



Ottawa, Friday, June 18, 1999

Inquiry No.: NQ-98-003

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

**CERTAIN STAINLESS STEEL ROUND BAR ORIGINATING IN OR
EXPORTED FROM THE REPUBLIC OF KOREA**

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 February 18, 1999, and of a final determination of dumping dated May 19, 1999, respecting the importation into Canada of stainless steel round bar of sizes 25 mm in diameter up to 570 mm in diameter inclusive, originating in or exported from the Republic of Korea, 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.

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 Republic of Korea has caused material injury to the domestic industry.

Pierre Gosselin

Pierre Gosselin
Presiding Member

Peter F. Thalheimer

Peter F. Thalheimer
Member

Richard Lafontaine

Richard Lafontaine
Member

Michel P. Granger

Michel P. Granger
Secretary

The Statement of Reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Date of Hearing: May 26, 1999

Date of Finding: June 18, 1999

Tribunal Members: Pierre Gosselin, Presiding Member
Peter F. Thalheimer, Member
Richard Lafontaine, Member

Director of Research: Selik Shainfarber

Lead Researcher: Don Shires

Economist: Dennis Featherstone

Statisticians: Margaret Saumweber
Joël J. Joyal

Counsel for the Tribunal: Philippe Cellard
Marie-France Dagenais

Registration and Distribution Officer: Gillian E. Burnett

Participant: Ronald C. Cheng
Gregory O. Somers
Benjamin P. Bedard
for Atlas Specialty Steels, A Division of Atlas Steels Inc.

(Domestic Producer)



Ottawa, Monday, July 5, 1999

Inquiry No.: NQ-98-003

**CERTAIN STAINLESS STEEL ROUND BAR ORIGINATING IN
OR EXPORTED FROM THE REPUBLIC OF KOREA**

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 in diameter up to 570 mm in diameter inclusive, originating in or exported from the Republic of Korea, 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, has caused material injury to the domestic industry.

Place of Hearing: Ottawa, Ontario
Date of Hearing: May 26, 1999

Date of Finding: June 18, 1999
Date of Reasons: July 5, 1999

Tribunal Members: Pierre Gosselin, Presiding Member
Peter F. Thalheimer, Member
Richard Lafontaine, Member

Director of Research: Selik Shainfarber

Lead Researcher: Don Shires

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Counsel for the Tribunal: Philippe Cellard
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Registration and Distribution Officer: Gillian E. Burnett

Participant: Ronald C. Cheng
Gregory O. Somers
Benjamin P. Bedard
for Atlas Specialty Steels, A Division of Atlas Steels Inc.

(Domestic Producer)

Witnesses:

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

Larry Kusiak
Marketing Manager
Atlas Specialty Steels, A Division of
Atlas Steels Inc.

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Atlas Specialty Steels, A Division of
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Ottawa, Monday, July 5, 1999

Inquiry No.: NQ-98-003

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

**CERTAIN STAINLESS STEEL ROUND BAR ORIGINATING IN
OR EXPORTED FROM THE REPUBLIC OF KOREA**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
PETER F. THALHEIMER, Member
RICHARD LAFONTAINE, 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 determination dated February 18, 1999,² and of a final determination dated May 19, 1999,³ respecting the dumping in Canada of stainless steel round bar of sizes 25 mm in diameter up to 570 mm in diameter inclusive, originating in or exported from the Republic of Korea (Korea), 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.

This is the second inquiry conducted by the Tribunal in the past 12 months concerning the dumping of stainless steel round bar. On September 4, 1998, in Inquiry No. NQ-98-001,⁴ the Tribunal made a finding of material injury respecting 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. In its statement of reasons for that finding, the Tribunal advised the Deputy Minister, under section 46 of SIMA, that, based on the evidence before it, certain stainless steel round bar, originating in or exported from Korea, was being dumped in the Canadian market and that there was a reasonable indication that the dumping was threatening to cause injury to the Canadian industry.

