

Ottawa, Friday, September 4, 1998

Inquiry No.: NQ-98-001

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

**STAINLESS STEEL ROUND BAR OF SIZES 25 mm DIAMETER UP
TO 570 mm DIAMETER INCLUSIVE, ORIGINATING IN OR EXPORTED
FROM THE FEDERAL REPUBLIC OF GERMANY, FRANCE, INDIA, ITALY,
JAPAN, SPAIN, SWEDEN, TAIWAN AND THE UNITED KINGDOM**

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 May 7, 1998, and of a final determination of dumping dated August 5, 1998, respecting the importation into Canada of stainless steel round bar of sizes 25 mm diameter up to 570 mm diameter inclusive, originating in or exported from the Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and the United Kingdom.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods originating in or exported from the Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and the United Kingdom has caused material injury to the domestic industry, excluding:

- (1) stainless steel round bar made to specifications ASN-A3380 and ASN-A3294; and
- (2) stainless steel round bar made to specification 410QDT (oil quenched), that is, grade 410, quenched and double tempered with an oil quenching medium.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Raynald Guay
Raynald Guay
Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Michel P. Granger
Michel P. Granger
Secretary

The Statement of Reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	August 4 to 7, 1998
Date of Finding:	September 4, 1998
Tribunal Members:	Pierre Gosselin, Presiding Member Raynald Guay, Member Peter F. Thalheimer, Member
Director of Research:	Selik Shainfarber
Research Manager:	Tom Geoghegan
Economist:	Sarah Mulvey
Statisticians:	Margaret Saumweber Joël J. Joyal Julie Charlebois Beverley Paratchek
Counsel for the Tribunal:	Hugh J. Cheetham Joël J. Robichaud
Registration and Distribution Officer:	Claudette D. Friesen

Participants:

	Ronald C. Cheng Gregory O. Somers Benjamin P. Bedard
for	Atlas Specialty Steels, A Division of Atlas Steels Inc.
	(Domestic Manufacturer)
	Richard G. Dearden Scott P. Little James S. Koumanakos
for	AB Sandvik Steel Sandvik Steel Canada, A Division of Sandvik Canada, Inc.
	Donald J. Goodwin Dawn L. Miller
for	Acciaierie Valbruna s.r.l. Acciaierie Di Bolzano SpA
	Peter Clark Chris Hines Yannick Beauvalet Alia Tayyeb
for	British Steel Canada Inc.

Milos Barutciski
Dany H. Assaf
for Foroni Metals of Texas Inc.
Foroni SpA

Peter E. Kirby
Jean-Philippe Daoust
for Aubert & Duval

Michael Gates
Manluk Industries Inc.

(Importers/Exporters)

Ottawa, Monday, September 21, 1998

Inquiry No.: NQ-98-001

**STAINLESS STEEL ROUND BAR OF SIZES 25 mm DIAMETER UP
TO 570 mm DIAMETER INCLUSIVE, ORIGINATING IN OR EXPORTED
FROM THE FEDERAL REPUBLIC OF GERMANY, FRANCE, INDIA, ITALY,
JAPAN, SPAIN, SWEDEN, TAIWAN AND THE UNITED KINGDOM**

Special Import Measures Act — Whether the dumping of the above-mentioned goods has caused material injury or retardation to the domestic industry or is threatening to cause material injury to the domestic industry.

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping in Canada of stainless steel round bar of sizes 25 mm diameter up to 570 mm diameter inclusive, originating in or exported from the Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and the United Kingdom, has caused material injury to the domestic industry, excluding: (1) stainless steel round bar made to specifications ASN-A3380 and ASN-A3294; and (2) stainless steel round bar made to specification 410QDT (oil quenched), that is, grade 410, quenched and double tempered with an oil quenching medium.

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Date of Finding:	September 4, 1998
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Tribunal Members:	Pierre Gosselin, Presiding Member Raynald Guay, Member Peter F. Thalheimer, Member
Director of Research:	Selik Shainfarber
Research Manager:	Tom Geoghegan
Researchers:	Shiu-Yeu Li Po-Yee Lee
Director of Economics:	Dennis Featherstone
Statisticians:	Margaret Saumweber Joël J. Joyal Julie Charlebois Beverley Paratchek
Counsel for the Tribunal:	Hugh J. Cheetham Joël J. Robichaud
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Benjamin P. Bedard
for Atlas Specialty Steels, A Division of Atlas Steels Inc.

(Domestic Manufacturer)

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Acciaierie Di Bolzano SpA

Peter Clark
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Alia Tayyeb
for British Steel Canada Inc.

Milos Barutciski
Dany H. Assaf
for Foroni Metals of Texas Inc.
Feroni SpA

Peter E. Kirby
Jean-Philippe Daoust
for Aubert & Duval

Michael Gates
Manluk Industries Inc.

(Importers/Exporters)**Witnesses:**

David G. Pastirik
Director - Sales and Marketing
Atlas Specialty Steels,
A Division of Atlas Steels Inc.

Don Cody
Controller
Atlas Specialty Steels,
A Division of Atlas Steels Inc.

David D. Neil
President
Unalloy IWRC

Jamie Church
Sales Manager - Seamless
Sandvik Steel Canada, A Division of Sandvik
Canada, Inc.

Lars Andersson
Marketing Manager
Metallurgy and Long Products Division
AB Sandvik Steel

Colin Chappelle
National Product Manager
Stainless, Nickel, Aluminum
Marmon/Keystone Canada Inc.

Ivan Le Muet
Engineer
Aubert & Duval

François B. Haymann
President
F.H. Technologies Inc.

Ward Seymour
President
ASA Alloys Inc.

Georges Chartrand
Vice-President - Sales, Mill Sales, North America
and General Manager
British Steel Canada Inc.

D. Keith Fehr
Vice-President
British Steel Alloys

Werner Memering
General Manager
Maxtech Metal Products

Dr. Valter Viero
Assistant Financial Director
Acciaierie Valbruna s.r.l.

Aldo Donati
General Manager
Foroni Metals of Texas Inc.

Michael Gates
Purchaser
Manluk Industries Inc.

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Ottawa, Monday, September 21, 1998

Inquiry No.: NQ-98-001

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

**STAINLESS STEEL ROUND BAR OF SIZES 25 mm DIAMETER UP
TO 570 mm DIAMETER INCLUSIVE, ORIGINATING IN OR EXPORTED
FROM THE FEDERAL REPUBLIC OF GERMANY, FRANCE, INDIA, ITALY,
JAPAN, SPAIN, SWEDEN, TAIWAN AND THE UNITED KINGDOM**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
RAYNALD GUAY, Member
PETER F. THALHEIMER, Member

STATEMENT OF REASONS

BACKGROUND

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*¹ (SIMA), has conducted an inquiry following the issuance by the Deputy Minister of National Revenue (the Deputy Minister) of a preliminary determination² dated May 7, 1998, and of a final determination³ dated August 5, 1998, respecting the dumping in Canada of stainless steel round bar of sizes 25 mm diameter up to 570 mm diameter inclusive (hereinafter referred to as certain stainless steel round bar), originating in or exported from the Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and the United Kingdom.

On January 14, 1998, pursuant to paragraph 34(1)(b) of SIMA, counsel for British Steel Canada Inc. (Montréal) and British Steel Alloys (Vancouver) referred to the Tribunal the question of whether the evidence before the Deputy Minister disclosed a reasonable indication that the dumping of certain stainless steel round bar originating in or exported from the United Kingdom had caused material injury or was threatening to cause material injury to the domestic industry. On February 13, 1998, the Tribunal ruled that there was a reasonable indication that the dumping of certain stainless steel round bar from the named countries had caused or was threatening to cause material injury to the domestic industry.

On May 7, 1998, the Tribunal issued a notice of commencement of inquiry.⁴ As part of the inquiry, the Tribunal sent detailed questionnaires to Atlas Specialty Steels, A Division of Atlas Steels Inc. (Atlas), importers and purchasers of certain stainless steel round bar. Respondents provided production, financial, import, sales, pricing and market information, as well as other information relating to certain stainless steel round bar, for the period from January 1, 1995, to March 31, 1998. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports. Prior

1. R.S.C. 1985, c. S-15.
2. *Canada Gazette* Part I, Vol. 132, No. 21, May 23, 1998, at 1169.
3. *Ibid.* No. 33, August 15, 1998, at 2093.
4. *Ibid.* No. 20, May 16, 1998, at 1107.

to the public hearing, parties submitted and replied to interrogatories with respect to matters relevant to the inquiry.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, interrogatories and replies thereto, all exhibits filed by the parties throughout the inquiry and 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 in respect of the use, disclosure, reproduction, protection and storage of confidential information on the record of the proceedings, as well as the disposal of such confidential information at the end of the proceedings or in the event of a change of counsel.

Public and *in camera* hearings were held in Ottawa, Ontario, from August 4 to 7, 1998. Atlas, the domestic producer of certain stainless steel round bar, was represented by counsel at the hearing. Sandvik Steel Canada, A Division of Sandvik Canada, Inc. (Sandvik), Acciaierie Valbruna s.r.l. (Valbruna), Acciaierie Di Bolzano SpA (Bolzano), British Steel Canada Inc. (BSC), Foroni Metals of Texas Inc. and Foroni S.p.A. (Feroni), and Aubert & Duval were also represented by counsel at the hearing. The Tribunal heard testimony from witnesses for the domestic industry and for importers and exporters. Manluk Industries Inc. (Manluk) also participated at the hearing. As well, witnesses for ASA Alloys Inc. and Maxtech Metal Products appeared at the Tribunal's request.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION

The Deputy Minister's investigation into this matter covered imports of certain stainless steel round bar from India during the period from October 1, 1996, to February 28, 1998 (17 months). For all other named countries, the period of investigation was from October 1, 1996, to September 30, 1997 (12 months).

The investigation revealed that 98.2 percent of certain stainless steel round bar that entered Canada from the named countries during the period of investigation were dumped by a margin ranging from 0 percent to 52.4 percent. The following table shows the weighted average margins of dumping by country expressed as a percentage of the normal value.

SUMMARY OF MARGINS OF DUMPING		
Country	Exporter	Margin of Dumping ¹ (%)
Germany	All exporters	52.4
France	All exporters	52.4
India	Mukand Limited	18.8
	Panchmahal Steel Limited	0.0
	Viraj Impoexpo Limited	0.0
	All other exporters	52.4
Italy	Acciaierie Valbruna s.r.l.	8.2
	All other exporters	52.4
Japan	All exporters	52.4
Spain	All exporters	52.4
Sweden	AB Sandvik Steel	42.8
	All other exporters	52.4
Taiwan	All exporters	52.4
United Kingdom	All exporters	52.4
United States ²	Foroni Metals of Texas Inc.	0.6
	All other exporters	52.4
Holland ²	All exporters	52.4
Notes:		
1. Represents the weighted average margin of dumping expressed as a percentage of the normal value.		
2. Imports reported for the United States and Holland represent certain stainless steel round bar that originated in the named countries.		
Source: Department of National Revenue, <i>Final Determination of Dumping and Statement of Reasons</i> , August 5, 1998, Tribunal Exhibit NQ-98-001-4, Administrative Record, Vol. 1 at 108.36.		

PRODUCT

The product that is the subject of the Tribunal's inquiry is defined as: stainless steel round bar of sizes 25 mm diameter up to 570 mm diameter inclusive, originating in or exported from the Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and the United Kingdom.

Certain stainless steel round bar includes all grades in cut lengths, with various diameters and with a variety of surface finishes.

