" and Table 3, "Indices of Selected Economic Indicators" on pages 13 and 14, respectively, the size of the apparent market, domestic production and the volume of imports from the subject countries all declined in 1991 from the levels reported for 1990, then increased in both 1992 and 1993. The size of the market and the volume of imports continued to increase in the first quarter of 1994, while domestic production fell marginally.

Sales volume fell by 14 percentage points in 1991 compared to 1990, but recovered strongly and steadily thereafter. Despite the recovery in sales volume, total domestic sales revenues remained depressed in 1991 and 1992, compared to 1990, before picking up in 1993, albeit more weakly than would be expected given the strong increase in sales volume in 1993. Domestic sales volume and sales value both were higher in the first quarter of 1994, compared to the first quarter of 1993, but again sales revenues grew more weakly than sales volume.

Capacity utilization fell by 8 percentage points in 1991 compared to 1990, and recovered in 1992 to the 1990 level. In 1993, capacity utilization rose by 6 percentage points, compared to 1992. Employment fell in each year between 1990 and 1993 to reach, in 1993, a level that was about 30 percent below that of 1990. This reflected the industry's drive, over the period, to improve productivity, reduce costs and enhance its competitiveness.

The Tribunal notes that the industry's principal claim of injury in this case relates to the price erosion and suppression caused by the dumped imports and the ensuing adverse financial effects on the industry. As noted previously, up until 1990, the industry was able to sell its products in the market at book prices. However, beginning in 1990, transaction prices began to fall in the Canadian market and the industry began to implement a system of discounts and allowances from book prices in order to remain competitive.

In 1990, discounts and allowances of up to \$60 per ton were offered to steel service centres at various Canadian locations. In 1991, reductions from book prices to steel service centres were increased to over \$100 per ton and were extended to many end users. In certain sectors of the market, such as studding, reductions from book prices were in excess of \$200 per ton. By 1992, almost all market sectors were being offered substantial price discounts, amounting to well over \$200 per ton at steel service centre accounts, as well as accounts involved in the HVAC (heating, ventilation, air conditioning), studding, decking and residential-door markets.<sup>45</sup>

There was a general improvement in transaction prices in 1993 and 1994. Indeed, the industry was able to announce book price increases for July 1993 and January and July 1994, amounting to a total book price rise of some \$65 per ton on average.<sup>46</sup>

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Exhibit E-1, par. 8, 10 and 12, Administrative Record, Vol. 11A.

45. Manufacturer's Exhibit A-5 (protected), Administrative Record, Vol. 10; Manufacturer's Exhibit A-5.1 (protected), Administrative Record, Vol. 10.1; Manufacturer's Exhibit A-5.2 (protected), Administrative Record, Vol. 10.2; Manufacturer's Exhibit A-5.3 (protected), Administrative Record, Vol. 10.3; Manufacturer's Exhibit A-5.4 (protected), Administrative Record, Vol. 10.4; and Manufacturer's Exhibit B-23 (protected), Administrative Record, Vol. 10A.2.

46. Manufacturer's Exhibit B-19, Administrative Record, Vol. 9A.

However, despite this, the evidence shows that substantial discounts from book prices have remained in place at steel service centres and numerous other accounts, exceeding, in several instances, \$150 per ton in 1993 and \$100 per ton in 1994.<sup>47</sup>

As a result of these discounts and allowances, the industry's average revenues earned on sales of the subject goods decreased in 1991 and again in 1992, before increasing marginally in 1993. Losses were incurred on the domestic industry's sales of the subject goods in both of 1991 and 1992 and, while sales were profitable in 1993, the profits were still approximately 73 percent below those earned in 1990. Moreover, the level of profits earned in 1993 represented only 2.5 percent of sales revenues, down from 9.8 percent in 1990. The Tribunal has examined the average costs involved in the production of the subject goods and found that the deteriorated margins earned on these products were not due to increased costs, but rather were a direct result of decreased average revenues earned on these products.<sup>48</sup>

The Tribunal also notes that the evidence presented in this case clearly indicates that prices had already begun to decline in 1990, from earlier levels.<sup>49</sup> Thus, revenues and profits reported for 1990 would have been lower than in the preceding year, which, by all accounts, was a year of strong demand.<sup>50</sup> Therefore, the 73-percent fall in profitability from 1990 to 1993 may actually understate the amount of financial injury suffered. Using 1990 as the base year for comparison, the Tribunal has estimated this injury to profits at over \$50 million in 1991, over \$70 million in 1992 and over \$60 million in 1993.<sup>51</sup>

Counsel for importers and exporters submitted that the above figures did not represent a complete picture of the industry's financial condition. Specifically, counsel argued that the DNN line and Z-Line had provided economic benefits to their parent operations that were not included in the financial results reported by the two companies. The Tribunal agrees that its material injury analysis should include the results of these two operations, insofar as they relate to the production and sales of the subject goods in the domestic market.

Accordingly, the Tribunal has "consolidated" the financial results of DNN's limited partnership, as they pertain to the production and sales of the subject goods, with the financial results reported by Dofasco for its production and domestic sales of the subject goods from its other galvanizing lines.<sup>52</sup> The same exercise was performed for Z-Line's production and domestic sales of the subject goods and Stelco's reported financial results

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47. *Supra*, note 45.

48. Protected Pre-Hearing Staff Report, Revised June 20, 1994, Tribunal Exhibit NQ-93-007-7A (protected), Administrative Record, Vol. 2 at 77.129.

49. Transcript of Public Hearing, Vol. 11, July 12, 1994, at 1803-04; and Manufacturer's Exhibit B-11 (protected), Tab 10, Administrative Record, Vol. 10A.1.

50. Tribunal Exhibit NQ-93-007-11.2, Administrative Record, Vol. 3A at 129-49; and Tribunal Exhibit NQ-93-007-11.1, Administrative Record, Vol. 3A at 165-203. Both Dofasco and Stelco, in their respective 1990 annual reports, described weakening prices and earnings on their overall steel operations in 1990. Stelco reported an overall loss for the first time in five years, while Dofasco reported decreased profits from operations.

51. Precise figures cannot be provided since this would reveal protected information.

52. Based on figures submitted by Dofasco, approximately 39 percent of the total production of DNN was sold as subject goods in the Canadian market in 1993 (77 percent of Dofasco's 50 percent interest in DNN).



for its domestic sales of the subject goods.<sup>53</sup> This analysis removed all apparent intra-company sales, billings and payments, matching the expenses incurred in producing the subject goods on the DNN line and Z-Line to the revenues earned on the domestic sales of those goods.

The Tribunal finds that the impact of this exercise on the industry income statement is minimal. The adjustments result in the small loss originally reported for 1991 changing to a small profit of less than 0.5 percent of total sales. The loss initially reported in 1992 would decrease from 1.0 to 0.7 percent of sales, and the profit in 1993 would decline from 2.5 to 2.3 percent of sales. Thus, the analysis does not change in any major way the overall financial position of the industry as first reported.

Counsel for importers and exporters also argued that the domestic industry's profitability on domestic sales of the subject goods had been adversely affected by a higher incidence of non-prime products being sold at a loss in the Canadian market. The increase in non-prime product sales, counsel submitted, was the result of two factors. First, the learning curve for the new galvanizing lines resulted in a higher proportion of secondary products in the initial stages of production. Second, secondary products previously sold in the U.S. market were diverted to Canadian customers as a result of the injury finding against Canada made by the United States International Trade Commission (USITC) in 1993 concerning corrosion-resistant steel products.<sup>54</sup>

The Tribunal notes that non-prime products are an inevitable by-product in the production of prime products.<sup>55</sup> Concerning the learning curve or the performance of the Canadian mills, there is no evidence that the production of non-prime products by the domestic industry is excessive or out of line with that experienced by other producers around the world. Finally, these products are like goods and properly included in the statistics and data submitted by the domestic industry.

Nevertheless, the Tribunal has attempted to assess the effects of the increased incidence of sales of seconds to determine whether this would have had a significant distorting effect on the industry's financial performance. This was done by an analysis which held the volume of non-prime product sales constant at the proportion of non-prime to prime product sales experienced by each of Dofasco and Stelco during the year before each company introduced its new production line.<sup>56</sup> Thus, the analysis held Stelco's proportion of non-prime to prime product sales constant at its 1990 level, and

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53. According to the figures submitted by Stelco, the proportion of the subject goods produced by Z-Line and sold in the Canadian market was 55 percent of Z-Line's total production in 1991, 52 percent in 1992 and 45 percent in 1993.

54. U.S. International Trade Commission, *Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom*, Inv. Nos. 701-TA-319-32, 334, 336-42, 344, and 347-53 (Final) and 731-TA-573-79, 581-92, 594-97, 599-609, and 612-19 (Final), Volume I: Determinations and Views of the Commission, Pub. 2664, August 1993.

55. Transcript of Public Hearing, Vol. 10, July 11, 1994, at 1498; and Transcript of In Camera Hearing, Vol. 3, June 30, 1994, at 550.

56. The proportion of non-prime to prime products sold by Sorevco in 1993 decreased during 1992 and 1993. Therefore, Sorevco's sales ratios and financial results were not adjusted in this exercise.

Dofasco's ratio at its 1992 level. The analysis also captured any increase in the domestic sales of non-prime products that may have been caused by diversion from the U.S. market.

The Tribunal found that the increase in the proportion of non-prime to prime product sales during the period of inquiry had a minimal effect on the financial position of the industry. Specifically, the adjustments made would have reduced the losses originally reported for 1991 by less than 0.1 percent of sales, and by 0.4 percent of sales in 1992. The profits reported for 1993 would have increased from 2.5 to 3.0 percent of sales.