Subsequent to this advice, on November 16, 1998, Atlas Specialty Steels, A Division of Atlas Steels Inc. (Atlas) filed a dumping complaint with the Deputy Minister respecting the subject goods. Having determined that the complaint was fully documented, the Deputy Minister initiated an investigation on December 3, 1998. As a result of the investigation, the Deputy Minister made a preliminary determination of dumping on February 18, 1999.

1. R.S.C. 1985, c. S-15.
2. *Canada Gazette* Part I, Vol. 133, No. 10, March 6, 1999, at 628.
3. *Ibid.* No. 23, June 5, 1999, at 1666.
4. *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*, Canadian International Trade Tribunal, *Finding*, September 4, 1998, *Statement of Reasons*, September 21, 1998.

On February 18, 1999, the Tribunal issued a notice of commencement of inquiry.⁵ As part of the inquiry, the Tribunal sent detailed questionnaires to Atlas, importers, exporters 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, 1997, to January 31, 1999. Respondents also provided information on their imports of certain stainless steel round bar during the Deputy Minister's period of investigation, from November 1, 1997, to October 31, 1998. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, all exhibits filed by Atlas, the only party to the proceedings, and the transcript of all proceedings. All public exhibits were made available to Atlas. 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 on May 26, 1999. Atlas was represented by counsel at the hearing. The Tribunal heard testimony from witnesses for Atlas and for British Steel Alloys (BSA), the latter being a distributor of certain stainless steel round bar that appeared at the Tribunal's request. The Tribunal conducted the hearing in Ottawa, Ontario, on the morning of May 26, 1999, to obtain evidence from Atlas, and then reconvened in the afternoon, in Hull, Quebec, where evidence was obtained by videoconference from BSA in Vancouver, British Columbia.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION

The Deputy Minister's investigation covered all imports of the subject goods during the period from November 1, 1997, to October 31, 1998. Sufficient sales and cost information was not provided by the exporters⁶ and importers⁷ identified by the Department of National Revenue (Revenue Canada) to permit the estimation of normal values. Consequently, normal values were established by advancing the export price by 110 percent.⁸ Revenue Canada reviewed all exports of the subject goods to Canada during the period of investigation and found that 100 percent were dumped by a weighted average margin of 52.4 percent.⁹ Provisional anti-dumping duties were imposed at a rate of 110 percent of the export price on imports of the subject goods, effective on February 18, 1999.

Before making a preliminary determination of dumping, the Deputy Minister must determine that the actual or potential volume of the dumped goods is not negligible. If the volume of dumped goods of a country is less than 3 percent of the total volume of like goods imported from all countries, the volume is considered negligible. The Deputy Minister found that dumped imports from Korea amounted to 5.2 percent of total imports, which was above the negligibility threshold. Consequently, the Deputy Minister found that the volume of dumped goods from Korea was not negligible. Under SIMA, the Tribunal must also examine the negligibility issue. The import data collected by the Tribunal, which correspond to the data collected

5. *Supra* note 2, No. 9, February 27, 1999, at 531.

6. The Department of National Revenue identified three exporters from Korea and five US exporters of the subject goods.

7. The Department of National Revenue identified 12 importers of the subject goods.

8. This represents the highest margin of dumping found during the previous investigation from co-operating exporters.

9. The margins of dumping applied to each exporter are identical, due to the method of determining the normal value.

during the Deputy Minister's period of investigation, confirm that the volume of dumped goods from Korea is not negligible.¹⁰

The Deputy Minister's final determination of dumping identified three Korean exporters of the subject goods and four exporters of Korean product from the United States. The following table shows the weighted average margins of dumping, by exporter, expressed as a percentage of the normal value.

