



Ottawa, Friday, July 2, 1999

Inquiry No.: NQ-98-004

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

**CERTAIN FLAT HOT-ROLLED CARBON AND ALLOY STEEL SHEET  
PRODUCTS ORIGINATING IN OR EXPORTED FROM FRANCE, ROMANIA,  
THE RUSSIAN FEDERATION AND THE SLOVAK REPUBLIC**

**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 dated March 3, 1999, and a final determination dated June 1, 1999, respecting the dumping in Canada of flat hot-rolled carbon and alloy steel sheet and strip, including secondary or non-prime material, originating in or exported from France, Romania, the Russian Federation and the Slovak Republic, in various widths from ¾ in. (19 mm) and wider, and (a) for product in coil form, in thicknesses from 0.054 in. to 0.625 in. (1.37 mm to 15.88 mm) inclusive, (b) for product that is cut-to-length, in thicknesses from 0.054 in. up to but not including 0.187 in. (1.37 mm up to but not including 4.75 mm), excluding stainless steel sheet and strip.

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 France, Romania, the Russian Federation and the Slovak Republic, has caused material injury to the domestic industry, excluding flat hot-rolled, cut-to-length alloy steel products containing no less than 11.5 percent manganese, in thicknesses from 3 mm to 4.75 mm.

The Canadian International Trade Tribunal also finds that the requirements of paragraph 42(1)(b) of the *Special Import Measures Act* with respect to massive dumping have not been met.

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  
Dates of Hearing: June 1 to June 11, 1999  
Date of Finding: July 2, 1999

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

Director of Research: Peter Welsh

Research Manager: Audrey Chapman

Researcher: Shiu-Yeu Li

Economist: Perpetua Katepa-Kalala

Statisticians: Lise Lacombe  
Julie Charlebois

Counsel for the Tribunal: John Syme  
Michèle Hurteau

Registration and Distribution Officer: Claudette D. Friesen

**Participants:**

Lawrence L. Herman  
Y.K. Anne Kim  
for Stelco Inc.

Steven D'Arcy  
C. Brent Jay  
Bruce C. Treichel  
Andrea E. Kokonis  
for Dofasco Inc.

Ronald C. Cheng  
Gregory O. Somers  
Benjamin P. Bedard  
for Algoma Steel Inc.  
Ispat Sidbec Inc.

Dalton J. Albrecht  
James Warnock  
for IPSCO Inc.

**(Domestic Manufacturers)**

Richard S. Gottlieb  
Darrel H. Pearson  
J. Peter Jarosz  
Jesse Goldman  
Jeffrey D. Jenkins  
Peter Collins  
for Thyssen Canada Limited  
Metalexportimport S.A.  
Sidex S.A. Galati  
Atlas Tube Inc.  
Bolton Steel Tube Co. Ltd.

Denis Gascon  
Richard A. Wagner  
Dominic Gourgues  
Colleen Liggett  
for Sollac, Aciers D'Usinor  
Aciers Francosteel Canada Inc.

Donald J. Goodwin  
Carol McGlennon  
James Hopkins  
for Magnitogorsk Iron and Steel Works  
Novolipetsk Iron & Steel Corporation  
SeverStal

Peter Clark  
Gordon LaFortune  
Chris Hines  
Sean Clark  
for Titan Tool & Die Ltd.  
Maksteel Inc.  
A.G. Simpson  
National Auto Radiator Mfg. Co. Ltd.  
Krupp Fabco  
Magna International Inc.

Ruben Rivas  
for Venture Steel Inc.

James D. McAnsh  
for SloVCan Steel Limited

Jean Gravend  
for Aciers EuroCan Inc.

Alain Flacon  
for Creusot-Loire Industrie

**(Importers/Exporters/Others)**



Ottawa, Monday, July 19, 1999

Inquiry No.: NQ-98-004

**CERTAIN FLAT HOT-ROLLED CARBON AND ALLOY STEEL SHEET  
PRODUCTS ORIGINATING IN OR EXPORTED FROM FRANCE, ROMANIA,  
THE RUSSIAN FEDERATION AND THE SLOVAK REPUBLIC**

*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 flat hot-rolled carbon and alloy steel sheet and strip, including secondary or non-prime material, originating in or exported from France, Romania, the Russian Federation and the Slovak Republic, in various widths from  $\frac{3}{4}$  in. (19 mm) and wider, and (a) for product in coil form, in thicknesses from 0.054 in. to 0.625 in. (1.37 mm to 15.88 mm) inclusive, (b) for product that is cut to length, in thicknesses from 0.054 in. up to but not including 0.187 in. (1.37 mm up to but not including 4.75 mm), excluding stainless steel sheet and strip, has caused material injury to the domestic industry, excluding flat hot-rolled, cut-to-length alloy steel products containing no less than 11.5 percent manganese, in thicknesses from 3 mm to 4.75 mm.

The Canadian International Trade Tribunal also finds that the requirements of paragraph 42(1)(b) of the *Special Import Measures Act* with respect to massive importation have not been met.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	June 1 to 11, 1999
Date of Finding:	July 2, 1999
Date of Reasons:	July 19, 1999
Tribunal Members:	Pierre Gosselin, Presiding Member Peter F. Thalheimer, Member Richard Lafontaine, Member
Director of Research:	Peter Welsh
Research Manager:	Audrey Chapman
Researcher:	Shiu-Yeu Li
Economist:	Perpetua Katepa-Kalala
Statisticians:	Lise Lacombe Julie Charlebois Joël J. Joyal

Counsel for the Tribunal: John L. Syme  
Michèle Hurteau

Registration and Distribution Officer: Claudette D. Friesen

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for Stelco Inc.