Counsel for importers and exporters also claimed that adjustments to the financial statements should be made in relation to the effects of Sorevco's entry into the market. Counsel noted that the planning documents related to the creation of Sorevco<sup>57</sup> showed that Dofasco, in making its decision to invest in Sorevco, had budgeted for a reduction in its sales and profitability of corrosion-resistant steel sheet products. It was argued that this decline in profitability of the subject goods should not be attributed to dumping.

The Tribunal notes that Dofasco's forecasts were made in 1988. When Sorevco entered the market in 1991, the recession had affected the demand for the subject goods and prices were below those envisaged in Dofasco's plan. Based on the reduced price levels in the market in 1991, Sorevco's impact on Dofasco's profits, if any, would have been much less than the estimates shown in the proposal to Dofasco's board of directors<sup>58</sup> in 1989. Moreover, even if the forecasts had been realized, on a total industry basis, Dofasco's losses would have been, to some extent, offset by Sorevco's gains. Thus, when analyzing injury to the industry as a whole, this type of intra-industry revenue shift would tend to have little overall effect.

Counsel for importers and exporters also argued that financial adjustments were warranted in relation to Dofasco's closure of its No. 1 Ingot Stream facility and its consequent increased reliance on purchased slabs for its raw materials, as well as in relation to increased pension and retirement costs, since those costs reduced profits and were not related to dumping. The Tribunal found no evidence that the closure decision resulted in increased costs to Dofasco. On the contrary, the evidence shows that the ingot stream facility was closed to save costs and increase efficiency.<sup>59</sup> Regarding the pension and retirement costs, the evidence shows that these costs fell in 1991, compared to 1990, and rose in 1993, compared to 1992.<sup>60</sup> These fluctuations are related to other factors such as movements in interest rates.<sup>61</sup> The Tribunal believes that these factors are properly accounted for by the companies in their income statements and that no adjustments, either upward or downward, are warranted.

In sum, the Tribunal considers that the only adjustments that are warranted to the industry's financial statements, as originally submitted, are those relating to the consolidation of the operations of Z-Line and DNN for the sale of the subject goods in the domestic market. As already noted, these adjustments do not significantly change the industry's overall poor financial performance during the period of inquiry. However, even if adjustments are also made for the sale of seconds in the Canadian market and,

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57. Manufacturer's Exhibit A-8 (protected) (single copy), Administrative Record, Vol. 10.5.

58. *Ibid.*

59. Tribunal Exhibit NQ-93-007-11.2, Administrative Record, Vol. 3A at 197.

60. Tribunal Exhibit NQ-93-007-12.2C (protected), Administrative Record, Vol. 4A at 81.

61. Transcript of In Camera Hearing, Vol. 3, June 30, 1994, at 551-52.

for the operations of Z-Line and DNN, the resulting impact is still minimal. In 1991, a small loss would turn into a small profit. There would be a decrease in the loss reported in 1992, amounting to approximately 0.6 percent of sales revenues and an increase in reported profits of 0.3 percent of sales value in 1993, to a level still 71.0 percent below the level of profits reported for 1990. In brief, there would be no change in the overall order of magnitude of the financial injury suffered by the industry, which the Tribunal has estimated to be over \$180 million over the period of inquiry.

Consequently, the Tribunal has no difficulty in concluding that the domestic industry has suffered and continues to suffer price erosion and suppression causing material injury, primarily in the form of financial injury on sales of the subject goods.

### **Causality**

The Tribunal must next consider whether there is a causal link between the material injury suffered by the domestic industry and the dumped imports. As noted previously, the material injury suffered by the industry stems from losses and low profitability related to reduced average unit revenues from 1990 through the first quarter of 1994. These low unit revenues are the product of prevailing price levels throughout this period. Subject goods transaction prices fell from 1990 to 1992, before beginning to rise in 1993 through 1994. In deciding whether dumping is a cause of the material injury suffered by the domestic industry, the issue is what effect did dumping have on prices for the subject goods sold in the Canadian market over this period.

Counsel for the domestic industry argued that dumped imports sharply eroded domestic prices from 1990 to 1992 and that, thereafter, they continued to suppress prices, impeding attempts by the domestic industry to raise prices to its book price levels. Counsel for importers and exporters argued that the 1990 to 1992 price declines were caused by other factors, such as the recession, additions to capacity and intra-industry competition. In their view, there was no price suppression in 1993 and 1994, as prices have risen over the past 18 months. In its analysis, the Tribunal must, therefore, carefully consider the role of dumping and non-dumping factors and ensure that any injury caused by the latter is not attributed to dumping.<sup>62</sup>

### **Effects of Dumped Imports**

The Tribunal notes that the domestic industry has submitted a vast amount of evidence in support of its case. The evidence can be divided into two categories: evidence that shows at a general "macro" level that there is a close correlation between the dumped import sales and offers, and price erosion and suppression in the Canadian market; and evidence that shows at the "micro" or customer level that the dumped import sales and offers caused the domestic industry to lower prices by offering substantial discounts and allowances, throughout the period of inquiry.

At the "macro" level, the Tribunal notes that the evidence of the domestic industry shows that the price declines in the commercial-door segment of its business, where it does not encounter import competition, were relatively small despite the recession and sharply reduced volumes sold to this sector.<sup>63</sup> The Tribunal is of the view that the

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62. Paragraph 4 of Article 3 of the Code.

63. Manufacturer's Exhibit B-13 (protected), Tab 132, Administrative Record, Vol. 10A.2; Manufacturer's Exhibit A-5 (protected) at 96-99, Administrative Record, Vol. 10; and Transcript of Public Hearing, Vol. 4, June 30, 1994, at 505.

evidence on the record shows that this correlation applies not only to the commercial-door segment of the market but to all segments of the non-automotive market. More specifically, the evidence shows that domestic prices were lowest in those segments of the market, such as studding and residential doors, where import sales and offers were most prevalent, and highest in those segments, such as commercial doors and appliances, where imports were either absent or less prevalent.<sup>64</sup> The evidence also shows that, between 1990 and 1992, prices declined steeply and at the same time in all regions of Canada,<sup>65</sup> despite the fact that the recession arrived later in the west and was less severe there.<sup>66</sup>

To corroborate the above evidence, Stelco submitted evidence regarding its sales and prices to a group of companies to which it has traditionally been the sole source of domestic supply. It was Stelco's evidence that, despite the absence of intra-industry competition at these companies, its prices declined substantially between 1990 and 1992 at these accounts because of the availability of low-priced imports.<sup>67</sup> This suggests that the price declines were correlated with import activity, not with intra-industry competition.

Furthermore, the evidence shows that galvanized steel sheet, as a higher value-added product than cold-rolled steel sheet, is normally sold at a substantial premium to cold-rolled steel sheet. This premium, which stood at \$70 per ton in the fourth quarter of 1992, fell to less than \$20 per ton in the fourth quarter of 1993.<sup>68</sup> The domestic industry argued that the reason the gap has narrowed so dramatically is because of the beneficial effects on the cold-rolled steel sheet prices of the successful anti-dumping action which was started in late 1992. Here once again, there is a correlation between the different behaviour of prices in the two markets and the effects of dumping and its elimination.

In its review of the record, the Tribunal has carefully examined industry prices in each region of the country. This examination reveals that industry allowances from book prices are greater and, therefore, F.O.B. mill prices are lower in western regions than in eastern regions.<sup>69</sup> Indeed, there is an unmistakable downward trend in F.O.B. mill prices as one moves across each region from east to west. Moreover, even when allowances are made to account for freight, prices in western regions still tend to be lower than in eastern regions. In addition, industry allowances from book prices are

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64. Manufacturer's Exhibit B-13 (protected), Tab 132, Administrative Record, Vol. 10A.2; and Transcript of Public Hearing, Vol. 4, June 30, 1994, at 505.

65. Manufacturer's Exhibit B-11 (protected), Tab 15, Administrative Record, Vol. 10A.1.

66. *Ibid.*, Tab 16.

67. Manufacturer's Exhibit B-7 (protected) at 3-7, 8-12 and 25-27, Administrative Record, Vol. 10A; and Manufacturer's Exhibit B-11 (protected), Tab 56, Administrative Record, Vol. 10A.1.

68. Manufacturer's Exhibit B-13 (protected), Tab 133, Administrative Record, Vol. 10A.2; and Transcript of Public Hearing, Vol. 4, June 30, 1994, at 509. This trend is also reflected in Manufacturer's Exhibit A-5.3 (protected), Tab 258, Administrative Record, Vol. 10.3.

69. Manufacturer's Exhibit A-5 (protected) at 20 and 39, Administrative Record, Vol. 10; Tribunal Exhibit NQ-93-007-11.2, Administrative Record, Vol. 3A at 15; and Tribunal Exhibit NQ-93-007-11.2B, Administrative Record, Vol. 3A at 318.

generally greater in thinner gauges than in thicker gauges. This reveals clear correlations with imports whose market share generally increases from east to west and which are concentrated in the thinner gauges of the product line.<sup>70</sup>

The Tribunal finds that, taken as a whole, the above correlations establish connections at the "macro" level between the dumped imports and the eroded and suppressed prices in the Canadian market over the period of inquiry. However, by themselves, they are not conclusive. What needs to be determined is whether these general correlations are supported by more specific evidence on the record.

At the "micro" level, the Tribunal notes that the domestic industry filed several witness statements of officials, including sales managers and field representatives, with first-hand knowledge of the marketplace. Taken together, these witness statements provide a detailed description, year by year, sector by sector and account by account, of how imports undercut Canadian prices and how the industry reacted by lowering its prices to defend its market share. These witness statements were supported by some 400 pieces of documentary evidence, including supplier invoices, written quotations for imported products, letters from customers requesting price concessions to meet import prices, import competitive allowance approval sheets, internal corporate memos and field or "call" reports recording conversations between the industry's sales people and its customers on the effects of import sales and offers in the market. This evidence implicates all subject countries and covers all regions of Canada.