SUMMARY OF MARGINS OF DUMPING	
Originating in and Exported from Korea	Margin of Dumping (%)
Changwon Specialty Steel Co., Ltd.	52.4
Dong Bang Special Steel Co. Ltd.	52.4
Ssangyong Corp.	52.4
Originating in Korea and Exported from the United States	
British Steel Alloys	52.4
Energy Steel Products	52.4
Federal Steel Supply, Inc.	52.4
Green Bay Supply Co. Ltd.	52.4

Source: Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, May 19, 1999, Tribunal Exhibit NQ-98-003-4, Administrative Record, Vol. 1 at 75.1-75.40.

PRODUCT

The product that is the subject of the Tribunal's inquiry is defined as stainless steel round bar of sizes 25 mm in diameter up to 570 mm in diameter inclusive, originating in or exported from Korea, 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. The subject goods include all grades, with the exception of the two noted exclusions, in cut lengths, with various diameters and with a variety of 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.

10. According to the Tribunal's figures, the volume of dumped subject goods accounted for 8.8 percent of the total imports of like goods from all countries. *Protected Pre-hearing Staff Report*, April 12, 1999, Tribunal Exhibit NQ-98-003-7A (protected), Administrative Record, Vol. 2 at 20.

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 chemical composition is checked and final additions are made to achieve the desired chemical analysis. Once the final composition 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 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. They are then reheated and hot rolled on the billet or bar mill to produce stainless steel bar. All stainless steel bar products are then passed through an annealing process. Hot-rolled bars are inspected, bundled and shipped. Bars that are turned or peeled, centreless ground, as well as other cold-finished bars, are routed to the finishing area before final inspection and shipment.

POSITION OF PARTIES

Domestic Producer

Atlas

Counsel for Atlas argued that the dumping of the subject goods has caused injury in the form of lost sales and market share, price erosion and price suppression and that the dumping is threatening to cause injury to the production in Canada of like goods.

According to counsel, the evidence in this inquiry should be considered in the context of the Tribunal's 1998 finding of injury in Inquiry No. NQ-98-001 respecting the dumping of certain stainless steel round bar from nine other countries. After the 1998 finding relating to the nine named countries, importers turned to other sources to obtain certain stainless steel round bar. This led to the current follow-up inquiry. In this context, this case was similar to another case where there had been an original inquiry that was closely followed by a second inquiry on the same goods, namely, Inquiry No. ADT-10-83¹¹ that preceded, by a matter of months, Inquiry No. ADT-13-83.¹²

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11. *Carbon Steel Plate, Including High Strength Low Alloy Plate; and Alloy Steel Plate, Both not Further Manufactured than Hot-rolled or Heat Treated, and Whether or not Coiled or with Rolled Surface Pattern, but Excluding Wheel Rim Base Sections, Carbon and Alloy Tool Steel, Stainless Steel, Mold Steel, Flanged or Dished Plate, Fabricated or Coated Plate, High Speed Steel, Plate for Saws and Plate Clad with Stainless Steel, 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, Anti-dumping Tribunal, Finding, December 7, 1983, Statement of Reasons, December 29, 1983.*
 12. *Carbon Steel Plate, Including High Strength Low Alloy Plate; and Alloy Steel Plate, Both not Further Manufactured than Hot Rolled or Heat Treated and Whether or not Coiled, but Excluding Plate Skelp, Surface Patterned Floor Plate, Wheel Rim Base Sections, Carbon and Alloy Tool Steel, Stainless Steel, Mold Steel, Flanged or Dished Plate, Fabricated or Coated Plate, High Speed Steel, Plate for Saws and Plate Clad with Stainless Steel, Originating in or Exported from the Netherlands, Anti-dumping Tribunal, Finding and Statement of Reasons, January 26, 1994.*

The second inquiry involved a single shipment of goods that could not be included in the Deputy Minister's preliminary determination of dumping in the first case because it landed in Canada one and a half or two months after the preliminary determination of dumping had been made. Counsel noted that the Anti-dumping Tribunal made an injury finding in the second inquiry, even though the shipment accounted for less than 1 percent of the Canadian market and there was insufficient time to permit the industry to provide separate evidence of injury.