Stainless steel is a corrosion-resistant and/or heat-resistant steel alloy which contains, by weight, a maximum carbon content of 1.2 percent and a minimum chromium content of 10.5 percent. There are many individual chemical analyses or grades for stainless steel. These analyses typically include other alloying elements besides chromium (such as nickel and molybdenum, among others) and are tailored to meet the mechanical and/or physical properties of particular end-use applications. The most popular analyses of stainless steel bar are AISI (American Iron & Steel Institute) types 303, 304, 304L, 316, 316L, 410, 416, 420 and 430F, and the 630 or 17Cr-4Ni precipitation hardening grade.

Selected scrap steel is melted in an electric arc furnace, tapped into a ladle and transferred to the ladle refining station where the steel is refined in a vacuum oxygen decarburization vessel, its chemistry is checked and final additions to the required alloys are made to achieve the desired chemical analysis. Once the final chemistry is confirmed, the ladle is transferred either to a continuous caster or to a bottom-poured ingot forming station. After solidification, the ingots are transferred to the ingot re-heating furnaces prior to hot working. Liquid stainless steel may be alternatively solidified directly into the intermediate bloom or billet stage by the continuous casting process, then transferred to re-heating furnaces for hot rolling. In some cases, certain quality specifications require the use of the vacuum arc re-melting (VAR) process after initial solidification before re-heating and hot working.

After heating, ingots or cast blooms are removed from the ingot heating furnace and transferred to the bloom/billet rolling mill for hot rolling into the intermediate stage bloom or billet products. After appropriate cooling, blooms or billets may be conditioned or ground, a surface quality enhancement process, then reheated and hot rolled on the billet or bar mill to produce stainless steel bar. All stainless steel bar products are routed for annealing. Hot-rolled bars are inspected, bundled and shipped. Bar turned or peeled, centreless ground, or other cold-finished bars are routed to the finishing area before final inspection and shipment.

POSITION OF PARTIES

Domestic Producer

Atlas

Counsel for Atlas submitted that the dumping of certain stainless steel round bar from the named countries has been the direct cause of price erosion, price suppression, lost orders and loss of market share, leading to reduced revenues and lower margins for Atlas. This was evident in 1996 through to the present. Even with the increase in volume of Atlas's sales of certain stainless steel round bar during the first quarter of 1998, aspects of injury are continuing.

Imports continued at high levels from 1996 through 1998. The Canadian market for certain stainless steel round bar declined in 1996 from 1995, and Atlas's sales volumes and share of the market fell as the sales volumes of the named countries increased sharply. In 1997, the market recovered to 1995 levels, and Atlas, continuing to discount its prices, improved sales volumes over 1996 levels. However, this was not enough to stem further declines in market share and declines in average sales returns in 1997, as the volumes and market share of the named countries continued to increase, although to a lesser extent than in 1996.

From the third quarter of 1995 to the first quarter of 1998, average prices for certain stainless steel round bar in the Canadian market moved steadily downward. Atlas had to continue and, in fact, deepen discounting in the face of dumped pricing.

With respect to causation, counsel for Atlas submitted that the effect of dumping, compelling significant price discounting in order to maintain market volume, and its effects on revenues, were illustrated by the sales history to Atlas's 10 largest accounts.

As for the alleged impact of the *Companies' Creditors Arrangement Act*⁵ (the CCAA) proceedings, including the issue of AlTech Specialty Steel Corporation (AlTech), counsel for Atlas submitted that the financial statement for certain stainless steel round bar does not include any restructuring costs relating to the CCAA or any write-offs relating to the AlTech receivable, so that these statements are untainted by these matters. Moreover, Atlas's customers testified before the Tribunal that these difficulties had not affected their buying decisions.

Counsel for Atlas argued that the Tribunal must keep three things in mind with respect to the causation issue. First, there were significant quantities of imports of certain stainless steel round bar from the named countries that came from countries not represented at the Tribunal's hearing, namely, the Federal Republic of Germany, India, Japan, Spain and Taiwan. With respect to the discounted sales or lost order evidence submitted by Atlas, not one of the examples provided was challenged involving these non-represented exports. Counsel argued that, even among the named countries represented at the hearing, such as the United Kingdom, France and Italy, significant quantities of dumped exports were made from mills or foreign brokers and through importers and traders or brokers not represented at the Tribunal's hearing.

Second, witnesses appearing before the Tribunal indicated that prices in the Canadian market began to decline in 1995 and have continued to the present, with German, French or Indian and Asian mills frequently mentioned by witnesses as being the most price aggressive throughout the period.

Third, counsel for Atlas submitted that, in considering the impact of dumping from several sources, the Tribunal has consistently conducted a single inquiry and has analyzed the impact of imports from all named countries *en masse*, or in a cumulative manner, regardless of the origin of the dumped goods. This rationale for cumulating is consistent with the principle that it is the global effect of dumping which is required to be assessed by the Tribunal under section 42 of SIMA.

With respect to threat of injury, counsel for Atlas submitted that the large production capability of the named countries, which exceeds their home market demands, results in these countries being highly export oriented. As well, ongoing increases in capacity, coupled with softening in demand, increase the tendency to export by the named countries. Furthermore, if impediments are created in one export market, producers such as those in the named countries are capable of diverting exports to other markets.

Importers/Exporters/End User

Sandvik

Counsel for Sandvik requested a finding of no injury or threat of injury and, in the alternative, an exclusion for Sweden from any injury finding. Counsel also requested an exclusion for certain stainless steel round bar produced by Sandvik that is equal to or greater than 6 in. in diameter.

According to counsel for Sandvik, Atlas's information circular and press releases written in 1998 generally stated that the company emerged out of the CCAA process with the strength to deal with future competition, dumped or otherwise. Counsel claimed that Atlas has been profitable since 1994, and the profitable operations include certain stainless steel round bar for domestic and export sales. Counsel calculated that, if one were to average the profit from export and domestic sales, one would have an average

5. R.S.C. 1985, c. C-36.

that is nearly as high as the benchmark year of 1995, which was an excellent year for the Canadian market for certain stainless steel round bar.

Counsel for Sandvik submitted that other factors were the cause of material injury to Atlas. For instance, Atlas had to replace senior company officials on three occasions over the past three years. This suggested that problems in the management of the company had adversely affected the company's performance over this period. Moreover, it was evident from documents filed by Atlas in the CCAA proceedings that the company had an inappropriate and over-leveraged capital structure. This, too, must have caused financial difficulties for the company, in counsel's view. In addition, these financial difficulties would have been compounded by the cash flow problems relating to the failure of AlTech, a company affiliated to Atlas, to pay, in full, for goods purchased from Atlas, allowing the related accounts receivable to grow to enormous proportions. Counsel contended that these problems must have starved Atlas of the funds needed to properly operate the company and make the capital investments necessary to modernize operations.

Counsel for Sandvik argued that none of the documents filed in the CCAA proceedings mentioned that dumped imports were the reason for Atlas applying for CCAA protection. Counsel further submitted that the drop in prices for certain stainless steel round bar was not unique to Canada. In fact, prices for stainless steel bar had fallen elsewhere in the world. Moreover, although prices for stainless steel bar have fallen by 25 percent since 1996, this was only half the price decrease experienced by stainless steel flat products.

Counsel for Sandvik stated that witnesses did not identify Sweden as aggressive with respect to price, and they also indicated that factors other than price were important considerations in making purchasing decisions. In counsel's submission, Sandvik did not undercut prices to achieve a presence in the Canadian market. Rather, Atlas lost sales to Sandvik because of lead times, delivery performance and product quality.

Counsel for Sandvik submitted that Sandvik did not pose a threat of injury to domestic production. Its planned levels of future exports to Canada, assuming a no injury finding or an exclusion for Sandvik, were reasonable and would be constrained by the demands of Sandvik's export markets in other parts of the world.

Valbruna and Bolzano

Counsel for Valbruna and Bolzano argued that the price declines in the Canadian market were a direct result of the decline in prices for stainless steel around the world, which occurred after the peak of 1995. They argued that the primary cause of this decline in prices was the global fall in the price of nickel on world markets, nickel being the single most valuable element used in the production of stainless steel. Counsel noted that a peak in stainless steel prices, similar to the one experienced in 1995, was experienced in 1989. This coincided with a 20-year high in the price of nickel. According to counsel, the direct correlation between the price of nickel and the price of stainless steel was, therefore, undeniable. They noted that this was acknowledged by the witnesses for Atlas. In sum, counsel argued that the price declines of 25 percent in Canada were, in large part, due to the decline in world prices rather than to dumping.

Counsel for Valbruna and Bolzano noted that the increase in the level of imports during 1997 over the previous year coincided with the March 1997 filing for creditor protection by Atlas. They also noted that several witnesses confirmed that a certain degree of concern was felt by customers during the period leading up to Atlas receiving CCAA protection. While the evidence showed that customers that were in close

communication with Atlas were reassured throughout 1997 and early 1998, counsel argued that customers without such reassurance were possibly less confident.

Foroni

Counsel for Foroni submitted that Atlas had not shown that it had suffered material injury during the Tribunal's period of inquiry. They first noted that certain market share trends reflected in the Tribunal's staff report were not much different from those that Atlas was hoping to obtain, as reflected in its business plans. They submitted that the use of 1995 as a benchmark year was inappropriate, particularly in relation to net profits. Most market participants agreed that 1995 was an exceptional year and that it was not reasonable to believe that these historic levels would be achieved on a year-to-year basis.

Counsel for Foroni also referred to evidence relating to other factors that were affecting Atlas, including declines in prices for nickel, chromium and other metals. They also submitted that the impact of the CCAA proceedings on Atlas had to be considered by the Tribunal, particularly in respect of the impact on the company's financial performance. In addition, with respect to net profit figures, counsel argued that the Tribunal should consider whether it was possible to net out all of the effects of the AlTech receivable. In this regard, they referred in particular to certain passages in a KPMG report and submitted that there were reasons to question the reliability of Atlas's figures.

Counsel for Foroni also made submissions relating to other disparate points raised by Atlas as indices of injury. Regarding the spread in prices for certain stainless steel round bar between Canada and the United States, they submitted that the evidence shows that these markets were very different over the period of inquiry. Next, they referred to evidence that they submitted which showed that certain stainless steel round bar would have been imported anyway during the Tribunal's period of inquiry because of a variety of issues, such as quality, delivery and customer satisfaction. They submitted that all these factors taken together show that, if Atlas has suffered any injury, it was due to factors other than dumping.

Turning to the issue of threat of injury, counsel for Foroni submitted that there was no threat from Foroni because of the low margin of dumping of its goods, as determined by the Deputy Minister, and the small number of sales from which the margin was derived.

Others

Representations were also made by, and on behalf of, BSC, Aubert & Duval and Manluk. These representations, in whole or in large part, deal with requests for exclusions and, accordingly, are dealt with under the exclusions section of these reasons.

ANALYSIS

Pursuant to section 42 of SIMA, as amended by the *World Trade Organization Agreement Implementation Act*⁶ (the WTO Implementation Act), the Tribunal is required to "make inquiry ... as to whether the dumping or subsidizing of the goods [to which the preliminary determination applies] ... has

6. S.C. 1994, c. 47.

caused injury or retardation or is threatening to cause injury.” Since its decision in Inquiry No. NQ-95-001,⁷ the Tribunal has been of the view that, as a result of the amendments to SIMA, in making a finding under subsection 43(1) in respect of an inquiry under section 42, it is directed to consider whether the domestic industry either has suffered injury or is threatened with injury. In other words, injury and threat of injury are distinct findings, and the Tribunal does not need to make a finding relating to both under subsection 43(1)⁸ unless it first makes a finding of no injury. The Tribunal in this inquiry agrees with these views.