During the course of the hearing, witnesses for the domestic industry were cross-examined by opposing counsel on their statements and on approximately one third of the supporting documentary evidence. Counsel for importers and exporters also filed written statements and supporting documentary evidence in an attempt to refute the allegations of the domestic industry. In a few instances, counsel demonstrated that the domestic industry's documentary evidence was not accurate. In other instances, however, although the domestic industry's allegations were addressed in cross-examination, counsel did not succeed in demonstrating that they were unreliable. While some of these exhibits lacked certain specificity, this does not mean that they should be given no weight, as argued by counsel for importers and exporters. The Tribunal considered such evidence to the extent that it is consistent with specific evidence on the record.

The Tribunal found that close to 100 documents<sup>71</sup> that were introduced in evidence contained specific price information that allowed price comparisons to be

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70. Transcript of Public Hearing, Vol. 6, July 5, 1994, at 890-91 and 898; and Transcript of In Camera Hearing, Vol. 5, July 5, 1994, at 857.

71. Manufacturer's Exhibit C-1 (protected), Administrative Record, Vol. 10B; Manufacturer's Exhibit A-5.1 (protected), Administrative Record, Vol. 10.1; Manufacturer's Exhibit A-5.3 (protected), Administrative Record, Vol. 10.3; Manufacturer's Exhibit B-11 (protected), Administrative Record, Vol. 10A.1; Manufacturer's Exhibits B-12 and B-13 (protected), Tab 132, Administrative Record, Vol. 10A.2; Importer's Exhibit D-13 (protected), Administrative Record, Vol. 12; Importer's/Exporter's Exhibit E-5 (protected), Administrative Record, Vol. 12A; Tribunal Exhibit NQ-93-007-18.26A (protected), Administrative Record, Vol. 6.1C; Importer's Exhibit D-37 (protected), Administrative Record, Vol. 12; Tribunal Exhibit NQ-93-007-18.2 (protected), Administrative Record, Vol. 6.1 at 36-40; Tribunal Exhibit NQ-93-007-18.13 (protected), Administrative Record, Vol. 6.1A at 124-37; and Tribunal Exhibit NQ-93-007-18.20 (protected), Administrative Record, Vol. 6.1B at 152-67.

made between import prices and domestic prices.<sup>72</sup> These documents, usually in the form of importer/exporter invoices, written offers and other documents containing specific information on prices of imports supplied to the Canadian producers by their customers, were mainly submitted to the Tribunal by the domestic industry. From these documents, the Tribunal was able to make over 1,200 comparisons between import prices and domestic prices for specific products. The latter prices were calculated by using the industry's published book prices, primarily those of Dofasco, which were adjusted to reflect the allowances in effect at the relevant time period and delivery costs. These comparisons revealed that, in approximately two thirds of the cases, import prices were lower than domestic prices. The amount of underpricing, in some cases, exceeded 50 percent, while the average underpricing was approximately 9 percent.

The Tribunal notes that approximately two thirds of the documents that were introduced in evidence by the domestic industry were not subjected to cross-examination. These documents identified many U.S. exporters and some offshore sources which did not participate in these proceedings. A careful examination of this evidence revealed numerous examples of import prices from named sources undercutting domestic prices.

The Tribunal pre-hearing pricing survey is consistent with the above evidence. On the non-automotive side, this pricing survey was focused on comparing import and domestic prices for the bellwether standard, commercial-quality steel sheet products with a G90 coating weight. This product group is used in a wide variety of common applications. As such, it exhibits the price sensitivity of a commodity product. This price sensitivity is reinforced by the fact that corrosion-resistant steel sheet generally comprises a large proportion of the cost of producing many of the finished products manufactured from the subject goods.<sup>73</sup> The information in the survey was provided primarily by customers of the Canadian mills and importers. Survey respondents included significant end users as well as national and regional steel service centres. The results of the survey showed that, in two thirds of the cases where imports and domestic mills competed head on, import prices were lower than domestic prices. Moreover, in eight of the eleven time periods examined, import prices were lower more often than domestic prices. Furthermore, import prices were lowest most often in the 1990 and 1991 periods, when prices declined sharply.

Counsel for importers and exporters argued that the Tribunal pricing survey was flawed because certain significant steel service centres did not provide complete responses concerning their domestic purchases of the subject goods. They have also noted that the survey results may be subject to errors because the survey did not take into account possible variations on prices related to product-width differences. In addition, they argued that import prices reported by respondents in one quarter should be shifted to the previous quarter, for the purpose of price comparisons with domestic mills, since that is when these prices would have been negotiated with purchasers, given the lead times required for such deliveries.

The Tribunal has considered these submissions, but concludes that they do not put in doubt the overall reliability of the survey. The Tribunal is of the view that shifting reported import prices to an earlier quarter would not alter the main results of

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72. None of the documents examined for this analysis were used by the Tribunal in its Public Pricing Report.

73. Manufacturer's Exhibit A-4 at 49, Administrative Record, Vol. 9; End User/Fabricator's Exhibit T-1, Administrative Record, Vol. 11C; and Tribunal Exhibit NQ-93-007-18.11 (protected), Administrative Record, Vol. 6.1A at 30.

the survey. Since prices were generally falling between 1990 and 1992, this would tend to match import prices with higher domestic prices in the earlier quarter and thereby boost the incidence of lower import prices in that period. As to the price variations related to width differences, the evidence shows that width is of minor importance in determining the price of the subject goods.<sup>74</sup> Moreover, the evidence shows that, in several instances, importers have sold or offered numerous gauges and widths at a single price.<sup>75</sup> Nonetheless, the Tribunal has assessed the effect that minor price variations might have by adding \$20 per ton to the relevant import prices and finds that the adjusted results are not substantially different from those originally reported. Furthermore, although the survey would have benefited from additional responses, it is nevertheless quite comprehensive and, in the Tribunal's opinion, for those surveyed, the results establish widespread price undercutting by imports from all subject sources.

The Tribunal notes that, over the past 18 months, general price levels in the Canadian market have shown improvement, especially the automotive sector, although some important sectors, such as construction, are still lagging. Against the background of improved prices, counsel for importers and exporters have contended that dumped imports cannot be held to be suppressing prices. In the opinion of the Tribunal, this contention is not borne out by the evidence. The Tribunal notes that the three domestic producers have each submitted information on sales to individual accounts that shows that, in many cases, their average selling prices or, in some instances, their specific selling prices, were lower in 1993 than those achieved in 1990.<sup>76</sup>

The Tribunal also notes that its examination of actual importer/exporter invoices and customer reported import prices revealed evidence of import underpricing through the fourth quarter of 1993, thus corroborating the evidence put forward by the domestic industry. In addition, the Tribunal price survey shows that imports continued to undercut Canadian prices, frequently and persistently, throughout 1993 and the first quarter of 1994. Finally, the Tribunal has taken all the pricing information contained in its extensive database on the bellwether G90 products that was compiled for its pricing survey, and developed average domestic and import prices for these products. According to these data, although average selling prices in Canada have improved over the last 18 months, average prices in the first quarter of 1994 still remain below 1990 levels. This is equally true for average import prices, in total, and for nine of the eleven subject countries.<sup>77</sup> Moreover, in several cases, average G90 import prices were actually lower in the first quarter of 1994 than in 1993. In the opinion of the Tribunal, the foregoing evidence supports the view that, despite improving conditions, domestic prices have continued to be suppressed over the past 18 months because of dumped imports.

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74. Public Pricing Report, June 7, 1994, Tribunal Exhibit NQ-93-007-23, Administrative Record, Vol. 1A at 88-89.

75. Manufacturer's Exhibit B-13 (protected), Tab 174, Administrative Record, Vol. 10A.2; Manufacturer's Exhibit B-12 (protected), Tabs 124 and 130, Administrative Record, Vol. 10A.2; Manufacturer's Exhibit A-5.1 (protected), Tabs 62, 65 and 159, Administrative Record, Vol. 10.1; and Importer's/Exporter's Exhibit E-5 (protected), Tab 1, Administrative Record, Vol. 12A.

76. Tribunal Exhibit NQ-93-007-12.1C (protected), Administrative Record, Vol. 4 at 151-209; Tribunal Exhibit NQ-93-007-12.3 (protected), Administrative Record, Vol. 4B at 32-42; and Manufacturer's Exhibit A-5 (protected) at 48-95, Administrative Record, Vol. 10.

77. For imports from some countries, prices for the first quarter of 1994 were not available. In those cases, the comparison was made between 1990 and 1993 average prices rather than first quarter 1994 prices.

The above evidence of price undercutting by imports is corroborated in several other parts of the record. More particularly, the Tribunal's witness for Fedmet Inc., Flat Rolled Division (Fedmet) testified that he had received numerous import offers over the period of inquiry from various named sources and that import prices were lower than domestic prices in most cases.<sup>78</sup> In addition, there are statements in the record made by respondents to the Tribunal purchaser's questionnaire which indicate that import prices were lower than domestic prices and generally had an important effect on Canadian market price levels.<sup>79</sup> The Tribunal further notes that there was evidence that some importers effectively stored the subject goods at their customers' premises by offering very generous delayed payment terms and through other arrangements.<sup>80</sup>

Of course, there is also evidence on the record, including the Tribunal pricing survey, which indicates that, in many instances, domestic prices were lower than import prices.<sup>81</sup> Indeed, there are statements from some purchasers that suggest that the domestic industry was responsible for falling market prices. The Tribunal is not surprised by this fact. When an industry is put in the position of having to defend its market share against dumped imports, as this industry was during the period of inquiry, there are bound to be instances of low industry pricing. Moreover, when prices are falling as steeply and rapidly as they were between 1990 and 1992, under the intense competitive conditions which existed, it is difficult to establish a clear market price, as all parties are acting and reacting quickly to a moving price target. This creates a "leapfrog" effect which makes it difficult, at any given point in time, to determine who is leading and who is following. On the basis of the picture that emerges from a review of the evidence in this case, the Tribunal is persuaded that the subject imports contributed significantly to the unstable, eroded and suppressed prices in the Canadian marketplace.