Counsel argued that an injury finding in the current inquiry respecting the subject goods should also be made, just as was done in Inquiry No. ADT-13-83. The volume of dumped goods from Korea in the current inquiry accounted for an even greater percentage of the market than was the case in Inquiry No. ADT-13-83 and, contrary to the earlier case, the industry in this case provided separate evidence of injury and threat of injury.

In the submission of counsel, the dumping of imports from Korea was a continuation of the dumping and injury situation that led to the 1998 finding by the Tribunal. In this connection, counsel noted that Atlas's share of the Canadian market declined from 1995 to 1996, then increased in January 1998, after the initiation of the Deputy Minister's first investigation in December 1997, and continued to increase through 1998, as a result of the 1998 finding. However, while the market share of the named countries in the first inquiry declined as a result of the 1998 finding, the market share held by imports from Korea increased. As a result, Atlas lost orders to imports from Korea.

Counsel noted that Atlas's average prices declined steadily from 1996 to 1998. Between March 1996 and March 1998, the availability of low-priced imports forced Atlas to discount prices on specific transactions, to enter into agreements to discount list prices for specified periods and to offer a variety of rebates. Initially, the low prices came from imports from the countries designated in the first inquiry, but, as the first inquiry against these countries progressed, low-priced offers from Korea were increasingly reported in the market. By the second half of 1997, average prices for imports from Korea had declined to the levels of average prices for imports from the named countries in the first inquiry and, in fact, were lower than Atlas's prices on selected grades at certain accounts. This continued into 1998 and contributed to Atlas's inability to raise prices over this period.

Counsel argued that there was a threat of injury from Korean imports. In this regard, counsel noted that the Tribunal recently found that there was a likelihood of resumed dumping of certain hot-rolled carbon steel plate from Korea based on the market conditions facing Korean producers of hot-rolled carbon steel plate.¹³ The conditions cited by the Tribunal in its statement of reasons included excess Korean capacity, poor domestic demand in Korea, weak demand in its traditional export markets, and Korea's export orientation. Counsel contended that Korean producers of certain stainless steel round bar are faced with the same circumstances, as evidenced by the data provided to the Tribunal by Changwon Specialty Steel Co., Ltd., a Korean producer of certain stainless steel round bar, on its production, capacity and exports.

Importers/Exporters/End Users

No importers, exporters or end users were parties to the inquiry.

13. *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate Originating in or Exported from Italy, the Republic of Korea, Spain and the Ukraine*, Review No. RR-98-004, Finding, May 17, 1999, *Statement of Reasons*, May 25, 1999.

ANALYSIS

“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 goods are “like goods” to the imported 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 the subject goods. If there is a finding of no injury, the Tribunal will proceed to consider whether the dumping of the subject goods 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 in diameter up to 570 mm in diameter inclusive, excluding ASN-A3380 and ASN-A3294 and 410QDT (oil quenched).¹⁴ In describing these goods, the Deputy Minister included all grades of stainless steel round bar (other than the noted exclusions) in cut lengths, in various diameters and with a variety of surface finishes. All stainless steel round bar is not identical. For example, it can have different chemical analyses, diameters or finishes. However, round bar produced to the same specifications is interchangeable, and round bar, in general, has similar characteristics and similar end uses, regardless of where it is produced. As in the 1998 finding, the Tribunal, therefore, concludes that domestically produced stainless steel round bar of grades and diameters included in the Deputy Minister’s definition constitutes “like goods” to the imported goods of the same description.

Domestic Industry

Having determined that domestically produced stainless steel round bar as described in the Deputy Minister’s definition are “like goods” to the imported goods of the same description, the Tribunal must next determine which producers constitute the domestic industry for the purpose 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. Again, as in the 1998 finding, the Tribunal, therefore, finds that Atlas constitutes the domestic industry for this inquiry.