“Injury” is defined in subsection 2(1) of SIMA as “material injury to a domestic industry.” “Domestic industry” is defined, in part, as “the domestic producers as a whole of the like goods or those ... whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods.” Therefore, in arriving at its decision in the present inquiry, the Tribunal will, first, determine which domestically produced certain stainless steel round bar is “like goods” to imported certain stainless steel round bar and then determine which are the domestic producers of those goods, i.e. which producers constitute the domestic industry. The Tribunal will then proceed to determine whether the domestic industry has suffered injury and, if so, whether a causal relationship exists between that injury and the dumping of certain stainless steel round bar. If there is a finding of no injury, the Tribunal will proceed to consider whether the dumping of certain stainless steel round bar is threatening to cause injury.

Like Goods

Subsection 2(1) of SIMA defines “like goods,” in relation to any other goods, as follows:

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

The Deputy Minister defined the goods that are the subject of the Tribunal’s inquiry as stainless steel round bar of sizes 25 mm diameter up to 570 mm diameter inclusive. In describing these goods, the Deputy Minister included all grades of stainless steel round bar in cut lengths, in various diameters and with a variety of surface finishes. The evidence shows that not all stainless steel round bar is identical, in that, for instance, it can have different chemical analyses, diameters or finishes. However, the evidence also shows that round bar produced to the same specifications is interchangeable and that round bar, in general, has similar characteristics and similar end uses, regardless of where it is produced. The Tribunal, therefore, concludes that domestically produced stainless steel round bar in the diameters set out in the Deputy Minister’s definition constitutes “like goods” to the imported goods of the same description.

7. *Caps, Lids and Jars Suitable for Home Canning, Whether Imported Separately or Packaged Together, Originating in or Exported from the United States of America*, Canadian International Trade Tribunal, Finding, October 20, 1995, *Statement of Reasons*, November 6, 1995. See also, for instance, *The Dumping in Canada of Refined Sugar Originating in or Exported from the United States of America, Denmark, the Federal Republic of Germany, the Netherlands, the United Kingdom and the Republic of Korea, and the Subsidizing of Refined Sugar Originating in or Exported from the European Union*, Canadian International Trade Tribunal, Inquiry No. NQ-95-002, *Findings*, November 6, 1995, *Statement of Reasons*, November 21, 1995; and *Faced Rigid Cellular Polyurethane-Modified Polyisocyanurate Thermal Insulation Board Originating in or Exported from the United States of America*, Canadian International Trade Tribunal, Inquiry No. NQ-96-003, *Finding*, April 11, 1997, *Statement of Reasons*, April 28, 1997.

8. *Ibid. Caps, Lids and Jars, Statement of Reasons* at 10.

Domestic Industry

Having determined that domestically produced stainless steel round bar of sizes 25 mm diameter up to 570 mm diameter inclusive is “like goods” to the imported goods of the same description, the Tribunal must next determine which producers constitute the domestic industry for the purposes of assessing injury. The evidence shows that Atlas is the only domestic producer of those goods and that its production constitutes 100 percent of total domestic production. The Tribunal, therefore, finds that Atlas constitutes the domestic industry for this inquiry.

Effect of Tolloed Goods on Total Imports

Shortly before the hearing commenced, counsel for BSC requested that the Tribunal revise the import tables of its staff report so that certain stainless steel round bar produced by Atlas which is exported to the United States on a tolling basis and then returned to Canada be treated as imports and not as domestic production. The Tribunal indicated to counsel and parties that, if they wanted to pursue this matter, they do so at the hearing and in argument.

During the hearing, the witnesses for Atlas were asked a number of questions about the tolloed goods by their counsel, various counsel for importers and exporters and the Tribunal. They testified that Atlas ships a certain amount of semi-finished round bar to the United States during the course of production to have certain intermediate processing steps performed.⁹ The actual operation performed on a tolling basis depends on a number of factors, including whether Atlas has the capability of performing a particular step in the production for particular products and, if it does, whether, in terms of planning overall production, it is more efficient to have a certain step performed for Atlas by a producer in the United States. The intermediate steps that Atlas identified that it may have done on a tolling basis include: immersion ultrasonic testing; re-melting; cold finishing; and certain turning operations, including rough turning.

The witnesses for Atlas stated that the products that are tolloed are always returned to Welland, Ontario, for a number of other operations prior to the stainless steel round bar becoming a finished product. These operations may include grinding, cutting, heat treatment, polishing and inspection. They also stated that the stainless steel round bar would never be sold in the form in which it returns to Canada because it is not a finished product and is only sold following further steps in the production process which take place in Canada. In addition, while the witnesses for Atlas agreed that the stainless steel round bar may come within the product description set out by the Deputy Minister when it is returned to Canada, they noted that it also fits the description when it leaves Welland for intermediate processing in the United States. Finally, in response to questions from the Tribunal, they testified that Atlas retained ownership of the tolloed goods throughout the tolling process.

The Tribunal is of the view that the circumstances of the tolling operation at issue are similar to circumstances in previous cases where the Tribunal has excluded from an injury finding goods from a named country that were sent to Canada for further processing on a tolling basis and then returned to the named

9. The volumes of tolloed goods for 1995, 1996 and 1997 are set out in Manufacturer’s Exhibit A-21 (protected), Administrative Record, Vol. 14.

country for sale.¹⁰ In those cases, the rationale for such an exclusion was, in part, that such goods did not enter the Canadian market when they were imported, as they entered Canada solely for the production step which was being tolled and then were returned to the named country for further processing. If such goods were subsequently sold into the Canadian market as subject goods, then presumably they would have been subject to the Tribunal's finding.¹¹

The Tribunal sees no reason for treating the tolling arrangement in this case differently, particularly when the stainless steel round bar satisfies the product definition at the time at which it is exported for tolling. As with the producers of the goods in these other cases, Atlas retains ownership of the stainless steel round bar throughout the process, a further indication that the purpose of the tolling transaction is not to sell the goods into another market, but rather to simply have an intermediate processing step performed by another producer.

As the Tribunal has determined that stainless steel round bar produced by Atlas which undergoes an intermediate process in the United States on a tolling basis should be considered part of domestic production, the Tribunal has not revised the data on imports as shown in the import tables of its staff report. The Tribunal now turns to address the application of subsection 42(3) of SIMA to the facts of this case.

Cumulation

Subsection 42(3) of SIMA gives the Tribunal the discretion to make an assessment of the cumulative effect of the dumping of goods to which a preliminary determination applies if certain conditions are met. The relevant portions of subsection 42(3) read as follows:

(3) In making ... its inquiry under subsection(1), the Tribunal may make an assessment of the cumulative effect of the dumping ... of goods to which the preliminary determination applies that are imported into Canada from more than one country if

10. See, for example, *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*, Canadian International Trade Tribunal, Inquiry No. NQ-92-009, *Finding*, July 29, 1993, *Statement of Reasons*, August 13, 1993, at 30, and *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*, Canadian International Trade Tribunal, Inquiry No. NQ-93-007, *Finding*, July 29, 1994, *Statement of Reasons*, August 15, 1994, at 41-42.

11. In another case, *Machine Tufted Carpeting with Pile Predominantly of Nylon, Other Polyamide, Polyester or Polypropylene Yarns, Excluding Automotive Carpeting and Floor Coverings of an Area Less Than Five Square Metres, Originating in or Exported from the United States of America*, Canadian International Trade Tribunal, Review No. RR-96-004, *Order*, April 21, 1997, *Statement of Reasons*, May 8, 1997, the Tribunal indicated that products sent out of Canada for further processing, and subsequently returned for sale in Canada in the condition in which they were returned, should be considered imports rather than "production in Canada." In contrast, the evidence in the present case is that the tolled goods are sent out of Canada for intermediate processing and then returned to Canada for further processing prior to their sale. The decision to consider the goods in this case as part of domestic production, and not as imports, is, thus, not inconsistent with *Carpets* and the cases referred to in note 75 on page 24 of that decision.

- (a) the margin of dumping ... in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and
- (b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and
 - (i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or
 - (ii) like goods of domestic producers.

The term “negligible” is defined in subsection 2(1) of SIMA as follows:

“negligible” means, in respect of the volume of dumped goods of a country,

- (a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods, except that
- (b) where the total volume of dumped goods of three or more countries, each of whose exports of dumped goods into Canada is less than three per cent of the total volume of goods referred to in paragraph (a), is more than seven per cent of the total volume of goods referred to paragraph (a), the volume of dumped goods of any of those countries is not negligible.

In his final determination of dumping, the Deputy Minister, in accordance with subsection 41(1) of SIMA, found that the volume of dumped imports from four of the named countries, namely, Japan, Italy, Spain and the United Kingdom, was less than 3 percent of the total volume of imports from all countries. However, the total volume of dumped imports from these four countries was greater than 7 percent. As a result, the Deputy Minister found that none of the countries met the definition of “negligible” and, therefore, did not terminate the investigation with respect to any of them. The Deputy Minister made a similar finding in his preliminary determination of dumping, in accordance with subsection 35(1) of SIMA.

At the hearing, the Tribunal raised a number of issues with counsel regarding the application of the negligibility provisions of SIMA. The first issue was the time period that should be considered by the Tribunal in determining whether the volume of dumped goods from a country is “negligible.” Counsel for Atlas submitted that the use of the word “dumped” in the definition of “negligible” in subsection 2(1) of SIMA suggests that the time period which must be considered by the Tribunal is the Deputy Minister’s period of investigation. Furthermore, according to counsel, the Tribunal must rely on the Deputy Minister’s calculations of the volume of dumped goods from each country and of the total volume of imports. Counsel submitted that the Tribunal is bound by the Deputy Minister’s final determination, which held that the volume of dumped imports from none of the countries was “negligible.”

Counsel for Valbruna and Bolzano agreed that the relevant time period is the Deputy Minister’s period of investigation; however, they submitted that, since the Deputy Minister was not aware of the actual total volume of imports because he was not privy to information regarding the tolled goods, the Tribunal must adjust the numbers accordingly. In support of their argument, counsel referred to paragraph 8 of Article 5 of the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*¹² (the Anti-Dumping Agreement), which provides that, as soon as investigating authorities learn that the volume of dumped imports is negligible, the investigation is to be terminated immediately. Counsel submitted that, if the tolled goods are added to total imports, then the volume of dumped imports from each of the four countries that were the subject of the Deputy Minister’s negligibility analysis would become

12. Signed at Marrakesh on April 15, 1994.

negligible. In the event that the Tribunal uses the import data contained in its staff report, counsel submitted that these numbers should be adjusted in a similar manner, rendering the volume of dumped imports from Italy, and any other country in a similar situation, negligible. As a result, the case should be terminated against them.

Counsel for Foroni submitted that the approach, which the Tribunal adopted in *Refined Sugar*, was the correct approach. In that case, the Tribunal used the most recent calendar year for which it had complete import statistics to do its own negligibility analysis. Counsel submitted that, in the present case, this would result in the use of import data for 1997, which, as in *Refined Sugar*, broadly corresponds to the Deputy Minister's period of investigation. The result of using this approach and including the tolled goods in the import numbers would render the volume of dumped imports from a number of the named countries, including Italy, negligible.

The Tribunal notes that the WTO Implementation Act implemented into Canadian law the *Agreement Establishing the World Trade Organization*¹³ and all of its Annexes, including the Anti-Dumping Agreement. As a result, numerous amendments were made to SIMA. In particular, subsection 42(3) of SIMA was amended to implement Canada's obligations regarding "cumulation" in paragraph 3 of Article 3 of the Anti-Dumping Agreement, which lists a number of conditions which must be met in order for an injury analysis to be based on a cumulative assessment of the effects of dumped imports. One of these conditions is that the investigating authority, which, in Canada, is the Tribunal, must determine that the volume of imports from each country named in an investigation is not negligible. The definition of "negligible" in paragraph 8 of Article 5 of the Anti-Dumping Agreement was reflected in subsection 2(1) of SIMA.