The factors at play in the automotive sector warrant additional comments. The Tribunal pricing survey shows that Canadian mills are generally competitively priced against imports and, accordingly, automotive assemblers and parts manufacturers have increasingly sourced their subject goods requirements from domestic suppliers over the period of inquiry. However, the evidence also shows that, from 1988 through 1992, Canadian mills had to lower progressively their prices to their major automotive customers to keep themselves competitive, primarily with U.S. mill prices.<sup>82</sup> As noted earlier, U.S. market conditions quickly spill over into Canada, especially in the integrated North American automotive sector, and Canadian and U.S. prices cannot get out of line. This was confirmed by the Tribunal's witnesses for General Motors of Canada Limited and Karmax Heavy Stamping, A Division of Cosma International Inc., both in their public and *in camera* testimonies.<sup>83</sup> This further means that Canadian mills effectively have little choice but to do what the evidence shows they did, namely, match or better

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78. Transcript of Public Hearing, Vol. 3, June 29, 1994, at 432; and Transcript of In Camera Hearing, Vol. 2, June 29, 1994, at 318-20.

79. See, for example, Tribunal Exhibit NQ-93-007-18.13 (protected), Administrative Record, Vol. 6.1A at 116-17; and Tribunal Exhibit NQ-93-007-18.2 (protected), Administrative Record, Vol. 6.1 at 34.

80. Manufacturer's Exhibit A-5.2 (protected), Tabs 121 and 127, Administrative Record, Vol. 10.2; Manufacturer's Exhibit A-5.1 (protected), Tabs 66 and 68, Administrative Record, Vol. 10.1; Transcript of Public Hearing, Vol. 9, July 8, 1994, at 1230; and Transcript of In Camera Hearing, Vol. 7, July 7, 1994, at 1304.

81. Public Pricing Report, June 7, 1994, Tribunal Exhibit NQ-93-007-23, Administrative Record, Vol. 1A at 110.

82. Manufacturer's Exhibit B-26 (protected), Administrative Record, Vol. 10A.2.

83. Transcript of In Camera Hearing, Vol. 2, June 29, 1994, at 228, 265 and 294.



dumped U.S. mill prices to maintain their supplier status with their Canadian customers. Indeed, the evidence shows that, in one instance where a domestic mill was trying to resist matching low U.S. prices at an important account, that account was considering sourcing more of its supply from U.S. mills.<sup>84</sup>

Counsel for importers and exporters argued that the participation of their clients in the market for corrosion-resistant steel sheet products was based on meeting domestic prices, and that when their prices declined they were simply following market prices down. The Tribunal rejects these contentions. As the Tribunal has recently stated, an importer may not dump on the pretext that it is only meeting domestic prices.<sup>85</sup> As stated by the Anti-dumping Tribunal in its *Soda Ash* case, in a passage that the Tribunal has frequently referred to, the domestic industry:

*could anticipate that competitors would follow [prices down], but it was entitled to assume that its competitors would not cross the line into injurious dumping.*<sup>86</sup>

### **Other Factors**

The Tribunal notes that counsel for importers and exporters have argued that a variety of other factors caused the price erosion and suppression observed in the Canadian market over the period of inquiry.

#### Recession

Of the various factors raised, the Tribunal considers the 1990 to 1992 recession to be the most significant. By all accounts, this was a particularly severe recession. It affected Canada as well as many other major economies. The evidence shows that there was a general decline in Canadian steel prices as well as in steel prices in many other countries. The domestic industry contended that, while the recession had an impact on volumes in Canada, it did not have a major effect on prices for the subject goods. In support of this contention, the domestic industry noted that prices started to fall in Canada in 1990, before the recession started. The domestic industry also noted that when the recession started, the Canadian steel supply was limited by the 3-month strike at Stelco in August 1990 and then by the subsequent 5-month reline of Stelco's blast furnace. In other words, although demand fell as a result of the recession, so did supply from Canadian mills, and this should have mitigated any price effects due to the recession. Nevertheless, prices fell sharply during this period.

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84. Reply to purchaser's questionnaire. The exhibit, volume and page numbers are withheld to protect the confidentiality of the party.

85. *Certain Cold-Rolled Steel Sheet Originating in or Exported from the Federal Republic of Germany, France, Italy, the United Kingdom and the United States of America*, Inquiry No. NQ-92-009, Finding, July 29, 1993, Statement of Reasons, August 13, 1993, at 27. With regard to this argument in respect of markets with rising prices, see *Certain Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate, Hot-Treated or Not, Originating in or Exported from Italy, the Republic of Korea, Spain and the Ukraine*, Canadian International Trade Tribunal, Inquiry No. NQ-93-004, Finding, May 17, 1994, Statement of Reasons, June 1, 1994.

86. *Commercial Grade Sodium Carbonate, Commonly Known as Soda Ash, Originating in or Exported from the United States of America*, Inquiry No. ADT-7-83, Finding and Statement of Reasons, July 7, 1983, at 12.

To corroborate the contention that the recession was not the reason that caused prices to fall, the domestic industry submitted evidence which shows that in a highly recession-sensitive sector of the market such as the one for commercial doors, volumes sold by the industry declined substantially between 1990 and 1992, with relatively small declines experienced on prices.<sup>87</sup> What made this so significant was that this sector, for all practical purposes, was not supplied by imports. Additionally, evidence adduced by the domestic industry shows that, although the recession started later and was less severe in Western Canada than in Central Canada, prices fell substantially, and fell at the same time in all areas of the country.<sup>88</sup> It is clear to the Tribunal that the domestic industry has endeavoured to achieve price stability, even to the point, according to one domestic industry witness, of cutting back supply to offset falling demand.<sup>89</sup>

### Capacity Additions

A second factor claimed by counsel for importers and exporters to be depressing prices relates to the additional capacity created by the domestic industry during the period of inquiry, namely, the commissioning of the Z-Line by Stelco, the DNN line by Dofasco and the emergence of a new entrant, Sorevco. The Tribunal notes that both the Z-Line and DNN line were built primarily to supply products for the automotive industry, which Stelco's and Dofasco's existing lines could not generally supply.<sup>90</sup> Moreover, the products coming off these lines are targeted to the North American automotive market, not just the Canadian market.<sup>91</sup> This is evidenced, in part, by the substantial increase in exports to the United States experienced by Stelco soon after the Z-Line went into production.<sup>92</sup> These new hot-dipped galvanizing (HDG) lines, therefore, did not duplicate the existing capacity and were not designed to increase supply to the markets already served by existing capacity. Rather, they were part of a world-wide increase in galvanizing capacity to meet the rapid growth in the use of corrosion-resistant steel in the automotive sector as well as part of the domestic mills' strategy to offer a cost-effective alternative to the use of electrogalvanized material in the manufacture of exposed and unexposed automotive parts.<sup>93</sup>

Furthermore, the Z-Line came on stream in the second half of 1991. By that time, much of the price declines experienced in the Canadian market between 1990 and 1992 had already occurred. It is, therefore, evident that these price declines were not precipitated by the Z-Line and cannot be attributed to it. As far as the DNN line is concerned, it came on stream in the spring of 1993, just in time to meet a strong recovery in automotive demand. Accordingly, the Tribunal has no reason to believe that the DNN line had any significant adverse affect on the market.

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87. Manufacturer's Exhibit A-5 (protected) at 96-98, Administrative Record, Vol. 10; and Manufacturer's Exhibit B-13 (protected), Tab 132, Administrative Record, Vol. 10.2.

88. Manufacturer's Exhibit B-11 (protected), Tab 16, Administrative Record, Vol. 10A.1; and Transcript of Public Hearing, Vol. 4, June 30, 1994, at 505-07, and Vol. 5, July 4, 1994, at 691-94.

89. Transcript of Public Hearing, June 27, 1994, at 245.

90. Transcript of Public Hearing, June 27, 1994, at 55, Vol. 2, June 28, 1994, at 329, and Vol. 4, June 30, 1994, at 499 and 573.

91. Transcript of Public Hearing, June 27, 1994, at 70 and 108, and Vol. 4, June 30, 1994, at 499; and Transcript of In Camera Hearing, June 28, 1994, at 5, and Vol. 4, July 4, 1994, at 822.

92. Tribunal Exhibit NQ-93-007-12.1I (protected), Administrative Record, Vol. 4 at 262-63.

93. Transcript of Public Hearing, Vol. 3, June 29, 1994, at 389 and 457, Vol. 4, June 30, 1994, at 561, and Vol. 5, July 4, 1994, at 686-87.

Unlike the Z-Line and DNN line, the arrival of Sorevco, in the spring of 1991, with a full operating capacity of about 165,000 net tons, increased the domestic capacity serving the non-automotive sector, primarily the construction sector. The evidence shows that Sorevco was planned in the mid-to-late 1980s on the basis of forecasts which predicted it would enter the market during a period of strong demand. As the record shows, these forecasts were wrong. Sorevco entered a market in which demand was soft and prices were declining. It is not in dispute that Sorevco has displaced both domestic and import sales since its arrival and has followed a competitive pricing strategy to do so. The question is whether Sorevco set out to undercut the market and buy market share or whether it was largely a price follower, reacting to the effect of dumped imports on market prices.