Injury

As noted earlier, the present inquiry follows closely upon another inquiry respecting essentially the same goods that, on September 4, 1998, resulted in a finding of material injury caused by the dumping of goods from nine countries. Indeed, in the 1998 finding, even though Korea was not a subject country, the Tribunal concluded that “Korean certain stainless steel round bar is presently being dumped in the Canadian

14. The definition is identical to the definition of the goods in Inquiry No. NQ-98-001, with the exception of the noted exclusions.

market and that there is a reasonable indication that such dumping threatens to cause injury”.¹⁵ In light of this conclusion, the Tribunal referred the matter of Korean imports to Revenue Canada under section 46 of SIMA. Subsequently, Atlas filed a complaint with Revenue Canada regarding Korean imports, which ultimately led to the current inquiry.

In short, this case arises directly from the earlier inquiry. The time period reviewed by the Tribunal in this case overlaps with the time period reviewed in the former inquiry, and many of the events and circumstances relevant to the first inquiry are equally relevant to this case. In light of these circumstances, the Tribunal agrees with counsel for Atlas that the present case should be considered against the background of the first inquiry.

In the 1998 finding, the Tribunal found that, over the period from 1995 to the first quarter of 1998, low-priced dumped imports from the nine named countries had caused Atlas to lose sales and market share and had forced it to discount prices and introduce a rebate program. More particularly, between 1995 and 1997, Atlas’s sales volume declined by over 10 percent, its sales revenues dropped by 20 percent, and its profitability plunged by close to 50 percent. At the same time, Atlas’s average domestic selling prices declined by about \$400 per ton, representing a decline of more than 10 percent, which concealed even greater declines of about 20 percent on certain key products.

All told, in the 1998 case, the Tribunal found that, over the period of inquiry, Atlas had suffered diminished revenue and profitability, amounting to several millions of dollars, when measured against the levels achieved in 1995. In the Tribunal’s opinion, the magnitude of the injury was material.

Turning to the present case, the Tribunal’s staff collected data for a period of inquiry that covered 1997, 1998 and the first month of 1999. These data show that, in 1998, sales of imports from the nine named countries, which were under investigation through most of that year in connection with the first inquiry, declined by some 69 percent from 1997 levels.¹⁶ Along with these sales declines, the combined market share of the named countries plunged from 31 to 9 percent. These sales and market share losses accrued to countries not under investigation, including Korea, as well as to the domestic industry. Specifically, the data show that, between 1997 and 1998, there was a twofold increase in the sales of imports and the market share of non-named countries, including Korea. Korean sales, alone, increased by 70 percent, albeit from relatively low levels.¹⁷ The sales gains accruing to Atlas over the 1997-98 period were also substantial. In fact, Atlas’s sales and market share in 1998 exceeded the levels achieved by Atlas in 1995 prior to the dumping by the countries named in the 1998 finding.¹⁸ However, Atlas gave up some of these market share gains in the first month of 1999, as it lost market share to Korea and imports from other sources.

Looking at prices over the same period, the data show that Atlas’s annual average prices declined between 1997 and 1998 and continued to fall in the first month of 1999.¹⁹ These declines occurred even after the Deputy Minister’s investigation was initiated in the first inquiry, on December 3, 1997, and have persisted despite the Tribunal’s injury finding on September 4, 1998.²⁰ This pattern of sustained and

15. *Supra* note 4, *Statement of Reasons*, at 31.

16. *Protected Pre-hearing Staff Report*, April 12, 1999, Tribunal Exhibit NQ-98-003-7A (protected), Administrative Record, Vol. 2 at 24.

17. *Ibid.*

18. *Ibid.* and Manufacturer’s Exhibit A-3 (protected), Att. A-1, Administrative Record, Vol. 14.

19. *Protected Pre-hearing Staff Report*, April 12, 1999, Tribunal Exhibit NQ-98-003-7A (protected), Administrative Record, Vol. 2 at 71 and 96.