In the Tribunal's view, the first question raised by the issue of the time period that the Tribunal should use for determining "negligibility" for purposes of subsection 42(3) of SIMA is whether, in considering to cumulate in a particular inquiry, the Tribunal must use the Deputy Minister's analysis of "negligibility" in the final determination of dumping or whether the Tribunal has a discretion to use whatever information it determines to be most reliable in the circumstances of a particular case. The Tribunal is persuaded that, while it may use the Deputy Minister's analysis if it so chooses, it is not required to do so for a number of reasons.

As noted above, paragraph 8 of Article 5 of the Anti-Dumping Agreement provides that there shall be immediate termination of an investigation in cases where authorities determine, among other things, that the volume of dumped imports from a particular country is negligible. In Canada, there are two authorities which conduct the dumping investigation, that is, the Department of National Revenue (Revenue Canada), which determines whether there is dumping, and the Tribunal, which determines whether dumping is causing injury. In the Tribunal's view, in order to meet its obligations under paragraph 8 of Article 5 of the Anti-Dumping Agreement, Canada had to provide both Revenue Canada and the Tribunal with the authority to terminate an investigation if either of these investigating authorities found that the volume of dumped imports from a named country was negligible. In the Tribunal's view, this was done and is reflected in subsections 35(1), 41(1) and 42(3) of SIMA. In other words, Revenue Canada can terminate an investigation, at the preliminary or final determination stage, regarding a particular country if it finds that the volume of dumped imports from that country is negligible. The Tribunal can do so at the injury stage of the investigation.

13. Signed at Marrakesh on April 15, 1994.

In the Tribunal's view, it must have the authority to consider the issue independently of the Deputy Minister, because information which is presented to the Tribunal, but which was not considered by the Deputy Minister, could, once considered, make the volume of imports from a particular country negligible.

In addition, the Tribunal notes that the purpose for which it considers the issue of "negligibility" in conducting its inquiry is different from the purpose for which the Deputy Minister considers this issue in making preliminary and final determinations of dumping. More particularly, the Tribunal considers the issue of "negligibility" not only for the purpose of determining whether an investigation should be terminated but also for the purpose of determining whether to make a cumulative assessment of the effects of dumping. Furthermore, the Deputy Minister can consider both actual and potential volumes of imports in determining whether or not they are negligible. The phrase "actual and potential" is not found in subsection 42(3) of SIMA nor in the definition of the term "negligible" in subsection 2(1). Therefore, in the Tribunal's view, its consideration of the issue of "negligibility" is limited to actual volumes of imports.

Despite the foregoing, the Tribunal is of the view that, in the circumstances of the present case, it should use the Deputy Minister's import data, for reasons similar to those on which it relied in determining, in *Refined Sugar*, that it should use its own numbers. As noted earlier, the definition of the term "negligible" in subsection 2(1) of SIMA refers to the volume of "dumped" goods from a named country. In the Tribunal's view, it is only appropriate to use its import numbers in making a determination as to "negligibility" for purposes of subsection 42(3) of SIMA when those numbers coincide with a period that either is the same as or falls within the Deputy Minister's period of investigation. In *Refined Sugar*, the Tribunal had information on a full calendar year basis that fell within the Deputy Minister's period of investigation. This is not the case in the present inquiry. The Tribunal notes that, if it used calendar year 1997, the import data for one quarter of that year would fall outside the period during which the Deputy Minister calculated margins of dumping.

The Tribunal is of the view that it is appropriate to use the Deputy Minister's import data in this case for two additional reasons. First, the Deputy Minister did not include the tolled goods in his calculation of the volume of total imports, which is consistent with the Tribunal's ruling on this issue. In the final determination of dumping, the Deputy Minister identified the tariff classifications under which certain stainless steel round bar is normally imported into Canada.¹⁴ These tariff classifications at the 9- and 10-digit levels are used as statistical breakouts by Statistics Canada. Evidence was presented which shows that, when the tolled goods were returned to Canada, they entered under a different statistical number from the ones used by the Deputy Minister to gather import data in this case. Therefore, it appears that the tolled goods were not included in the Deputy Minister's import data. Second, the final determination of dumping indicates that the Deputy Minister's decision with respect to negligibility was based on actual imports, not actual and potential imports.

Having decided in this case to use the Deputy Minister's import data, the Tribunal finds, in accordance with subsection 42(3) of SIMA, that the volume of dumped imports from each of the named countries is not negligible. The Tribunal also finds that the margin of dumping in relation to the goods from each of those countries is not insignificant.

14. Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, August 5, 1998, Tribunal Exhibit NQ-98-001-4, Administrative Record, Vol. 1 at 108.6.

Accordingly, in its analysis, the Tribunal has made an assessment of the cumulative effect of the dumping of certain stainless steel round bar originating in or exported from all of the named countries. The Tribunal also considers such an assessment appropriate in light of the fact that imports of certain stainless steel round bar are, in general, fungible amongst themselves and with the like goods produced by Atlas. Consequently, imports of certain stainless steel round bar compete with one another and with the like goods in the Canadian market.

Injury

Subsection 37.1(1) of the *Special Import Measures Regulations*¹⁵ prescribes certain factors that the Tribunal may consider in determining whether a domestic industry has been materially injured by dumped imports. These factors include the volume of dumped goods and their effect on prices in the domestic market for like goods and the consequent impact of these imports on a number of economic factors, such as actual or potential declines in output, sales, market share, profits and return on investments. Prior to considering such factors, the Tribunal considers it useful to briefly discuss certain characteristics of the market for certain stainless steel round bar and its international nature.

In this regard, the evidence shows that there are numerous countries, representing the major regions of the world, that export significant quantities of certain stainless steel round bar. For example, in this case alone, in addition to the nine countries named in the Deputy Minister's final determination of dumping, at least seven other countries were identified as having had a presence in the Canadian market since 1995.¹⁶

Moreover, in many cases, there are several mills within a country that have the capacity to export certain stainless steel round bar to a wide variety of export destinations and that do so. Indeed, according to the evidence, exports of stainless steel, including certain stainless steel round bar, represent a significant proportion of total combined stainless steel mill production for each of the countries named in this inquiry.¹⁷ Stainless steel mills in most countries, therefore, actively seek out export markets for their production to achieve efficient and effective levels of plant loading.

In addition to direct mill exports, international trade in certain stainless steel round bar is further facilitated by the fact that, as for steel generally, there are numerous distributors, traders, brokers and agents around the globe that buy goods directly from mills, as well as from each other. They may import goods into a country for use in that country, or they may tranship the goods from one country to another. Beyond fuelling international trade, the activities of these players make it difficult for many mills to know or control the final destination of their production. In this way, a mill's products may end up being sold or dumped in a particular country without any direct involvement by that mill, and there is some evidence to suggest that this has happened in this case.¹⁸

Also facilitating international trade in certain stainless steel round bar is the fact that, although there are many specialty products within the range of products covered by this inquiry, the most important grades for certain stainless steel round bar, in terms of volume, are essentially commodity grades. For example, according to the data in this case, over 50 percent of domestic production (for domestic consumption) and

15. SOR/95-26, December 20, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 80.

16. Manufacturer's Exhibit A-7, para. 11, Administrative Record, Vol. 13.

17. *Public Pre-Hearing Staff Report*, June 29, 1998, Tribunal Exhibit NQ-98-001-6, Administrative Record, Vol. 1A at 71-72 and 120.

18. *Transcript of In Camera Hearing*, Vol. 2, August 5, 1998, at 326, 334, 336 and 340.

over 60 percent of imports fall within just two grades, AISI 304 and AISI 316,¹⁹ that are considered commodity-like.

Evidence in this case shows that certain mills try to distinguish their products from those of other mills through, for example, the development of proprietary processes and the use of trademarks.²⁰ However, it has not been shown that such efforts at differentiation allow mills to charge a premium for their products. On the contrary, the evidence shows that, in terms of pricing and substitutability, the market, on the whole, tends to treat certain stainless steel round bar, that is produced to the same specification, for the most part, as fully interchangeable products regardless of its domestic or import source.²¹

Turning to the specific developments in the Canadian market over the period of inquiry, the evidence shows that imports from the named countries played a small role in the market in 1995, before growing substantially in 1996 and 1997. Specifically, the combined market share held by the named countries, in 1995, ranked third behind Atlas and imports from the United States. However, in 1996, when the Canadian market was declining, imports from the named countries penetrated the domestic market in a very significant way. In volume terms, imports from the named countries surged by 54 percent compared to imports reported in 1995. This surge in imports resulted in a significant gain in market share for the named countries in 1996, as both Atlas and US imports lost market share.

In 1997, there was a resurgence in the overall Canadian market, with volumes approaching those achieved in 1995. Imports from the named countries continued to capture market share in 1997, but their gains were below those achieved in 1996. However, they captured a significant proportion of the market growth. As a consequence, although Atlas increased its sales volume somewhat in 1997 compared to 1996, its market share continued to fall, while the share held by US imports remained unchanged. By the end of 1997, imports from the named countries had increased their share of the Canadian market by some 15 percentage points compared to 1995.

With the initiation of the Deputy Minister's investigation in December 1997, sales of imports from the named countries dropped by close to 40 percent during the first quarter of 1998 compared to the same period in 1997. Atlas's sales increased sharply during this period, resulting in the highest market share held during the Tribunal's inquiry period. US imports regained some market share in 1998, but their market share gains were much less than those achieved by Atlas.

19. *Public Pre-Hearing Staff Report*, June 29, 1998, Tribunal Exhibit NQ-98-001-6, Administrative Record, Vol. 1A at 21; and Tribunal Exhibit NQ-98-001-10.1.F (protected), Administrative Record, Vol. 4A at 20.

20. Importer's/Exporter's Exhibit B-2 at 4, para. 16, Administrative Record, Vol. 15; and *Transcript of Public Hearing*, Vol. 2, August 5, 1998, at 292-93.

21. *Transcript of Public Hearing*, Vol. 2, August 5, 1998, at 355.

In terms of prices, the Tribunal notes that, as a result of the well-developed international trade in certain stainless steel round bar, prices may be quickly transmitted from one part of the world to another.²² Numerous witnesses referred to global price movements, to the “world price” of certain stainless steel round bar and to the fact that Canadian prices were bound to follow world prices.²³ In this connection, the evidence shows that, since 1995, world prices for certain stainless steel round bar, as well as for many other stainless steel products, have been on a steady downward trend.²⁴ The evidence also shows that, over the period of this inquiry, average Canadian prices declined significantly in conjunction with the decline in world prices and the decline in the average price of imports into Canada.

The Tribunal notes that a significant exception to this global price movement is the United States, where, according to the evidence, average prices actually stayed up after 1995, as world and Canadian prices declined.²⁵ This discrepancy in price behaviour may well have something to do with the fact that, in 1995, the US stainless steel round bar industry took successful anti-dumping action against four countries, including three that are named in this inquiry. However, in recent quarters, US prices for stainless steel products, including stainless steel round bar, have begun to decline sharply.²⁶

Looking in more detail at certain stainless steel round bar price movements in Canada, over the period of inquiry, the evidence shows that Atlas’s average selling price edged upward in 1996 compared to 1995, but dropped significantly in 1997 due to the discounting and rebates offered by Atlas to its customers. Despite the initiation of the dumping investigation by Revenue Canada in late 1997, Atlas’s average selling prices fell during the first quarter of 1998 compared to the same period in 1997. Over the period of inquiry, Atlas’s average selling prices in the Canadian market fell by about \$400 per ton, representing a decline of more than 10 percent.²⁷

The Tribunal notes that the declines in Atlas’s average prices, while important, conceal even more significant declines on specific products. In particular, Atlas’s official price lists show that, on certain key products sold to major customers, the declines exceeded 20 percent. Moreover, the declines started sooner than the data on average prices reveal, namely, in early 1996.²⁸ The depth, timing and frequency of the price declines experienced by Atlas, as revealed by these official price lists, were confirmed by Atlas’s customers who testified at the hearing, as will be discussed further under the causation section of these reasons.