First, considering this question, the Tribunal notes that Sorevco did not trigger the price declines in the Canadian market, since prices had already declined by the time it entered the market in 1991. Second, over the period of review, about 10 to 15 percent of Sorevco's production were shipped to export markets, primarily the United States.<sup>94</sup> Third, the evidence shows that Sorevco immediately adopted industry book prices.<sup>95</sup> Fourth, the evidence also shows that Sorevco entered the market slowly, operating at about one third of its capacity in its first year of business, and just over 40 percent of its capacity in its second year.<sup>96</sup> Fifth, the Tribunal's independent witness for Fedmet testified that Sorevco's arrival did not affect market prices.<sup>97</sup> This testimony corroborates testimonies of witnesses for Sorevco and other industry witnesses to the effect that Sorevco's strategy was to compete based on the geographical advantages of its location, offering reliable primary or alternative sourcing with quicker delivery and better service in its prime target markets of Quebec, Eastern Ontario and Atlantic Canada.<sup>98</sup>

Although it is evident that Sorevco's entry into the market altered the distribution of market share for both domestic producers and importers, the Tribunal is not persuaded, based on the evidence, that prices would have been much different than they were in the Canadian market had Sorevco not been created.

Counsel for importers and exporters also contended that Stelco emerged from its strike and subsequent blast furnace reline in financial difficulty and proceeded to buy market share, thereby driving prices down. In this connection, the Tribunal notes that, far from coming back to the market aggressively, the evidence shows that Stelco attempted to smooth the transition by extending its blast furnace reline, from three to five months and by increasing its shipments to export markets.<sup>99</sup> During the period of inquiry, Stelco also idled its No. 1 Galvanizing Line at Hilton Works, which has an annual capacity of 125,000 net tons.<sup>100</sup>

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94. Tribunal Exhibit NQ-93-007-12.3C (protected), Administrative Record, Vol. 4B at 87.16-17.

95. Transcript of Public Hearing, Vol. 2, June 28, 1994, at 364.

96. Tribunal Exhibit NQ-93-007-12.3 (protected), Administrative Record, Vol. 4B at 19.

97. Transcript of Public Hearing, Vol. 3, June 29, 1994, at 413; and Transcript of In Camera Hearing, Vol. 2, June 29, 1994, at 325.

98. Transcript of Public Hearing, Vol. 6, July 5, 1994, at 815-16 and 875-76; and Transcript of In Camera Hearing, June 28, 1994, at 31-32.

99. Manufacturer's Exhibit B-2 at 15-16, Administrative Record, Vol. 9A; and Tribunal Exhibit NQ-93-007-12.1I (protected), Administrative Record, Vol. 4 at 262-63.

100. Transcript of Public Hearing, Vol. 5, July 4, 1994, at 722.

### Non-Prime Subject Goods

The sale of non-prime subject goods by the domestic industry at substantial discounts from their prime value was yet another factor that counsel for importers and exporters claimed was suppressing prices. The evidence shows that non-prime products (the vast majority of which are seconds) are priced to reflect their realizable market value.

In the case of seconds, this reflects the salvageable portion of coils that can be sold at prime prices, less the cost of processing and recovery.<sup>101</sup> The evidence also shows that seconds are not sold with primes at a "packaged" average price,<sup>102</sup> and that primes and seconds do not compete with each other or overlap in many end-use applications. This was clearly reflected by the testimony of a witness for Bethlehem who confirmed, in cross-examination, a statement made in proceedings before the USITC, that seconds do "not represent an acceptable substitute for prime merchandise and any alleged price suppressive or depressive effect on prices ... is, at best, minimal."<sup>103</sup>

### Exchange Rates

Counsel for importers and exporters also argued that the effect of the U.S.-Canadian dollar exchange rate had to be considered when assessing injury to the Canadian industry over the period of inquiry. The Tribunal has done this and can find no meaningful correlation between import volumes, price changes and exchange rate variations. For example, the evidence shows that total imports of corrosion-resistant steel sheet reached a nine-year low in 1989 despite a strong and strengthening Canadian dollar at that time.<sup>104</sup> Moreover, the subject imports have shown no significant decline as the Canadian dollar weakened from 1991 through 1993.<sup>105</sup> On the contrary, the subject imports have risen by 25 percent in the first quarter of 1994 compared to the first quarter of 1993,<sup>106</sup> notwithstanding the sharply lower value of the Canadian dollar in the latest quarter.

The Tribunal further notes that for most of the period between 1990 and 1992, the U.S.-Canadian dollar exchange rate was relatively stable, fluctuating within a narrow band.<sup>107</sup> However, over this period, from peak to trough, Canadian prices fell by as much as 30 percent in many segments of the non-automotive market.<sup>108</sup> Similarly, in the automotive market, net realized prices declined steadily between 1990 and 1992,<sup>109</sup> irrespective of exchange rate fluctuations. This evidence does not support the proposition that exchange rates were a major factor affecting Canadian prices over the period of inquiry.

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101. Transcript of Public Hearing, Vol. 4, June 30, 1994, at 578, and Vol. 6, July 5, 1994, at 809.

102. Transcript of In Camera Hearing, Vol. 2, June 29, 1994, at 349.

103. Transcript of Public Hearing, Vol. 10, July 11, 1994, at 1498-1503.

104. Manufacturer's Exhibit B-11 (protected), Tab 8, Administrative Record, Vol. 10A.1.

105. Public Pre-Hearing Staff Report, Revised June 20, 1994, Tribunal Exhibit NQ-93-007-6A, Administrative Record, Vol. 1A at 0.122.

106. *Ibid.*

107. Public Pre-Hearing Staff Report, June 1, 1994, Tribunal Exhibit NQ-93-007-6, Administrative Record, Vol. 1A at 0.116.

108. See, for example, Manufacturer's Exhibit A-5 (protected) at 34, 59-60 and 72-73, Administrative Record, Vol. 10; and Tribunal Exhibit NQ-93-007-11.2, Administrative Record, Vol. 3A at 45.

109. Manufacturer's Exhibit B-26 (protected), Administrative Record, Vol. 10A.2.

## **Conclusion**

The Tribunal accepts that dumping was not the only factor at play affecting prices and causing injury during the period of inquiry. There will almost always be factors other than dumping causing injury to the domestic production.<sup>110</sup> Furthermore, the obligation under paragraph 3 of Article 4 of the Code is to not attribute the effects of those other factors to the dumped imports.

The Tribunal acknowledges that factors other than dumping had some effect on the price for the subject goods in the Canadian market. This is particularly true of the net new capacity additions and the recession in the early part of the period of inquiry. However, the Tribunal considers that the recession's principal effect was to reduce sales volume. The Tribunal is not convinced that these other factors explain the magnitude of the price erosion and suppression resulting in the reduced profitability experienced by the domestic industry.

The Tribunal is persuaded, therefore, that there is a clear causal link between the dumping and the material injury experienced by the domestic industry. The Tribunal is of the opinion that the low-priced, dumped imports destabilized the Canadian market over the period of inquiry. Consequently, the Tribunal finds that the dumped imports have caused and are causing material injury to the domestic industry.

## **Threat of Material Injury**

With respect to the threat of material injury, the Tribunal notes that the domestic industry has made major capital investments related to corrosion-resistant steel sheet products since 1990, reflecting global trends in this area. Indeed, the industry's future well-being has become increasingly tied to these products as they have become one of the most, if not the most, important industry product lines, in terms of sales and financial contribution, over the past four years.<sup>111</sup> Given this increased dependency on the subject goods, depressed prices caused by the dumping could, therefore, have an even greater impact on the industry in the future than in the past.

The Tribunal also notes that the 1993 USITC finding<sup>112</sup> restricts access to the U.S. market for a number of other countries that have also been named in the Canadian action. This creates a risk of trade diversion to Canada. Although there is no evidence that diversion has occurred since the U.S. finding, the Tribunal considers that this could well be because of the pending Canadian trade action in this case. In other words, the risk is still there in the absence of a threat of an injury finding.

The Tribunal notes that the steel market is cyclical, moving up and down with swings in economic activity. In order to maintain its long-term viability, the domestic industry needs to benefit from the good times to make up for the difficult times that it

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110. See, for example, *Sacilor Aciéries v. The Anti-dumping Tribunal* (1985), 9 C.E.R. 210 at 214 (Federal Court of Appeal, File No. A-1806-83, June 27, 1985), where the Federal Court of Appeal acknowledged that, as a matter of "common sense," there would almost always be other factors affecting the situation of the domestic industry. The Court went on to say that the question of deciding how much weight to give to dumping and to these other factors cannot, however, be reduced to any precise mathematical formula.

111. See, for example, Tribunal Exhibit NQ-93-007-11.2, Administrative Record, Vol. 3A at 245.

112. *Supra*, note 54.

inevitably has to go through, and has just gone through with particular severity. The Tribunal also notes that the production of all steel products is highly capital intensive, with a pressing need for high utilization rates to cover high fixed costs.<sup>113</sup> This is especially true for highly processed steel products such as the subject goods. Indeed, this creates a production imperative that is reflected in the numerous dumping actions that have been taken against a wide variety of countries over the past 20 years, in Canada, the United States and Europe.