20. *Ibid.* at 71.

persistent declines in annual average prices is also reflected in Atlas's prices to its major customers.²¹ In terms of Korean prices, the data show the same pattern of steady declines over the period. Specifically, Korean prices in 1998, as well as in the first month of 1999, were lower than those in the comparative periods in 1997 and the first month of 1998. All told, Korean average prices declined by about 13 percent from 1997 through to the first month of 1999.²²

Thus, although Atlas experienced increased sales volumes in 1998 compared to 1997, these sales were made at lower average prices, which undermined the growth in revenues that would be expected with the growth in sales volume. Nevertheless, despite lower net revenues per ton, Atlas's profitability improved somewhat in 1998 compared to 1997. This improvement occurred because Atlas was able to achieve unit cost reductions that exceeded its unit revenue declines. However, even with these improvements, Atlas's financial results in 1998 remain well below the levels achieved in 1996.²³

The Tribunal notes that, in the first inquiry, the decline in Atlas's financial performance, as largely reflected in the decline between 1996 and 1997, represented injury that was material in magnitude. In 1998, despite the dumping inquiry which culminated in the injury finding in September of that year, Atlas was only able to stabilize its financial performance at more or less 1997 levels. In other words, it was unable to make any significant progress in returning to its pre-dumping, pre-injury levels of performance, as would have been expected once the cause of that injury was removed. Instead, it suffered price erosion and price suppression. In the Tribunal's view, this inability to rebound or meaningfully benefit from the 1998 finding constitutes material injury to the domestic industry.

Causation

Having determined that the domestic industry has suffered material injury, the Tribunal must next consider whether there is a causal link between the injury and the dumping of the subject goods. In this case, this question comes down to why Atlas has been unable to raise its prices or, indeed, to prevent their continuing decline, despite having been successful in obtaining anti-dumping protection in 1998, following a process which it initiated in 1997. It is Atlas's contention that the price erosion and price suppression that it continues to suffer are caused by the availability of dumped Korean imports in the Canadian market.²⁴

In addressing this question, the Tribunal has first focused on data gathered by its staff on domestic and import prices and volumes at four key accounts, whose combined purchases comprise about 36 percent of the domestic market.²⁵ Second, the Tribunal has reviewed the evidence submitted by Atlas, especially certain field or contact reports which outline, on a contemporaneous basis, specific examples where Korean products were either sold or offered to Atlas's customers or identified by those customers as being a source of lower-priced goods. Third, the Tribunal has taken special note of the testimony of the witness for BSA who appeared in the hearing at the Tribunal's request.

Looking, first, at the four key accounts on a combined basis, the Tribunal's data show that sales of Korean imports to these accounts grew over the 25-month period examined, as Korean average import

21. *Ibid.* at 37.

22. *Ibid.* at 71.

23. *Ibid.* at 96.

24. Atlas has identified other non-named countries, as well as India, as ongoing sources of low-priced goods.

25. *Protected Pre-hearing Staff Report*, April 12, 1999, Tribunal Exhibit NQ-98-003-7A (protected), Administrative Record, Vol. 2 at 38. The four key accounts were Atlas Ideal, ASA Alloys Inc., Avesta Sheffield Inc. and BSA.

prices declined by 28 percent.²⁶ For most of this period, Korean average prices were below Atlas's average prices. Korean import prices were also lower than those of any of the other import groupings examined²⁷ at several intervals over the period, including the most recent period covered by the data, namely, the first month of 1999. The January 1999 Korean prices are particularly surprising, given that they follow the initiation of Revenue Canada's investigation in this case in December 1998.