22. Indeed, the price movements observed in this case seem to be driven by the same considerations applicable to the steel industry in general that were described by the Chairman of British Steel plc, in the company’s 1997 Annual Report, where he stated: “steel producers seek to maintain high capacity utilisation. If demand levels in one region of the world are not sufficient to sustain utilisation, producers increase sales to other regions to achieve desired outputs. There is a well developed international trade in steel which facilitates rapid changes in trading levels, leading to an equally rapid movement in price levels.” Manufacturer’s Exhibit A-14, Administrative Record, Vol. 13; and Importer’s Exhibit D-8, Administrative Record, Vol. 15A.

23. *Transcript of In Camera Hearing*, Vol. 2, August 5, 1998, at 269.

24. Importer’s Exhibit D-8 at 3, Administrative Record, Vol. 15A.

25. *Transcript of Public Hearing*, Vol. 1, August 4, 1998, at 203.

26. *Transcript of In Camera Hearing*, Vol. 2, August 5, 1998, at 246.

27. *Protected Pre-Hearing Staff Report*, June 29, 1998, Tribunal Exhibit NQ-98-001-7 (protected), Administrative Record, Vol. 2 at 19.31.

28. Manufacturer’s Exhibit A-1 (protected), para. 39, Administrative Record, Vol. 14.

At the aggregate level, average import prices from the named countries declined by an amount similar to the domestic industry, namely, just over 10 percent, over the period of inquiry. However, the data show that average import prices declined sooner than domestic prices and remained roughly at or below domestic prices over the inquiry period.²⁹ However, as with the domestic industry, these aggregate average values belie more significant price undercutting by imports at particular times and at particular accounts. These, on occasion, exceeded 20 percent, as will also be discussed further under the causation section.

Lower selling prices and, to some extent, the inability to raise prices³⁰ had a major impact on Atlas's financial results between 1995 and 1997. During this period, domestic sales volume declined by just over 10 percent. However, the impact of lower prices on sales revenue and profits was much more severe. Sales revenue dropped by 20 percent, while profits plunged by close to 50 percent, as indicated in the financial statement prepared by Atlas for the purpose of this inquiry. These declines appear to have stopped in the first quarter of 1998, as both sales revenue and profits have stabilized; however, profit levels are considerably below 1995 levels. This stabilization in financial performance appears to be largely the result of higher sales volumes coincident with the initiation of the dumping investigation by Revenue Canada. Over the period of inquiry, Atlas suffered diminished revenue and profitability, amounting to several millions of dollars, when measured against the levels achieved in 1995.³¹

The Tribunal notes that, in the course of the inquiry, an issue arose as to whether Atlas's financial statements for certain stainless steel round bar included costs associated with an account receivable (the AlTech receivable) which had been allowed to grow to large proportions, as well as those connected with Atlas's decision to seek protection from its creditors in 1997. Counsel for importers and exporters argued that any impairment of Atlas's performance which stemmed from these matters should not be attributed to dumping, as they had nothing to do with dumping.

The Tribunal has little doubt that the CCAA process and the AlTech issue were significant adverse developments for Atlas which would have had an effect on its financial statements for certain stainless steel round bar, if the associated costs had been fully allocated to certain stainless steel round bar. However, the witnesses for Atlas testified that the financial statements for certain stainless steel round bar prepared for this inquiry excluded any restructuring or other costs associated with the CCAA process. They also excluded any costs relating to the AlTech receivable, other than a charge arising from late payments to suppliers which, when apportioned to certain stainless steel round bar, was so small as to have almost no effect on the financial statements.³² Accordingly, the Tribunal accepts that the financial statements that it has considered in its injury analysis in this inquiry reflect the performance of certain stainless steel round bar that is effectively free from the effect of these other factors. The Tribunal agrees that the CCAA process and the AlTech issue are non-dumping factors and will discuss them further under the causation section.

29. *Protected Pre-Hearing Staff Report*, June 29, 1998, Tribunal Exhibit NQ-98-001-7 (protected), Administrative Record, Vol. 2 at 19.31-19.32.

30. Manufacturer's Exhibit A-5 (protected), para. 21, Administrative Record, Vol. 14.

31. *Protected Pre-Hearing Staff Report*, June 29, 1998, Tribunal Exhibit NQ-98-001-7 (protected), Administrative Record, Vol. 2 at 19.35.

32. *Transcript of In Camera Hearing*, Vol. 1, August 4, 1998, at 56, and Vol. 2, August 5, 1998, at 206 and 222-23.

Finally, the Tribunal notes that counsel for importers and exporters argued that it was not appropriate to use 1995 as a benchmark year for comparison to subsequent periods because 1995 was a banner year for certain stainless steel round bar. According to counsel, the subsequent declines in market share and industry economic indicators were exaggerated when measured against the high water mark achieved in 1995. The Tribunal does not accept counsel's argument. First, the evidence shows that Atlas's prices and financial performance declined substantially from 1996 to 1997. Indeed, over the 1996-97 period, Atlas's performance declined more sharply than between 1995 and 1996.³³ Thus, whether measured against 1995 or 1996, the injury suffered by Atlas would still be material, in the Tribunal's estimation. Second, the evidence shows, as noted earlier, that prices in the United States did not decline for a time following 1995.³⁴ Based on the US experience, there seems no reason to assume that Canadian prices could not have also held at their 1995 levels for a longer period than they did.

In sum, the Tribunal finds that, over the period of inquiry, Atlas experienced declines in its revenues and profitability on its domestic sales of certain stainless steel round bar which reflected declines in market share and the existence of price erosion and suppression in the Canadian marketplace. The Tribunal finds that the magnitude of this injury is such that Atlas has been materially injured.

Causation

The Tribunal must next consider whether there is a causal link between the material injury suffered by the domestic industry and the dumped imports. The Tribunal must also examine other factors to ensure that injury caused by such factors is not attributable to the dumped imports. In considering the issue of causation in this inquiry, the Tribunal has taken particular note of the evidence and testimony of witnesses who appeared before it at the hearing, the various field reports submitted by the industry illustrating and documenting the injury that it suffered and the data collected by Tribunal staff on sales to particular accounts.

Beginning with the evidence of witnesses, the Tribunal notes that, as a group, they represented almost all segments of the domestic market, namely, the domestic producer, exporters and importers, distributors and end users. The Tribunal finds that these witnesses, collectively, provided it with a comprehensive and generally consistent view of market developments in Canada over the past few years, which is summarized in the following paragraphs.

According to Atlas officials, the price declines in Canada over the inquiry period were not attributable to Atlas. On the contrary, the witnesses for Atlas stated that Atlas resisted lowering its prices for as long as it could and only did so, in the end, to defend its market share which had begun to erode in the face of lower-priced imports.³⁵ The Tribunal notes that this testimony by the witnesses for Atlas is supported by the fact that not one importer, exporter or distributor witness, who appeared before the Tribunal, suggested that Atlas had led prices down in the Canadian market. Moreover, Atlas's position is further supported by the fact that, although the price of imports from the named sources began declining as early as the second half of 1995, Atlas did not respond with price reductions of its own until 1996.³⁶

33. *Protected Pre-Hearing Staff Report*, June 29, 1998, Tribunal Exhibit NQ-98-001-7 (protected), Administrative Record, Vol. 2 at 19.35.

34. *Transcript of Public Hearing*, Vol. 1, August 4, 1998, at 203.

35. *Transcript of Public Hearing*, Vol. 1, August 4, 1998, at 233-34.

36. Manufacturer's Exhibit A-3 (protected), para. 9-15, Administrative Record, Vol. 14.

Far from suggesting that Atlas had led prices down, most witnesses, including those representing importers and exporters, readily pointed to one export source or another as being the price leader and most aggressive participant in the market.³⁷ For example, a witness for one of the largest distributors of certain stainless steel round bar in Canada described the difference between import prices from certain export sources and domestic prices as “huge,” on occasion, undercutting domestic prices by some 20 percent.³⁸

Several witnesses, who are major customers of Atlas, testified that, as import prices fell and the participation of imports in the Canadian market increased, they frequently presented Atlas with information regarding import price levels and the extent of the price undercutting which was occurring. Moreover, they indicated to Atlas that they would have no choice but to fill certain of their requirements with imported product if Atlas’s prices did not fall into line with import prices.³⁹ According to the evidence, these were not idle threats, as its customers did, in fact, turn to imports of certain stainless steel round bar when Atlas did not respond quickly enough with lower prices.⁴⁰

In the face of pressure from its customers and falling market share, Atlas, in fact, repeatedly lowered its official prices through 1996 and 1997.⁴¹ In addition, Atlas was obliged to further reduce its official list prices by offering spot discounts to meet specific competitive situations. It also found it necessary to implement a volume rebate program in 1997 to encourage customer loyalty.⁴² However, as the decline in import prices deepened, Atlas’s customers urged it to take anti-dumping action to stem the price declines and stabilize prices.⁴³ Not only were these customers themselves being hurt by losing sales to competitors that were selling dumped imports but they were also having to take losses on their inventories which had to be written down to reflect falling prices on new stock.⁴⁴

The Tribunal notes that the names of certain specific export sources came up more frequently than others in the testimony of witnesses as being the most aggressive and the most disruptive in the Canadian market.⁴⁵ Consistently, the exporters or countries mentioned were those that chose not to appear in the Tribunal’s inquiry.⁴⁶ In this regard, the Tribunal notes that total exports from countries not appearing before the Tribunal represented about 60 percent of exports of certain stainless steel round bar from the named

37. *Transcript of In Camera Hearing*, Vol. 2, August 5, 1998, at 256 and 271-72; and *Transcript of Public Hearing*, Vol. 2, August 5, 1998, at 358-59 and 395-96.

38. *Transcript of Public Hearing*, Vol. 2, August 5, 1998, at 363-64.

39. *Transcript of In Camera Hearing*, Vol. 2, August 5, 1998, at 231-37; and *Transcript of Public Hearing*, Vol. 2, August 5, 1998, at 365-66.

40. *Ibid.*

41. Manufacturer’s Exhibit A-3 (protected), para. 9-65, Administrative Record, Vol. 14.

42. *Ibid.* para. 24.

43. *Transcript of In Camera Hearing*, Vol. 2, August 5, 1998, at 233 and 243; and Manufacturer’s Exhibit A-3 (protected), attachment 2GG, Administrative Record, Vol. 14.

44. *Transcript of In Camera Hearing*, Vol. 2, August 5, 1998, at 238, 243 and 343-45.

45. *Transcript of In Camera Hearing*, Vol. 2, August 5, 1998, at 271; and *Transcript of Public Hearing*, Vol. 2, August 5, 1998, at 256, 358-59 and 395-96.

46. *Ibid.*

sources over the Deputy Minister's period of investigation.⁴⁷ In addition to identifying certain export sources, the evidence indicates certain importers from the named sources as being particularly disruptive by engaging in practices known as "on-the-water" and "off-the-dock" selling.⁴⁸ These importers also were not represented in this case.