This production imperative is especially acute when major investments are made in new facilities that have to be recouped within a reasonable economic time frame. The evidence is clear that there have been major new investments in galvanizing facilities throughout the world from the mid-1980s to date.<sup>114</sup> This process has accelerated in the 1990s. For example, since 1990, the U.S. industry has added over 20 percent ( more than 2.0 million metric tonnes) to its HDG capacity, with over 50 percent of this coming on stream in the last two years. An additional 1.0 million metric tonnes of U.S. galvanizing line capacity has been revamped over the past four years.<sup>115</sup> During this period, Western Europe has started up about 3.5 million metric tonnes in new HDG capacity, which represents an increase of some 45 percent.<sup>116</sup>

Over the last four years, Japan increased its HDG capacity by about one third, adding some 4.0 million metric tonnes. This includes an addition of 360,000 metric tonnes at Nippon's Kimitsu Works, making this facility the largest single galvanizing plant in the world.<sup>117</sup> It also includes a new HDG line, with a rated capacity of almost 500,000 metric tonnes, that has just recently been completed by Nippon at Nagoya Works. According to witnesses for Nippon, the new Nagoya line has not yet been put into operation because of insufficient demand.<sup>118</sup> Insofar as Latin America, Asia and Africa are concerned, the combined HDG capacity in those regions has doubled from 2.0 to 4.0 million metric tonnes since 1990.<sup>119</sup> These world-wide increases in HDG capacity run counter to broader trends in the global steel industry, which are generally to reduce capacity and reflect strong and growing interest in galvanized steel markets by steel producers everywhere.

The Tribunal notes that, by all accounts, there is an economic recovery underway in North America. However, the evidence presented in this case shows that it is proceeding at an uneven pace in different segments of the corrosion-resistant steel sheet product market. While demand in the automotive sector is strong, demand in other major sectors such as construction remains soft and uncertain.<sup>120</sup> These conditions are reflected in mill capacity utilization rates. For example, the four U.S. mills that participated in these proceedings are major suppliers to the North American automotive

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113. Transcript of Public Hearing, Vol. 8, July 7, 1994, at 964-65, and Vol. 10, July 11, 1994, at 1445.

114. Manufacturer's Exhibit B-38A, Administrative Record, Vol. 9A; and Manufacturer's Exhibit A-6, Tabs 1 and 12, Administrative Record, Vol. 9.

115. *Ibid.*

116. *Ibid.*

117. Tribunal Exhibit NQ-93-007-20.15, Administrative Record, Vol. 5.2H at 67.

118. Transcript of Public Hearing, Vol. 11, July 12, 1994, at 1679.

119. Manufacturer's Exhibit B-38A, Administrative Record, Vol. 9A; and Manufacturer's Exhibit A-6, Tabs 1 and 12, Administrative Record, Vol. 9.

120. Importer's Exhibit D-1, Annex 1, Administrative Record, Vol. 11; Exporter's Exhibit I-3, Administrative Record, Vol. 11B; and Transcript of Public Hearing, Vol. 5, July 4, 1994, at 692-93..

industry. Their evidence was that they currently were operating at full, or close to full, capacity utilization. However, this contrasts with the situation in the non-automotive sector, which is supplied by numerous other mills shipping to Canada. In this connection, the Tribunal notes the evidence of a U.S. steel company that "the galvanized market has declined in the West Coast due to the downturn in real estate in California" and that, "although construction has increased somewhat in the past 18 months, the market is still depressed ... and mills are probably at 75 percent capacity on average."<sup>121</sup>

The Tribunal further notes that, although the North American automotive sector is strong, the recovery has been characterized more by demand increases than by price increases. Indeed, although demand has strengthened considerably over the past two years, prices have not risen at the same rate.<sup>122</sup> This is largely due to the fact that major automotive users are able to take advantage of competitive conditions among suppliers to obtain steel at the lowest possible price, including at dumped prices.<sup>123</sup> Moreover, there is every reason to believe that this situation will continue in the future. This is evident from the testimony of a witness for one of the major U.S. mills who stated that one of the major North American automakers was opening its sourcing from North American to global bidding.<sup>124</sup>

As for the construction sector, while current forecasts, including a recent Dofasco report,<sup>125</sup> predict some strengthening in the demand for the subject goods in the construction sector in the coming year, it must be kept in mind that these improvements, if realized, are building on the low base of current activity. Moreover, many of these projections are built around interest rate assumptions that are increasingly difficult to forecast, given the volatility experienced in Canadian and global capital markets in recent years.

Turning to Europe, Francis Mer, President of Eurofer, the main body representing Western Europe's steel producers, described the recessionary conditions and poor outlook for the European steel industry, in the January 1994 issue of the "Metal Bulletin," as follows:

*In this context, the steel industry — which has just experienced one of the worst years of its history when EC apparent consumption and deliveries by the ECSC steel industry into the domestic market fell to their lowest level for ten years — is facing 1994 with much pessimism.*

*It will be extremely problematic to reverse the present situation which is characterised by an exceptional drop in demand and an absolutely unsatisfactory level of prices.*<sup>126</sup>

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121. Tribunal Exhibit NQ-93-007-20.2, Administrative Record, Vol. 5.2 at 49.

122. Protected Pricing Report, June 6, 1994, Tribunal Exhibit NQ-93-007-22 (protected), Administrative Record, Vol. 2 at 105-08.

123. Transcript of In Camera Hearing, Vol. 2, June 29, 1994, at 296.

124. Transcript of In Camera Hearing, Vol. 9, July 11, 1994, at 1576.

125. "Dofasco Steel Quarter," quarterly report published by Dofasco, Exporter's Exhibit I-3, Administrative Record, Vol. 11B.

126. Manufacturer's Exhibit A-6, Tab 4, Administrative Record, Vol. 9.

This overall picture is confirmed, for galvanized products, by a report contained in the June 1994 edition of the "CRU Monitor,"<sup>127</sup> the most recent authoritative documentary information available to the Tribunal on offshore market conditions. The "CRU Monitor" describes the HDG market as being "by far the weakest" of the steel product markets. It notes that the increased demand from the automotive sector is easily being met by the huge capacity and that there is an excess of material in the non-automotive market, where demand from the construction industry, one of the largest other end users, is still weak. The report goes on to describe the low prices prevailing in Europe and the unlikely possibility of any 1994 price rises in most HDG markets. According to the report, mid-June 1994 HDG transaction prices<sup>128</sup> are only at 65 percent of the list prices in Germany, France and the United Kingdom, and at 75 percent of the list prices in Spain. Moreover, average European export prices to third countries are shown to be below home-market transaction prices.

Looking at Japan, the June 1994 "CRU Monitor" notes that there are no clear signs yet of a recovery and that the only conclusion that can be made from conflicting economic indicators is that the economy has bottomed out. This follows an earlier 1994 "CRU Monitor" which states that current forecasts call for Japanese sheet production to be at its lowest level in 20 years, with coated sheet shipments down by 18 percent from the previous year. As already noted, poor demand conditions have delayed the start up of the new Nagoya HDG facility. An earlier "CRU Monitor"<sup>129</sup> states further that "[c]onfronted with depressed demand at home, European and Japanese mills appear to be looking towards export markets where there is no recession in order to boost their capacity utilization." The Tribunal is aware that Japanese mills are currently focusing much of their attention on Asian export opportunities, especially in China. However, the fact remains that Japanese mills have considerable export capacity<sup>130</sup> and, if export opportunities are not fully realized in one part of the world, opportunities in other parts will be sought. In the opinion of the Tribunal, there is every reason to believe that these export markets include Canada, given the relative strength of the North American economy, compared to most other major economies at this stage of the global economic cycle.

The Tribunal notes that many of the foreign mills which participated in these proceedings claimed to be currently operating at high capacity utilization levels. This may be so, but it does not alter the overall picture of huge HDG capacity increases, slack demand, oversupply and low prices in major HDG markets around the world. This adds up, in the Tribunal's view, to a high risk of dumping in the Canadian market in the future.

Moreover, it is clear from the information provided by the foreign mills which responded to the foreign manufacturer's questionnaire that, in many cases, their high utilization rates are achieved by maintaining substantial levels of shipments to export

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127. Published monthly by CRU International Ltd., Importer's/Exporter's Exhibit E-9, Administrative Record, Vol. 11A.

128. Base prices for the most common commercial-grade products for new transactions in the current month for forward delivery.

129. Manufacturer's Exhibit A-6, Tab 31, Quarter 1, 1994, Administrative Record, Vol. 9.

130. See, for example, Tribunal Exhibit NQ-93-007-21.15 (protected), Administrative Record, Vol. 6.2 at 124.



markets, including Canada.<sup>131</sup> According to the data provided by Western European and other non-U.S. mills, these export shipments regularly comprise in excess of 25 percent of total galvanized steel sheet shipments. The importance of export markets to mills in Western Europe can only be enhanced, in the opinion of the Tribunal, by problems in their home markets related to rising low-priced imports from Eastern Europe and the Commonwealth of Independent States (CIS).<sup>132</sup>

Turning back to Canada, from mid-1993 to date, the domestic industry has been endeavouring to raise prices and, indeed, average domestic industry list and transaction prices have improved in 1994 compared to 1993. However, as noted earlier in this statement of reasons, the evidence shows that imports have continued to act as a drag on prices right up until the present. The persistence of low-priced imports is all the more surprising because of the substantial decline in the value of the Canadian dollar against the U.S. dollar over the last 18 months or so. All things being equal, this should have caused imports to be higher priced and less competitive in the Canadian market.

However, the evidence shows that the subject countries generally maintained their volume of imports into the Canadian market at dumped prices in 1993.<sup>133</sup> Indeed, in the first quarter of 1994, compared to the first quarter of 1993, the volume of the imported subject goods actually increased by 25 percent.<sup>134</sup> This increase in imports, in the period leading up to the preliminary determination of dumping, combined with the evidence of persistent underselling and generally high margins of dumping,<sup>135</sup> reveals a risk of continued instability in the Canadian market in the absence of the price discipline imposed by anti-dumping duties.