One of the four key accounts was the single largest purchaser of Korean goods and an important purchaser of Atlas's products. Data available for this account show that its purchases of Korean imports grew as Korean prices declined during the inquiry period. Moreover, from the second half of 1997 onward, in each period examined, Korean prices were, on average, consistently lower than Atlas's prices to this purchaser and, generally so, on directly comparable bellwether grades of stainless steel bar.²⁸

Turning to the evidence submitted by Atlas, the Tribunal notes that Atlas has submitted field reports which document instances of low-priced offers by Korean mills to Atlas's Canadian customers as early as March 1996. At that time, Atlas was owned by Sammi of Korea. According to witnesses for Atlas, prior to March 1997, as a subsidiary of Sammi, Atlas was able to exert some influence over the level and nature of Korean activities in the Canadian market. Hence, Korean activities were not a source of particular concern.²⁹ However, in early 1997, Sammi applied for creditor protection in Korea as a result of financial difficulties that it was experiencing.³⁰ This, in turn, led Atlas to file for protection in Canada under the *Companies' Creditors Arrangement Act*³¹ in March 1997, from which it finally emerged, under new North American ownership, on March 31, 1998.³²

Atlas officials testified that, as its relationship with Sammi was being terminated, they saw an increase in Korean activity in the Canadian market.³³ In this regard, Atlas submitted numerous field reports which described contacts in 1997 and, with increasing frequency, in 1998, between Atlas sales personnel and many of its major customers. These field reports establish that, throughout the period, Atlas's customers had received or were aware of offers of low-priced imports from a number of sources, including Korea, and that they used these offers to extract price concessions from Atlas. As well, Atlas attempted to increase prices in February 1998. However, as a result of these low-priced offers, the price increase attempt was unsuccessful.³⁴

The field reports established that the difference between Atlas's prices and those of the other import sources, including Korea, frequently exceeded 10 percent and, on occasion, was more than 20 percent.³⁵ In at least one case, Atlas lost business to Korean imports, even though it lowered its price in an effort to maintain its sales.³⁶ Moreover, the vigour with which Korean importers were pursuing Canadian customers

26. *Protected Pre-hearing Staff Report*, April 12, 1999, Tribunal Exhibit NQ-98-003-7A (protected), Administrative Record, Vol. 2 at 38 and 40.

27. Three import groupings were established based on the following country of origin designations: (1) Korea; (2) the nine named countries in the previous inquiry combined; and (3) all other countries combined.

28. *Protected Pre-hearing Staff Report*, April 12, 1999, Tribunal Exhibit NQ-98-003-7A (protected), Administrative Record, Vol. 2 at 37-56.

29. *Transcript of Public Hearing*, May 26, 1999, at 11 and 12.

30. Manufacturer's Exhibit A-5 (protected) at 2, Administrative Record, Vol. 14.

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

32. Manufacturer's Exhibit A-5 (protected) at 3, Administrative Record, Vol. 14.

33. *Transcript of Public Hearing*, May 26, 1999, at 12.

34. *Ibid.* at 68 and 69.

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

36. Manufacturer's Exhibit A-3 (protected), Att. F, Administrative Record, Vol. 14.

is exemplified in a field report concerning an offer that was made in March 1999, a month after the Deputy Minister's preliminary determination of dumping in February 1999.³⁷

With respect to the evidence of the witness for BSA, the Tribunal finds that the testimony provided is fully consistent with pricing data gathered by the Tribunal's staff, as well as the information contained in Atlas's field reports. More particularly, the witness indicated that Atlas's prices had been, and continued to be, under pressure from low-priced imports, including those from Korea, and, in many cases, the price gaps were large. He stated that the products from Korea were commodity-grade items and that the primary reason for purchasing them was the low prices at which they were available. He further stated that BSA had stopped purchasing Korean product in the latter half of 1998 because of the possibility of anti-dumping action being taken against Korea. Despite this, BSA continued to receive offers from Korean suppliers, at low prices, even after the preliminary determination of dumping against Korea in February 1999.³⁸