While witnesses focused on exports from certain specified countries as being the most disruptive, they, nonetheless, collectively implicated all the named sources as exporting certain stainless steel round bar to Canada at low prices at one time or another over the period of inquiry.⁴⁹ In the estimation of several witnesses, prices in Canada had now declined to the point where they were at historical lows.⁵⁰ Moreover, while imports from the named sources had quickly declined or ceased following the initiation of the dumping investigation by the Deputy Minister in December 1997, the prices for certain stainless steel round bar remained under downward pressure. According to witnesses, as imports from the named sources abated, they were being rapidly replaced by new sources such as the Republic of Korea (Korea).⁵¹

The Tribunal notes that the foregoing summary of events, as drawn primarily from the testimony of witnesses representing the various interests in this market, is substantially consistent with other documentary evidence on the record. More particularly, in support of its case, Atlas filed over 50 field reports, called contact reports, which documented, on a contemporaneous basis, the discussions that Atlas representatives had with customers about prices, volumes, availability and sources of imports over the period of inquiry. These reports collectively show that, starting in the latter half of 1995, and continuing through 1996, 1997 and 1998, imports of common grades of certain stainless steel round bar from all of the named countries, were offered or were available to Atlas's key customers at prices that were below Atlas's prices, often by 5 to 10 percent, and sometimes by as much as 30 percent or more.⁵² In short, these reports chronologically outline the same pattern of substantial and persistent undercutting of domestic prices by imports, as was described by witnesses, throughout the inquiry period and which is continuing to the present time.

The Tribunal notes that, for the most part, the contact reports submitted by the domestic industry went unchallenged and uncontradicted. However, in two or three cases, the prices of imports reported in these contact reports were shown to be roughly equal to or somewhat higher than prevailing Atlas prices. The Tribunal does not consider this to be very significant. First, these few examples relating to pricing by some specific foreign mills at a specific point in time must be considered against all the other evidence indicating price undercutting from all of the named countries with goods dumped by substantial margins. Secondly, when prices are continually declining, it is not surprising that domestic industry prices may sometimes be lower than import prices, at a given point in time. Third, although import prices may be slightly higher in these few examples, they are being measured against Atlas's prices that have already been reduced due to previous price undercutting by imports.

47. In the case of some countries, certain exporting mills were represented at the hearing and others were not represented. Thus, the volume of exports from countries and exporting mills not represented at the hearing is in excess of 60 percent. Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, August 5, 1998, Tribunal Exhibit NQ-98-001-4, Administrative Record, Vol. 1 at 108.35.

48. Manufacturer's Exhibit A-1 (protected), para. 17, Administrative Record, Vol. 14.

49. See, for example, *Transcript of Public Hearing*, Vol. 2, August 5, 1998, at 275 and 309; and *Transcript of In Camera Hearing*, Vol. 2, August 5, 1998, at 232.

50. *Transcript of In Camera Hearing*, Vol. 2, August 5, 1998, at 257.

51. *Transcript of Public Hearing*, Vol. 2, August 5, 1998, at 255.

52. Manufacturer's Exhibit A-3 (protected), attachment 2, Administrative Record, Vol. 14.

In addition, as the Tribunal and its predecessors have noted before, even where imports are simply meeting or tracking falling domestic prices, they are not entitled to “cross the line” into injurious dumping.⁵³ Therefore, evidence which may suggest, as in the examples referred to in the preceding paragraph, that imports, in some instances and from some sources, are simply being priced at or close to the prevailing Canadian market levels, however low those may be, does not mean, in the Tribunal’s opinion, that those dumped imports are not causing injury.

Turning to the data gathered by Tribunal staff, the same pattern of price undercutting by imports emerges. In particular, the Tribunal notes the information contained in the staff report concerning the purchases made by five Canadian distributors, which together accounted for over 40 percent of the total market for certain stainless steel round bar in 1997. From 1996 through the first quarter of 1998, these distributors collectively purchased certain stainless steel round bar from all of the nine countries named in this inquiry, as well as Atlas product.

According to the data, average prices of dumped imports to these distributors, taken collectively, began to decline, along with domestic prices, in the second quarter of 1996. In the first quarter of 1996, as well as over each of the following seven quarters, up to the first quarter of 1998, combined average import prices at these five accounts were consistently below domestic prices.⁵⁴ The amount of undercutting reached a peak in the first quarter of 1997, when combined import prices were 26 percent below domestic prices. In the first quarter of 1998, domestic average prices to these distributors fell to where they were roughly equal to average import prices. The total decline in average prices, over the nine quarters examined at these accounts, amounted to about 20 percent, for both domestic goods and goods imported from the named countries.⁵⁵

The data further show that, while total purchases of certain stainless steel round bar by these distributors grew over the period, almost all of this growth was captured by imports from the named sources. Specifically, as average import prices declined, the volume of sales of imports surged, growing from almost nothing in the first quarter of 1996 to almost 60 percent of total purchases of certain stainless steel round bar by these distributors in the last quarter of 1997. Over the same period, sales of domestic product were, on the whole, stagnant.⁵⁶ In the Tribunal’s estimation, the foregoing data establish a causal relationship between price undercutting by dumped imports and price and volume injury suffered by Atlas.

Finally, in considering the issue of causation, it is interesting to compare Atlas’s performance on domestic sales with its performance on export sales. The evidence shows that this is a study in contrasts. Specifically, Atlas’s domestic profitability declined in every year over the period of inquiry, whereas its export profitability rose each year. Moreover, at the beginning of the period, Atlas’s domestic sales of certain stainless steel round bar were more profitable than its export sales, but, by the end of the period, its export profitability far exceeded its performance on domestic sales.⁵⁷ In the Tribunal’s opinion, Atlas’s export

53. *Transcript of Public Argument*, Vol. 4, August 7, 1998, at 527.

54. When import and domestic prices are examined separately at each individual account, average import and domestic prices seem to alternate, on being the lowest, from quarter to quarter. In the Tribunal’s opinion, such a “leap frog” pattern is also consistent with price undercutting by imports.

55. *Protected Pre-Hearing Staff Report*, June 29, 1998, Tribunal Exhibit NQ-98-001-7 (protected), Administrative Record, Vol. 2 at 19.52, 19.54, 19.56, 19.57, 19.108, 19.114 and 19.115.

56. *Ibid.*

57. *Ibid.* at 19.35 and 19.38.

performance shows that it is a competitive international supplier of certain stainless steel round bar, and its poorer domestic performance is not a result of a lack of competitiveness. Rather, Atlas's performance in Canada over the period of inquiry appears directly related to the effect of dumped imports into the Canadian market.

Other Factors

The Tribunal notes that counsel for importers and exporters have argued that factors other than dumping have caused the injury suffered by Atlas over the inquiry period. These include: the cost of raw material inputs, such as nickel, in the production of certain stainless steel round bar; mismanagement by senior company officials and certain financial difficulties; Atlas's export orientation; and general economic conditions.

As far as the price of raw materials such as nickel is concerned, the evidence shows that there is a long-standing historical correlation between stainless steel prices and nickel prices and that, over the period of inquiry, the price of both declined substantially. According to counsel for importers and exporters, this showed that the price declines in certain stainless steel round bar were largely a consequence of falling nickel prices.

The Tribunal notes that the correlation between stainless steel prices and nickel prices does not establish which is the price leader. Indeed, in the present case, it is unclear to the Tribunal to what extent the supply and demand conditions for stainless steel may be contributing to price declines for nickel and vice versa. In any event, even if nickel is the leader, the domestic industry has submitted evidence, which has not been contradicted, that the falling prices of nickel and other raw materials could only account for a small proportion of the decline in prices for certain stainless steel round bar, having regard to their share of the costs of production.⁵⁸ Moreover, the proposition that falling global nickel prices may explain the depth and rapidity of the decline in prices for certain stainless steel round bar in Canada over the period of inquiry is inconsistent with the evidence in this case that prices for stainless steel round bar in the United States did not decline,⁵⁹ while nickel prices were falling in 1996 and 1997.

Insofar as mismanagement is concerned, counsel for importers and exporters noted that Atlas's senior management had been replaced on several occasions over the past several years and, in certain cases, lawsuits had been filed in connection with the performance of senior management. In addition, in 1997, Atlas was placed under the protection of the CCAA as a result of certain financial difficulties that it was experiencing. As a result of the CCAA proceedings, Atlas's capital structure was entirely changed, and it emerged from CCAA protection under new ownership. Moreover, both before and during the period of inquiry, Atlas had allowed its accounts receivable to grow out of control, depriving Atlas of cash flow necessary for operations and capital improvements. According to counsel, these events not only harmed Atlas in direct financial terms but also hurt its credibility with its customers which, as a consequence, sought out alternate sources of supply.

The Tribunal agrees, as did the officials representing Atlas at the hearing, that the past several years have been difficult ones for Atlas. However, as noted in the injury section of these reasons, the financial costs associated with these difficulties have not been attributed to the production and sale of certain stainless steel

58. *Transcript of Public Hearing*, Vol. 1, August 4, 1998, at 26-27.

59. *Ibid.* at 203.

round bar, nor is it evident to the Tribunal how these difficulties relate to the collapse in Canadian market prices for certain stainless steel round bar, the prime cause of injury in this case.

As for the effect of Atlas's difficulties on customer confidence, the Tribunal heard from several witnesses, who were and are customers of Atlas, that these difficulties were not a major issue in their purchasing decisions.⁶⁰ Moreover, the Tribunal notes that, if security of supply were a critical issue for customers, one might expect to see a premium paid for alternate import sources of supply, instead of a discount, which is what the evidence shows in this case.

Counsel for importers and exporters also argued that Atlas's production and sales were focused on export markets, especially the United States, to the detriment of the company's performance in the Canadian market. Counsel suggested, for example, that this export priority had caused Atlas's domestic customers to experience inordinately long lead times for delivery of goods. Again on this issue, the Tribunal finds that the testimony of Atlas's customers does not indicate that Atlas's lead times caused them to curtail their purchases from Atlas.⁶¹ Moreover, the Tribunal is not persuaded that Atlas's success in export markets has come at the expense of its domestic customers, nor does this factor, like many of the other factors raised, have anything to do with price erosion and suppression in Canada.

Finally, the Tribunal has considered whether changes in demand in Canada for certain stainless steel round bar, over the period of inquiry, may have had an effect on prices for certain stainless steel round bar. As discussed in the injury section, the data show that Canadian demand in 1997 was growing after a sharp fall in 1996 and, by the end of the year, had recovered to almost the robust levels of 1995. Yet, despite the growth in demand in 1997, average prices dropped sharply over this 12-month period compared to 1996. This strongly suggests to the Tribunal that changes in demand were not a driving factor in the price declines experienced over the inquiry period.

For the foregoing reasons, the Tribunal finds that the dumping of certain stainless steel round bar has caused material injury to the domestic industry.

REQUESTS FOR EXCLUSIONS

Several counsel for importers and exporters requested exclusions for their respective clients or for particular certain stainless steel round bar products. Counsel for Atlas filed a written consent to one of the requests for product exclusions made by Aubert & Duval. The Tribunal notes that it is within its discretion to grant exclusions⁶² and that, in the past, the Tribunal has granted three different types of exclusions: product exclusions, producer exclusions and country exclusions. The most common is the product exclusion which has been granted in exceptional circumstances, for instance, when the domestic industry does not produce the particular product.

60. *Transcript of Public Hearing*, Vol. 2, August 5, 1998, at 253-54, 264-65 and 371.

61. *Ibid.* at 253-54 and 260.

62. See, for example, *Hitachi Limited v. The Anti-dumping Tribunal*, [1979] 1 S.C.R. 93; and *Sacilor Aciéries v. The Anti-dumping Tribunal* (1985), 9 C.E.R. 210 (F.C.A.), Court File No. A-1806-83, June 27, 1985.