Finally, the Tribunal notes that, since the third quarter of 1993, the domestic industry has announced three price increases, amounting to \$65 per net ton, on average, in its efforts to achieve price levels that will allow it, over time, to recover from the past injury it has suffered, as well as to provide it with the foundation for future profitability.<sup>136</sup> These Canadian price increases are less than 50 percent of the price increases which have been announced in the United States on corrosion-resistant steel sheet products, over the same period.<sup>137</sup> Moreover, despite the announced increases in Canada, the domestic industry is still obliged to offer substantial allowances and

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131. Tribunal Exhibit NQ-93-007-65 (protected), Administrative Record, Vol. 2A at 21; Tribunal Exhibits NQ-93-007-70 and NQ-93-007-71 (protected), Administrative Record, Vol. 2A at 28 and 30; Tribunal Exhibits NQ-93-007-73 to NQ-93-007-76 (protected), Administrative Record, Vol. 2A at 32, 34, 36 and 38; and Tribunal Exhibits NQ-93-007-80, NQ-93-007-82 and NQ-93-007-83 (protected), Administrative Record, Vol. 2A at 44, 48 and 50.

132. See, for example, Exporter's Exhibit R-4, Administrative Record, Vol. 11C, regarding the nature of these problems.

133. Public Pre-Hearing Staff Report, Revised June 20, 1994, Tribunal Exhibit NQ-93-007-6A, Administrative Record, Vol. 1A at 0.123.

134. *Ibid.* at 0.122.

135. While there is a wide range in the margins of dumping established for individual foreign mills, the average margins of dumping for each of the countries named by the Deputy Minister in his final determination of dumping exceed 25 percent in many cases.

136. Manufacturer's Exhibit B-19, Administrative Record, Vol. 9A.

137. *Ibid.*

discounts to many of its customers.<sup>138</sup> In the estimation of the Tribunal, if anti-dumping duties are not put in place, the industry will continue to have difficulty achieving and sustaining price levels that will provide reasonable financial returns.

For the foregoing reasons, the Tribunal is of the opinion that the dumping from the subject countries is likely to cause material injury to the production in Canada of like goods.

## **REQUESTS FOR EXCLUSIONS**

Several counsel for importers and exporters requested exclusions for their respective clients or for particular subject goods. In certain instances, counsel for the domestic industry filed written consents to requests for certain product exclusions made by counsel on behalf of importers or exporters. The Tribunal notes that it is within its discretion to grant exclusions,<sup>139</sup> and that such exclusions will only be granted in exceptional circumstances.

### **Product Exclusions**

Counsel for Triumph Industries requested an exclusion for corrosion-resistant steel sheet products known as Tribrite, Triclear and Trichrome on the basis that they are not produced in Canada. Dofasco, Stelco and Sorevco filed written consents to such requests for exclusions.<sup>140</sup> A similar request was received from counsel for Nippon for corrosion-resistant steel sheet products known as Durgrip-E and Durexcelite on the basis that these products are not produced in Canada. Counsel for Toyota also requested that these two products manufactured by Nippon be excluded from any injury finding. Dofasco, Stelco and Sorevco filed written consents to such requests for exclusions.<sup>141</sup>

Generally speaking, in determining whether to exclude a particular product from a finding of material injury, the Tribunal will consider such factors as whether the domestic industry produces the product. The evidence clearly shows that corrosion-resistant steel sheet products known as Tribrite, Triclear, Trichrome, Durgrip-E and Durexcelite are not produced by any of the Canadian mills which participated in these proceedings and that these mills do not produce any products which are directly substitutable for any of these five products.<sup>142</sup> There was no indication that CCC, the

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138. Manufacturer's Exhibit B-23 (protected), Administrative Record, Vol. 10A.2.

139. See, for example, *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (F.C.A.); and *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). See also *Certain Flat Hot-Rolled Carbon Steel Sheet Products Originating in or Exported from the United States of America*, CDA-93-1904-07, Decision and Reasons of the Panel, May 18, 1994; and *Certain Cold-Rolled Steel Sheet Originating in or Exported from the United States of America*, CDA-93-1904-09, Opinion and Panel Decision, July 13, 1994.

140. Manufacturer's Exhibit A-9, Administrative Record, Vol. 9; Manufacturer's Exhibit B-15, Administrative Record, Vol. 9A; and Manufacturer's Exhibit C-5, Administrative Record, Vol. 9B.

141. Manufacturer's Exhibit A-12, Administrative Record, Vol. 9; Manufacturer's Exhibit B-16A, Administrative Record, Vol. 9A; and Manufacturer's Exhibit C-6, Administrative Record, Vol. 9B.

142. Transcript of In Camera Hearing, Vol. 3, June 30, 1994, at 595-96; Transcript of Public Hearing, Vol. 5, July 4, 1994, at 690-691; and Transcript of Public Hearing, Vol. 6, July 5, 1994, at 885-86.

only other Canadian producer, produced any of these five products or any products directly substitutable for them. Accordingly, the Tribunal concludes that corrosion-resistant steel sheet products known as Tribrite, Triclear, Trichrome, Durgrip-E and Durexcelite are not produced in Canada and should be excluded from the injury finding.

Counsel for Bethlehem, USX, LTV and Inland requested an exclusion for corrosion-resistant steel sheet products, produced by the electrogalvanizing process, for use in the manufacture of motor vehicles also on the basis that these products are not produced in Canada.

Dofasco, Stelco and Sorevco do not produce corrosion-resistant steel sheet products using the electrogalvanizing process. CCC is the only producer of electrogalvanized corrosion-resistant steel sheet products in Canada. There is no evidence that CCC sold any of its electrogalvanized products to the automotive sector of the market during the period of inquiry or, for that matter, that its electrogalvanizing line is capable of producing steel products to required specifications in order to supply this market. There is, however, evidence that certain automotive parts manufacturers were unable to source electrogalvanized products from Canadian mills on the basis that these products are not produced in Canada.<sup>143</sup> Furthermore, Dofasco agreed with a statement made by Magna International Inc. that one of the factors which limits its ability to source electrogalvanized products from Canadian mills is that it is not produced in Canada.<sup>144</sup> On the basis of this evidence, the Tribunal is of the view that electrogalvanized corrosion-resistant steel sheet products used in the manufacture of motor vehicles are not produced in Canada.

Counsel for Stelco argued that electrogalvanized corrosion-resistant steel sheet products used in the manufacture of motor vehicles should not be excluded from an injury finding by the Tribunal on the basis that their client produces hot-dipped products which are substitutable for electrogalvanized products. There was evidence showing that Stelco had succeeded in replacing electrogalvanized products with hot-dipped products for use in the manufacture of certain automotive parts, and that it is continuously working towards displacing electrogalvanized products in other applications, including exposed automotive applications.<sup>145</sup> There was also substantial evidence that the demand for these products is customer driven and that automotive manufacturers still insist on using electrogalvanized products to produce many unexposed automotive parts, and that this is not about to change quickly.

A witness for Karmax Heavy Stamping, A Division of Cosma International Inc., testified that there are differences in the coating thickness, the surface roughness and the hardness of the products that prevent them from being perfectly interchangeable. He said that automobile manufacturers continue to require a product that has weldability and paintability characteristics that cannot be fulfilled by hot-dipped galvanized or galvanized products.<sup>146</sup> A witness for Inland testified that because electrogalvanized

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143. Tribunal Exhibit NQ-93-007-9.10 (protected), Administrative Record, Vol. 2 at 82; and Transcript of Public Hearing, Vol. 3, June 29, 1994, at 465.

144. Transcript of Public Hearing, Vol. 2, June 28, 1994, at 290.

145. Transcript of Public Hearing, Vol. 5, July 4, 1994, at 660-64; Transcript of In Camera Hearing, Vol. 4, July 4, 1994, at 723-24; and Manufacturer's Exhibit B-25 (protected), Administrative Record, Vol. 10A.2.

146. Transcript of Public Hearing, Vol. 3, June 29, 1994, at 444-49.

products have better weldability and formability characteristics than hot-dipped galvanized or galvanized products, they will continue to be the product of choice in the production of various unexposed automotive parts.<sup>147</sup>

The evidence shows that, in the automotive sector of the market, electrogalvanized products are more expensive than hot-dipped galvanized or galvanized products.<sup>148</sup> However, in the construction sector, a witness for BSC indicated that the two products are priced competitively.<sup>149</sup> Also, there was evidence which suggests that electrogalvanized products sold in the non-automotive sector of the market have a thinner coating than electrogalvanized products which are used in the manufacture of parts for motor vehicles.<sup>150</sup> Therefore, the Tribunal is of the view that electrogalvanized corrosion-resistant steel sheet products used in the automotive sector have different, distinguishable, physical characteristics than electrogalvanized corrosion-resistant steel sheet products used in the non-automotive sector.

On the basis of this evidence, the Tribunal concludes that corrosion-resistant steel sheet products, produced by the electrogalvanizing process, for use in the manufacture of motor vehicles, should be excluded from the injury finding.<sup>151</sup>

A request for an exclusion was received from Standby Electronics Corporation (Standby Electronics) for a particular type of galvanized steel which it imports from the United States on the basis that it is not able to obtain the product in Canada in the volumes it wishes because of the domestic mills' minimum purchase quantity requirements. The Tribunal concludes that the request for an exclusion by Standby Electronics should not be granted on the basis that the product is produced and available in Canada. The Tribunal is of the view that it cannot grant a product exclusion to a single end user on the basis that the domestic industry will not supply the product in the minimal quantities desired. The Tribunal notes that in response to Standby Electronics' request, Dofasco has taken steps to find a solution to this problem by identifying a steel service centre willing to carry the product.<sup>152</sup>

A request for an exclusion was received from CCC for corrosion-resistant steel sheet products exported from the United States for painting or printing by it and re-exported from Canada. In a letter addressed to the Tribunal, it was noted that title to the steel remains with the U.S. exporters, that such goods are not sold in Canada and that they already qualify for relief from customs duties and relief from the Goods and Services Tax.<sup>153</sup> Dofasco, Stelco and Sorevco filed written consents to such a request for an exclusion.<sup>154</sup>

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147. Transcript of Public Hearing, Vol. 10, July 11, 1994, at 1592-93.