The Tribunal notes that, although the volumes of Korean imports have grown sharply in percentage terms, from 1997 to 1998, and in January 1999 compared to January 1998, they comprise a small proportion of the Canadian market. The Tribunal is of the view that these volumes could and would have been much higher but for two factors. First, the evidence shows that Atlas chose to defend its market share by adjusting its prices to meet low-priced import competition from Korea and elsewhere.³⁹ This restrained the growth of Korean and other imports, but at the expense of lower unit revenues and profitability. Atlas was unable to raise prices much above the suppressed levels that had resulted from the first round of dumping from the countries named in the 1998 finding. Second, as noted by the witness for BSA, in the course of 1998, the Canadian market became aware of the possibility of anti-dumping action against Korea, and this may well have had a chilling effect on import intentions.

In connection with Atlas's decision to defend its market share, the evidence shows that Atlas could not afford to take Korean price offers lightly. The company was well aware that Korea had substantial production capacity for stainless steel products, especially relative to the size of the Canadian market,⁴⁰ and that Korean capacity had increased in recent years.⁴¹ Also, Atlas knew that an important Korean supplier of the subject goods to the Canadian market, Changwon Specialty Steel Co., Ltd., the Korean company which acquired Sammi out of bankruptcy, Atlas's former owner, was undoubtedly quite familiar with Atlas's marketing and operations.⁴² In addition, the Korean industry is highly export oriented, and its exports to North America have been significantly increasing in recent years.⁴³ Moreover, soft demand in Korea and in some of its traditional export markets, as a result of the Asian crisis, raised the risk that Korean product would have entered Canada in significant volumes if Atlas had chosen to ignore Korean prices. In short, the Tribunal is of the view that Atlas had little choice but to respond to Korean prices and incur injury in the form of price erosion and price suppression.

The Tribunal notes that, as is usually the case, there were other factors affecting prices in the Canadian market over the period examined. In particular, demand conditions were soft in certain end-use

37. Manufacturer's Exhibit A-3 (protected), Att. P, Administrative Record, Vol. 14.

38. *Transcript of Public Hearing*, May 26, 1999, at 82-120; and *Transcript of In Camera Hearing*, May 26, 1999, at 50-78.

39. *Transcript of Public Hearing*, May 26, 1999, at 22 and 23; *Transcript of In Camera Hearing*, May 26, 1999, at 34 to 36.

40. *Transcript of Public Hearing*, May 26, 1999, at 12; Manufacturer's Exhibit A-2, at 27, Administrative Record, Vol. 13.

41. Manufacturer's Exhibit A-2, Att. 3 to 5, Administrative Record, Vol. 13.

42. *Transcript of Public Hearing*, May 26, 1999, at 12.

43. *Ibid.* at 13.

markets, such as the petroleum sector, which undoubtedly created some drag on prices.⁴⁴ Moreover, Korea was not the only country to emerge as a source of supply to the Canadian market, as the countries named in the 1998 finding began to curtail their activities in Canada. In fact, Atlas has identified several new sources of low-priced goods that have appeared since the 1998 finding.⁴⁵ Atlas has also identified India, which was one of the nine named countries in the 1998 inquiry, as an ongoing source of low-priced goods.⁴⁶ According to the evidence, the goods from each of these sources are low priced and comparably priced with Korean product.⁴⁷ However, after due consideration of these factors, the Tribunal is satisfied from the evidence that Korean imports, at dumped prices, caused price erosion and prevented Atlas from increasing prices and, in so doing, materially injured the domestic industry.

CONCLUSION

For the reasons stated above, the Tribunal concludes that the dumping in Canada of stainless steel round bar of sizes 25 mm in diameter up to 570 mm in diameter inclusive, originating in or exported from Korea, 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, has caused material injury to the domestic industry.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Richard Lafontaine
Richard Lafontaine
Member

44. *Ibid.* at 11 and 15.

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

46. *Ibid.*

47. *Transcript of Public Hearing*, May 26, 1999, at 102 and 116.