Product Exclusions

Aubert & Duval initially requested exclusions for two product specifications which it sells to Canadair, namely, ASN-A3380 and ASN-A3294. These specifications are particular to Aérospatiale, the maker of the airbus aeroplanes. Canadair is a supplier to Aérospatiale. In argument, counsel for Aubert & Duval expanded the company's request for product exclusions. They requested an exclusion for certain stainless steel round bar that Aubert & Duval produces and exports to Canada with a low sulphur content, i.e. equal to or less than 30 parts per million of sulphur (on the basis that Atlas does not make such a product or at least a product that competes with Aubert & Duval's products). In the alternative, counsel requested an exclusion for certain stainless steel round bar used in the aeronautical industry. In doing so, they noted that certain stainless steel round bar with a low sulphur content is basically an aeronautical product.

In the further alternative, counsel for Aubert & Duval requested an exclusion for grades 13-8MO and 15-5PH. They noted that ASN-A3380 is a type of 13-8MO and that ASN-A3294 is a type of 15-5. They submitted that Atlas consented to an exclusion for 13-8MO because it does not have the capability to produce this product grade. With respect to 15-5PH, counsel submitted that the 15-5 is a generic grade, but that not all 15-5 is the same. Counsel questioned whether Atlas actually produces 15-5 in Canada. They submitted that the evidence shows that most of Atlas's VAR, which is an integral part of the production process, takes place in the United States. Furthermore, they noted that Atlas had profitability reports for all other products except the 15-5 VAR. In the alternative, counsel argued that the 15-5 VAR produced by Atlas is different from the 15-5 produced by Aubert & Duval and that there has been no injury caused by Aubert & Duval's 15-5 to Atlas's 15-5 VAR. Counsel referred to the evidence which showed that Atlas did not suffer any price reductions with respect to its 15-5 VAR during the period of inquiry. Indeed, there were price increases.

As noted above, in general, 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.⁶³ The Tribunal also considers such factors as whether there is any domestic production of substitutable or competing goods,⁶⁴ whether the domestic industry is an "active supplier" of the product or whether it normally produces the product.⁶⁵

With respect to ASN-A3380 and ASN-A3294, the Tribunal first notes that Atlas has agreed to the exclusion for ASN-A3380 on the basis that it does not produce this product. While Atlas has contested the exclusion for ASN-A3294, the Tribunal notes that Atlas acknowledged that it is not a certified supplier to

63. See, for example, *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*, Canadian International Trade Tribunal, Inquiry No. NQ-93-007, *Finding*, July 29, 1994, *Statement of Reasons*, August 15, 1994, at 39.

64. See, for example, *Machine Tufted Carpeting Originating in or Exported from the United States of America*, Canadian International Trade Tribunal, Inquiry No. NQ-91-006, *Finding*, April 21, 1992, *Statement of Reasons*, May 6, 1992.

65. See, for example, *Certain Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate, Heat-Treated or Not, Originating in or Exported from Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom, the United States of America and the Former Yugoslav Republic of Macedonia*, Canadian International Trade Tribunal, Inquiry No. NQ-92-007, *Finding*, May 6, 1993, *Statement of Reasons*, May 21, 1993.

Aérospatiale.⁶⁶ As such, Atlas cannot currently sell this product to Canadair for its Aérospatiale contract. In these circumstances, the Tribunal is of the view that both specifications should be excluded from the finding.

With respect to the balance of Aubert & Duval's product exclusions, the evidence shows that Atlas produces certain stainless steel round bar with a low sulphur content, i.e. containing 30 parts per million or less of sulphur.⁶⁷ Accordingly, the Tribunal concludes that an exclusion for such products in the present case is not warranted. Further, the evidence shows that the aeronautical industry or, as the witness for Atlas referred to it, the aerospace industry is very important to Atlas. The evidence shows that Atlas produces certain stainless steel round bar for the aerospace industry,⁶⁸ which it sells either through distributors or directly to end users.⁶⁹ For these reasons, the Tribunal is of the view that an exclusion for imported certain stainless steel round bar used in the aeronautical or aerospace industry is not warranted. With respect to the request for exclusion for 15-5, the Tribunal is not prepared to grant this exclusion, as there is evidence that Atlas produces this grade of round bar.

Counsel for Foroni requested an exclusion for certain stainless steel round bar equal to or greater than 6 in. in diameter exported by Foroni. Counsel for Sandvik made a similar request. In support of their request, counsel for Foroni relied on the company's insignificant dumping margins and the fact that the majority of the products exported by Foroni were over 6 in. in diameter and were found to be undumped. In addition, counsel for Foroni referred to the testimony of the witnesses for Atlas, who were unaware of any lost sales or any specific allegations of injury against Foroni. Counsel for Atlas objected to this request for exclusion on the basis that it regularly offers and sells this product.

The evidence shows that certain stainless steel round bar equal to or greater than 6 in. in diameter is regularly produced and sold by Atlas in Canada.⁷⁰ There is nothing to indicate that imports of certain stainless steel round bar in this size range are, in any material way, different from Atlas's certain stainless steel round bar or that the domestic and imported products do not compete against each other for sales in Canada. For this reason, the Tribunal cannot grant an exclusion for these products.

Manluk's representative requested an exclusion for certain stainless steel round bar made to specification 410QDT (oil quenched) and used in the manufacture of specialized petrochemical industrial components produced by Manluk. He emphasized that these goods are quenched and double tempered with an oil quenching medium. He referred to the evidence which showed that, on a number of occasions, Atlas has been unable to provide Manluk with this product because it was not in its production scheme. The representative argued that Manluk cannot rely on recent promises made by Atlas that it will produce and supply it with the product. Furthermore, as a result of not being able to import the product because of the provisional anti-dumping duties or not being able to obtain it from Atlas, Manluk has become concerned about its ability to fully meet its customers needs in the near future. He stated that, if Manluk is not supplied with the product soon, it will have to consider laying off people and closing sections of its new plant.

Counsel for Atlas objected to this request for exclusion on the basis that Atlas regularly offers and sells this product. Counsel referred to the testimony of the witness for Atlas to the effect that Atlas has

66. A certified supplier is one that has been approved to provide goods for the building of airbus aeroplanes.

67. *Transcript of In Camera Hearing*, Vol. 2, August 5, 1998, at 190-91.

68. *Transcript of In Camera Hearing*, Vol. 2, August 5, 1998, at 184-85.

69. *Ibid.* and *Transcript of Public Hearing*, Vol. 1, August 4, 1998, at 211-12.

70. Tribunal Exhibit NQ-98-001-10.1.F (protected), Administrative Record, Vol. 4A at 20.

developed new processes and technologies that enable it to confidently undertake the production of this product. They submitted that the evidence filed by Manluk with respect to Atlas's inability to supply the product predated Atlas's new technology and relates to goods that are not the subject of this inquiry.

The Tribunal notes that there is no evidence that Atlas normally produces like goods to the specification requested by Manluk. The evidence shows that Manluk has never had any success in the past in obtaining this product and that, in fact, Atlas has declined to produce this product for Manluk. Events surrounding recent efforts to obtain the product from Atlas indicate to the Tribunal that, while Atlas is making efforts to produce the product, it still has not shown that it can deliver it in a timely manner and to Manluk's quality needs. In these circumstances, the Tribunal concludes that imported certain stainless steel round bar made to specification 410QDT (oil quenched), that is, grade 410, quenched and double tempered with an oil quenching medium, should be excluded from the finding. In doing so, the Tribunal notes that this exclusion will not prevent Atlas from supplying Manluk in the future.

Producer Exclusions

Counsel for Aubert & Duval requested a producer exclusion on the basis that the company has not caused nor is it threatening to cause material injury to Atlas. They submitted that Aubert & Duval operates in a market which is completely separate from the market in which Atlas and the other participants in the inquiry operate. More particularly, Aubert & Duval sells small quantities of very expensive goods into very specialized end-use markets. They also submitted that Aubert & Duval's prices have been consistently higher than Atlas's prices and the prices of other importers and exporters.

Counsel for BSC argued that certain stainless steel round bar produced by British Steel Engineering Steels (BSES) should be excluded from an injury finding by the Tribunal because it has not caused nor is it threatening to cause material injury to Atlas. Counsel argued that the mere presence of imports is not sufficient to establish causation. Rather, there must be evidence of the dumped product underselling the domestic product and, in this case, there is no evidence to show that BSC is underselling Atlas in the Canadian market. Counsel noted that Manluk's representative testified that he paid a premium for the specific product that he needed that was produced by BSES, as well as testified to the fact that he had difficulty in sourcing the product from Atlas. Counsel referred the Tribunal to the decision of the Anti-dumping Tribunal (ADT) in Inquiry No. ADT-9-81,⁷¹ where the ADT excluded Matsushita Electric Trading Co. Ltd. on the basis that its exports had no impact on the general injury experienced by the domestic industry in that case.

71. *Countertop Microwave Ovens in which Cooking Time, Power Level and/or Other Operating Features are Controlled by Electro-Mechanical or Solid-State Devices with Limited Control and no Memory Capability (Commonly Described as "Mechanical Control Countertop Microwave Ovens")*, and *Countertop Microwave Ovens in which Cooking Time, Power Level and/or Other Operating Features are Controlled Wholly or in Part by a Microprocessor-Based Electronic Control (Commonly Described as "Electronic Control Countertop Microwave Ovens")*, Commonly Considered Either for Household Use Only or for Household and Commercial Use, But Excluding Mechanical Control Microwave Ovens and Electronic Control Microwave Ovens Commonly Considered for Commercial Use Only, Originating in or Exported from Japan, Singapore and the Republic of Korea, Finding, March 30, 1982, Statement of Reasons, May 7, 1982.

A producer exclusion for Foroni was also requested. Counsel for Foroni stated that the company's dumping margin of 0.6 percent was *de minimis* and that it has been also found to have low dumping margins in dumping proceedings in the United States. They submitted that the evidence shows that Foroni's sales to Canada are sporadic and are usually the result of long-standing customer relationships. In support of their request, counsel also referred to *Microwave Ovens*, to the producer exclusion granted to Creusot-Loire by the ADT in Inquiry No. ADT-10-83⁷² and to the ADT's decision in Inquiry No. ADT-11-80.⁷³ They argued that the principles on which the ADT relied, in deciding whether or not to grant producer exclusions enunciated in those cases, were reiterated in more recent cases, including Inquiry No. NQ-91-004⁷⁴ and *Certain Cold-Rolled Steel Sheet*, even though, in those cases, the Tribunal declined to grant the exclusions.

Counsel for Valbruna and Bolzano argued that Valbruna and Bolzano should be excluded from an injury finding on the basis that the domestic industry has failed to demonstrate that they have caused injury. Counsel argued that the evidence showed that Valbruna and Bolzano's prices in the Canadian market have been consistently higher than those of Atlas. In addition, there was evidence that Valbruna chose to sell to one distributor which was not a regular customer of Atlas. Finally, they submitted that evidence showing a healthy and growing demand and stable prices in the principal markets served by both companies represented a significant disincentive for Valbruna and Bolzano to export to Canada.

Counsel for Atlas first referred to the Tribunal's long-standing practice of considering the effect of dumped imports *en masse*. They submitted that the Tribunal is not required to relate its finding to each exporter. As a consequence, they suggested that the Tribunal will only grant producer exclusions in exceptional circumstances. Counsel argued that those circumstances are not present in this case. Counsel noted that the Tribunal has only granted producer exclusions where a producer manufactures a product which is not manufactured in Canada and, therefore, opposed all requests for producer exclusions.

In *Certain Corrosion-Resistant Steel Sheet Products*, in determining whether to grant requests for producer exclusions, the Tribunal stated the following:

[T]he 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

72. *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*, Finding, December 7, 1983, *Statement of Reasons*, December 29, 1983.