148. Transcript of Public Hearing, Vol. 5, July 4, 1994, at 707-08; Transcript of Public Hearing, Vol. 10, July 11, 1994, at 1372 and 1384-85; and Transcript of In Camera Hearing, Vol. 9, July 11, 1994, at 1501-02.

149. Transcript of In Camera Hearing, Vol. 7, July 7, 1994, at 1354-55.

150. Transcript of Public Hearing, Vol. 8, July 7, 1994, at 1046-48, 1102-03 and 1114-15.

151. The Tribunal intends that this exclusion encompasses the manufacture of parts for motor vehicles.

152. Manufacturer's Exhibit A-21, Administrative Record, Vol. 9.

153. Tribunal Exhibit NQ-93-007-8.1, Administrative Record, Vol. 1A.

154. Tribunal Exhibit NQ-93-007-59, Administrative Record, Vol. 1B; Manufacturer's Exhibit B-16, Administrative Record, Vol. 9A; and Manufacturer's Exhibit C-4, Administrative Record, Vol. 9B.

The Tribunal concludes that the request from CCC should be granted. As defined, the exclusion prevents the imports from entering into commerce in the Canadian market, either as corrosion-resistant steel substrates or as finished painted or printed products. Though CCC may be the importer of record, title to the goods remains with the U.S. exporters. The Tribunal concludes that the importation of these steel products and their subsequent re-exportation, under the circumstances described, will not displace the domestic production of like goods because of the nature of the contract.

### **Producer Exclusions**

The Tribunal received several requests for producer exclusions. Counsel representing the four U.S. integrated steel mills requested that, in the event of an injury finding, their clients be excluded from it. Even though their clients represented 60 percent of U.S. imports in 1993, counsel argued that they had not caused, were not causing and were not likely to cause material injury to the Canadian industry. Counsel for Triumph Industries also requested that his client be excluded from an injury finding by the Tribunal. He argued that Triumph Industries has a policy of not dumping, had a negligible margin of dumping in the present case, and was not the subject of any allegations of unfair pricing or lost sales by the domestic industry.

As noted earlier, the Tribunal's practice in conducting its inquiry is to consider the effect of dumped imports *en masse* in a cumulative manner. In cases involving numerous exporters, from one or more sources, the Tribunal is not required to relate its finding to each exporter. To do so would be contrary to the general principle of cumulation. In fact, it is well within the Tribunal's discretion to make a finding in respect of all goods from several exporters irrespective of whether there is evidence that some of these exporters have contributed to the injury or likely injury of the domestic industry.<sup>155</sup>

The Tribunal has indicated that it will only grant exporter exclusions in exceptional circumstances.<sup>156</sup> More recently, the Tribunal has said that "exporter exclusions are generally granted only in narrow circumstances, such as when an exporter is shipping a specific product that is not produced in Canada."<sup>157</sup>

In the *Gypsum Board* case, the Tribunal refused to grant exclusions for three U.S. producers on the basis that its injury finding was not directed against any individual producer, but rather against dumped imports as a whole which were causing material injury to Canadian production. The Tribunal noted that the injury stemmed from distressed market conditions which prevailed nationwide. Since all producers were subject, more or less, to the same general market conditions, the Tribunal found that they generally all posed a risk of injurious dumping to Canadian production. This held true

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155. See, for example, *Hitachi Limited v. The Anti-dumping Tribunal*, [1979] 1 S.C.R. 93; and *Certain Cold-Rolled Steel Sheet Originating in or Exported from the United States of America*, CDA-93-1904-09, Opinion and Panel Decision, July 13, 1994, at 58.

156. *Certain Steel Welded Pipe Originating in or Exported from Taiwan*, Inquiry No. NQ-91-001, Finding, September 5, 1991, Statement of Reasons, September 20, 1991, at 10. See also, *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, at 16-17, where the Anti-dumping Tribunal also said that country exclusions are only granted on rare occasions.

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

for producers that participated in the Tribunal's proceedings, as well as for those that did not, including producers that made little or no shipments to Canada during the period surveyed by the Tribunal.<sup>158</sup>

The Tribunal notes that imports from the four U.S. integrated steel mills which participated in these proceedings and which requested producer exclusions represented approximately 60 percent of the total exports from the United States in 1993. All of these exporters, except for Bethlehem, were found to be dumping a high percentage of their exports in Canada at weighted average margins of dumping which, the Tribunal found, had an effect on the pricing of corrosion-resistant steel sheet products by the domestic industry in Canada.

The Tribunal further notes that witnesses for the U.S. mills testified that they have no control over the ultimate destination of the products they sell to their customers.<sup>159</sup> The evidence shows that these customers include steel service centres which have been identified in the Deputy Minister's final determination of dumping as having exported the dumped goods to Canada.<sup>160</sup>

In accordance with its previous practice of considering the cumulative effects of the dumped imports and of granting producer exclusions only in exceptional circumstances, the Tribunal denies requests made by counsel for the four U.S. integrated steel mills and counsel for Triumph Industries.

### **Country Exclusions**

The Tribunal received several requests for country exclusions. For similar reasons, the Tribunal decides not to grant country exclusions. The Tribunal is of the view that all subject countries have contributed, to varying degrees, to the material injury suffered by the domestic industry by their dumping of corrosion-resistant steel sheet products. As noted earlier, it is this collective impact that the Tribunal considered in its injury analysis.

The Tribunal notes that all subject exporting countries, including those which did not participate in these proceedings, had significant weighted average margins of dumping, ranging from 12.3 percent to 60.8 percent.<sup>161</sup> The Tribunal also notes that all of the countries, except for the United States, were found to have been dumping 100 percent of their exports of corrosion-resistant steel sheet products in Canada during the Deputy Minister's period of investigation.<sup>162</sup> As noted earlier, the Tribunal considered that offers for sale of corrosion-resistant steel sheet products to purchasers in Canada by foreign mills from all subject countries had a significant eroding and suppressive effect on domestic selling prices. Therefore, the Tribunal finds that country exclusions are not warranted.

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158. *Ibid.* at 19.

159. Transcript of Public Hearing, Vol. 10, July 11, 1994, at 1375, 1548 and 1598.

160. Transcript of Public Hearing, Vol. 10, July 11, 1994, at 1584-87; and Tribunal Exhibit NQ-93-007-5 (protected), Administrative Record, Vol. 2 at 77.02-.04.

161. Department of National Revenue, Final Determination of Dumping, June 29, 1994, Statement of Reasons, Tribunal Exhibit NQ-93-007-4, Administrative Record, Vol. 1 at 164-66.

162. *Ibid.*

## **CONCLUSION**

For the reasons stated above, the Tribunal concludes that the dumping in Canada of certain corrosion-resistant steel sheet products, originating in or exported from Australia, Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden and the United Kingdom, has caused, is causing and is likely to cause material injury to the production in Canada of like goods, excluding:

- (i) corrosion-resistant steel sheet products, with a zinc iron first coating applied either electrolytically or by a hot-dipped process and an iron rich flash coating imposed electrolytically, known as Durgrip-E or Durexcelite, and exported from Japan by Nippon Steel Corporation, for use in the manufacture of motor vehicles;
- (ii) corrosion-resistant steel sheet products, produced by the electrogalvanizing process, for use in the manufacture of motor vehicles.<sup>163</sup>

Similarly, the Tribunal concludes that the dumping in Canada of certain corrosion-resistant steel sheet products, originating in or exported from the United States of America, has caused, is causing and is likely to cause material injury to the production in Canada of like goods, excluding:

- (i) cold-rolled steel coil which has been cleaned and electrogalvanized in accordance with ASTM Standard A591, the surface of which has been burnished with a system of 3-M Scotch-Brite rolls producing a polished or bright appearance, zinc weight both sides single spot 7.6-45.8 g/sq. m, known as Tribrite, and exported from the United States of America by Triumph Industries, A Division of The Triumph Group Operations, Inc.;
- (ii) cold-rolled steel coil which has been cleaned and electrogalvanized in accordance with ASTM Standard A591, the surface of which may or may not be burnished and which has been roll-coated with a clear, continuous film composed of metal chromates and phosphates producing a clear, lacquered appearance, zinc weight both sides single spot 7.6-45.8 g/sq. m, and chromate coating 3-4 mg/sq. ft. each side, known as Triclear, and exported from the United States of America by Triumph Industries, A Division of The Triumph Group Operations, Inc.;
- (iii) cold-rolled steel coil which has been cleaned and electrogalvanized in accordance with ASTM Standard A591, the surface of which is roll-coated with a continuous film composed of chromium chromates and oxides producing a green/gold appearance, zinc weight both sides single spot 7.6-45.8 g/sq. m, and chromate coating, as Chrome, of approximately 30 mg/sq. ft., known as Trichrome, and exported from the United States of America by Triumph Industries, A Division of The Triumph Group Operations, Inc.;
- (iv) corrosion-resistant steel sheet products exported from the United States of America for painting or printing by Metal Koting Continuous Colour Coat

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163. The Tribunal intends that this exclusion encompasses the manufacture of parts for motor vehicles.

Limited and re-exported from Canada, provided that title to such goods as imported, further processed and re-exported from Canada remains with the U.S. exporters, and provided that such goods are not sold in Canada, but are re-exported;

- (v) corrosion-resistant steel sheet products, produced by the electrogalvanizing process, for use in the manufacture of motor vehicles.<sup>164</sup>

Anthony T. Eyton

Anthony T. Eyton  
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member

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164. The Tribunal intends that this exclusion encompasses the manufacture of parts for motor vehicles.