73. *Juvenile Products Consisting of Folding Strollers Incorporating an Adjustable or Removable Seat; Convertible Carriage/Strollers Incorporating a Removable Travel Bed; Folding Fixed Back Strollers; Folding Padded High Chairs with a Tubular Steel Frame; Folding Padded Playpens with a Steel Frame; Automatic Baby Swings with a Tubular Steel Frame; and Adjustable Car Seats with a Tubular Steel Frame and Moulded Plastic Seat Originating in or Exported from the United States of America*, Finding and *Statement of Reasons*, February 5, 1981.

74. *Aluminum Coil Stock and Steel Head and Bottom Rails, for Use in the Production of Horizontal Venetian Blinds, Originating in or Exported from Sweden*, Canadian International Trade Tribunal, Finding, February 7, 1992, *Statement of Reasons*, February 24, 1992.

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.⁷⁵

The Tribunal also indicated that it would only grant producer exclusions in exceptional circumstances, such as when an exporter is shipping a specific product that is not produced in Canada. In *Certain Corrosion-Resistant Steel Sheet Products*, the Tribunal refused to grant producer exclusions to four US steel mills which represented 60 percent of the total exports from the United States during the year preceding the Tribunal's finding. Furthermore, three of these exporters were found to be dumping a high percentage of their exports in Canada by weighted average margins which the Tribunal found had an effect on the prices of like goods in Canada.

In the present case, producer exclusions have been requested on behalf of the following producers: Aubert & Duval, BSES, Foroni, Valbruna and Bolzano. The Tribunal notes that its injury finding in the present case was made on the basis of total imports from the named countries. The evidence shows that a significant proportion of certain stainless steel round bar originating or exported from France, the United Kingdom and Italy was found to be dumped by weighted average margins which, in the Tribunal's view, had a significant impact on the prices of like goods in Canada.⁷⁶ For these reasons, the Tribunal is of the view that none of the requests for producer exclusions should be granted.

Country Exclusions

The Tribunal received requests for country exclusions for Sweden, the United Kingdom and Italy, on the basis that they have not caused and are not threatening to cause material injury to the domestic industry. In particular, counsel for Valbruna and Bolzano noted that Italian prices have been consistently higher than domestic prices and that this pattern is projected to continue in the foreseeable future, which will dissuade Italian producers from exporting to Canada.. Furthermore, there is no evidence of capacity additions in Italy, and there has not been a significant increase in Italian exports of dumped goods. In fact, they have declined due to better prices in other markets.

Counsel for Atlas noted that, in the past, the Tribunal has refused to grant a country exclusion where a particular country had a significant weighted average margin of dumping or where 100 percent of a country's exports were dumped. Counsel referred to the Tribunal's decision in Inquiry No. CIT-5-88,⁷⁷ where the Tribunal outlined a three-branch test to decide whether to grant country exclusions, namely, whether the percentage of the dumped goods is a very small proportion of the total goods from a given country, whether the margins from the country are very low and whether the volume is a very small proportion of the total dumped goods. In counsel's view, none of the countries for which exclusions were requested meet any of these tests. Accordingly, their requests should be denied.

75. *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*, Canadian International Trade Tribunal, Inquiry No. NQ-93-007, Finding, July 29, 1994, *Statement of Reasons*, August 15, 1994, at 42; and see also *Certain Cold-Rolled Steel Sheet Originating in or Exported from the United States of America*, Canadian Secretariat File No. CDA-93-1904-09, *Opinion and Panel Decision*, July 13, 1994, at 58.

76. Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, August 5, 1998, Tribunal Exhibit NQ-98-001-4, Administrative Record, Vol. 1 at 108.35.

77. *Polyphase Induction Motors Originating in or Exported from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America*, Finding, April 28, 1989, *Statement of Reasons*, May 12, 1989.

For similar reasons as those given for refusing producer exclusions, the Tribunal decides not to grant country exclusions. The Tribunal is of the view that all the named countries have contributed, to varying degrees, to the material injury suffered by the domestic industry by their dumping of certain stainless steel round bar. As noted earlier, it is the collective impact of the dumped imports that the Tribunal considered in its analysis. The Tribunal notes that Sweden, the United Kingdom and Italy all had weighted average margins of dumping of 52.4 percent.⁷⁸

REQUEST FOR A REFERRAL TO THE DEPUTY MINISTER

In argument, counsel for Atlas requested that the Tribunal advise the Deputy Minister that the conditions of section 46 of SIMA had been met with respect to imports of certain stainless steel round bar originating in or exported from Korea.

The relevant portions of section 46 of SIMA, as amended by the WTO Implementation Act, read as follows:

46. Where, during an inquiry referred to in section 42 respecting the dumping ... of goods to which a preliminary determination under this Act applies, the Tribunal is of the opinion that

(a) there is evidence that goods the uses and other characteristics of which closely resemble the uses and other characteristics of goods to which the preliminary determination applies have been or are being dumped ..., and

(b) the evidence discloses a reasonable indication that the dumping ... referred to in paragraph (a) has caused injury ... or is threatening to cause injury,

the Tribunal, by notice in writing setting out the description of the goods first mentioned in paragraph (a), shall so advise the Deputy Minister. (Emphasis added)

In turn, subsection 31(7) of SIMA provides:

(7) The Deputy Minister may, on receipt of a notice in writing from the Tribunal pursuant to section 46 respecting the dumping ... of any goods, cause an investigation to be initiated respecting the dumping ... of any goods described in the notice. (Emphasis added)

Prior to the WTO Implementation Act, a referral by the Tribunal under section 46 of SIMA had the effect of initiating a dumping investigation in respect of any country or countries named in the referral. In other words, the Deputy Minister had no role in determining whether an investigation should be commenced. The amendments to section 46 and subsection 31(7) have changed the effect of any notice that the Tribunal may issue under section 46. Rather than being a decision to initiate an investigation, any advice simply has the effect of bringing the matter to the Deputy Minister's attention. The Deputy Minister now has a discretion to initiate an investigation or not. The *Clause By Clause Guide to Bill C-57* describes these changes to section 46 as follows:

Clause 171 modifies the current section 46 in two ways: First, the Tribunal is no longer authorized to *direct* the Deputy Minister to initiate an investigation. This change will allow the Deputy Minister to determine whether there is sufficient evidence of dumping ... required to initiate the investigation. Such a determination falls directly within the jurisdiction of the Deputy Minister.⁷⁹

78. Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, August 5, 1998, Tribunal Exhibit NQ-98-001-4, Administrative Record, Vol. 1 at 108.36.

79. *World Trade Organization Agreement Implementation Act, Clause By Clause Guide to Bill C-57*, Department of Foreign Affairs and International Trade, November 1994, comments on Clause 171.

In addition, the *Clause By Clause Guide to Bill C-57* describe the changes to subsection 31(7) of SIMA as follows:

Subsection 31(7) modifies subsection 31(2) of the current *Special Import Measures Act*, by leaving to the Deputy Minister's discretion the question of whether or not to initiate an investigation of dumping ... of any goods in response to action taken by the Tribunal under section 46.⁸⁰

In the Tribunal's view, one consequence of these amendments is that, as any "action" taken under section 46 of SIMA does not have the effect of actually initiating an investigation, it follows, then, that the level or standard of evidence needed to establish the conditions for establishing a case for notification has been reduced, since the Deputy Minister will independently consider whether an investigation should be initiated and, presumably, gather further evidence. In other words, what is now required under section 46 is information sufficient to warrant further consideration, not a final decision.

The Tribunal is of the view that, in order to warrant advising the Deputy Minister, the evidence in a particular case must show the following: (i) the imports from the named countries must be goods that compete with or are substitutable for domestically produced certain stainless steel round bar; (ii) these goods must "have been or are being" imported into Canada, i.e. there must be actual imports from the named countries; and (iii) the evidence regarding the pricing of these goods must indicate that they have been or are being dumped in Canada. In addition, the evidence relating to these goods must disclose a reasonable indication that the dumping of these goods has caused or is threatening to cause injury.

The evidence on the record shows that there are actual imports of goods of the same description as certain stainless steel round bar from Korea and that these goods compete with certain stainless steel round bar in the Canadian marketplace.

With respect to the issue of whether these goods have been or are being dumped, Atlas has submitted evidence which includes contact reports relating to prices offered in Canada for certain stainless steel round bar from Korea. From these selling prices in Canada, Atlas has estimated an export price, FOB mill, for certain bellwether products. These prices were compared to estimated normal values for certain stainless steel round bar from Korea which Atlas constructed, based on its own costs of production. Atlas submitted that its costs were competitive with Korean producers, since materials and other inputs are based on world prices. As a result of its calculations, Atlas estimated margins of dumping of 16.0 percent for one product and 23.4 percent for the other product subject to this analysis. In addition to this evidence, the Tribunal notes that the average selling prices for imports from Korea in 1997 are lower than those from a number of the named countries. Furthermore, purchasers of certain stainless steel round bar testified that imports from Korea were "affecting prices in Canada," were being priced "aggressively" and were a "big factor" in the Canadian marketplace today.⁸¹

The Tribunal notes that the evidence submitted by Atlas regarding this issue is of a nature similar to what complainants may file in respect of the issue of dumping in a complaint to the Deputy Minister. It is evidence that may not go as far as the type of evidence with respect to dumping that the Tribunal required under section 46 of SIMA prior to the amendments to this section under the WTO Implementation Act. In particular, there is no direct evidence of home market prices in Korea. However, as the Tribunal's "action" under section 46 now has the effect of simply bringing the matter to the Deputy Minister's attention, the Tribunal is of the view that the evidence in this case is sufficient to establish that Korean goods have been or are being dumped in Canada for purposes of section 46.

80. *Ibid.* comments on Clause 161.

81. *Transcript of Public Hearing*, Vol. 2, August 5, 1998, at 255-56 and 358-59; and *Transcript of In Camera Hearing*, Vol. 2, August 5, 1998, at 255.

Turning to the question of whether there is a reasonable indication of injury or threat of injury from imports from Korea, the Tribunal first considers the volumes of imports from Korea. Atlas submitted Statistics Canada data for the Tribunal's period of inquiry. According to this data, Korean import volumes, while large in 1995, were relatively small in both 1996 and 1997, as well as in the first quarter of 1998. However, the average selling price of these goods in 1997 and into 1998 was below that of a number of the named countries. Also, there is evidence that Korea's production and exports of stainless steel generally have increased significantly in recent years⁸² and, therefore, the potential for increased volumes of low-priced Korean product over the coming quarters exists. This evidence persuades the Tribunal that, while these volumes, when considered separately from other imports, are not sufficient to have caused injury, there is a reasonable indication that they threaten to cause injury. Also, depending on the time frame of the Deputy Minister's investigation, the actual volumes to be investigated may be different from the data before the Tribunal.

For these reasons, the Tribunal is of the opinion that the evidence before it is sufficient for it to conclude that Korean certain stainless steel round bar is presently being dumped in the Canadian market and that there is a reasonable indication that such dumping threatens to cause injury. The Tribunal, therefore, will so advise the Deputy Minister under section 46 of SIMA.

CONCLUSION

For the reasons stated above, the Tribunal concludes that the dumping in Canada of stainless steel round bar of sizes 25 mm diameter up to 570 mm diameter inclusive, originating in or exported from the Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and the United Kingdom, has caused material injury to the domestic industry, excluding:

- (1) stainless steel round bar made to specifications ASN-A3380 and ASN-A3294; and
- (2) stainless steel round bar made to specification 410QDT (oil quenched), that is, grade 410, quenched and double tempered with an oil quenching medium.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Raynald Guay
Raynald Guay
Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

82. *Public Pre-Hearing Staff Report*, June 29, 1998, Tribunal Exhibit NQ-98-001-6, Administrative Record, Vol. 1 at 72 and 120.