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for Dofasco Inc.

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Ispat Sidbec Inc.

Dalton J. Albrecht  
James Warnock  
for IPSCO Inc.

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for Thyssen Canada Limited  
Metalexportimport S.A.  
Sidex S.A. Galati  
Atlas Tube Inc.  
Bolton Steel Tube Co. Ltd.

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for Sollac, Aciers D'Usinor  
Aciers Francosteel Canada Inc.

Donald J. Goodwin  
Carol McGlennon  
James Hopkins  
for Magnitogorsk Iron and Steel Works  
Novolipetsk Iron & Steel Corporation  
SeverStal

Peter Clark  
Gordon LaFortune  
Chris Hines  
Sean Clark  
for Titan Tool & Die Ltd.  
Maksteel Inc.  
A.G. Simpson  
National Auto Radiator Mfg. Co. Ltd.  
Krupp Fabco  
Magna International Inc.

Ruben Rivas  
Venture Steel Inc.

James D. McAnsh  
for SlovCan Steel Limited

Jean Gravend  
Aciers EuroCan Inc.

Alain Flacon  
Creusot-Loire Industrie

**(Importers/Exporters/Others)**

**Witnesses:**

Donald K. Belch  
Director - Government Relations  
Stelco Inc.

Tom E. Witter  
Sales Manager - Hot-rolled Sheets  
Lake Erie Steel Company Ltd.

R.H. Thompson  
Plant Accountant  
Lake Erie Steel Company Ltd.

Lou Saunders  
Corporate Vice-President  
Carbon Steel Purchasing  
Samuel, Son & Co., Limited

Paul Rouleau  
Director, Marketing and Administration  
Ispat Sidbec Inc.

Robert A. Clark  
General Supervisor, Trade and Audit  
Algoma Steel Inc.

Derek de Korte  
Marketing Manager, Sheet Products  
Algoma Steel Inc.

P. Murray Williamson  
Vice-President and General Manager - Sales  
Canadian Steel Mill Operations  
IPSCO Saskatchewan Inc.

David J. Waugh  
General Manager, Sales and Service  
Distribution and Tubular Industries  
Dofasco Inc.

Michael J. Bakarich  
Financial Analyst  
Dofasco Inc.

Mark Bortolotto  
Manager  
TradeARBED Canada Inc.

Andrei Kniازه  
Foreign Relations Department  
Novolipetsk Iron & Steel Corporation

Leonid Iakovlev  
Market Researcher  
Sales Directorate, Planning and  
Analysis Division  
Analytic Department  
SeverStal

Christian Castonguay  
Commercial Director, Flat-rolled Products  
Ispat Sidbec Inc.

Tom A.D. McCracken  
General Manager  
Automotive & Welded Tubular Flat-rolled Sales  
Algoma Steel Inc.

Douglas J. Hahn  
Vice-President, Sales & Marketing  
Sonco Steel Tube Division  
Copperweld Canada

Glenn A. Gilmore  
Trade Supervisor  
IPSCO Inc.

Dennis G. Martin  
Manager - Trade Relations & Market Data  
Dofasco Inc.

Gilbert Romano  
President and General Manager  
Aciers Francosteel Canada Inc.

Serguei L. Polkovnikov  
Head of Department  
Foreign Markets Analysis Department  
Novolipetsk Iron & Steel Corporation

Konstantin Bobrov  
Sales Directorate  
Head of USA and Canada Department - Export Division  
SeverStal

Liviu Zaharia  
Head of Export Department  
Sidex S.A. Galati

Cristina Stroe  
Chief of Marketing Department  
Metalexportimport S.A.

Lutz Luckow  
Vice-President  
Thyssen Canada Limited

Roman M. Klaptocz  
Manager - Traffic, Logistics  
Thyssen Canada Limited

Juergen Marschall  
Executive Vice-President  
Thyssen Canada Limited

Barry Zekelman  
Vice-President  
Atlas Tube Inc.

Carl E. Ohlson  
President  
Atlas Tube & Metal Sales

K. Wayne Brush  
Vice-President, Purchasing  
Magna International Inc.

D.J. Zieman  
Director of Purchasing  
Magna International Inc.

A.C. Kafato  
Vice-President, Sales and Purchasing  
Maksteel Inc.

Winston Penny  
President  
Bolton Steel Tube Co. Ltd.

Ruben Rivas  
President  
Venture Steel Inc.

Robert J. Howson  
Executive Vice-President  
SlovCan Steel Limited

Address all communications to:

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



Ottawa, Monday, July 19, 1999

Inquiry No.: NQ-98-004

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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*<sup>1</sup> (SIMA), has conducted an inquiry following the issuance by the Deputy Minister of National Revenue (the Deputy Minister) of a preliminary determination<sup>2</sup> dated March 3, 1999, and of a final determination<sup>3</sup> dated June 1, 1999, respecting the dumping in Canada of certain flat hot-rolled carbon and alloy steel sheet (hereinafter referred to as hot-rolled steel sheet) products originating in or exported from France, Romania, the Russian Federation and the Slovak Republic.

On December 18, 1998, pursuant to paragraph 34(1)(b) of SIMA, counsel for a Canadian importer, Aciers Francosteel Canada Inc. (Francosteel), and an exporter in France, Sollac, Aciers d'Usinor (Sollac) referred to the Tribunal the question of whether the evidence before the Deputy Minister disclosed a reasonable indication that the dumping of certain hot-rolled steel sheet products originating in or exported from France had caused material injury or retardation or was threatening to cause material injury to the domestic industry. On January 18, 1999, the Tribunal ruled that there was a reasonable indication that the dumping of certain hot-rolled steel sheet products from France, Romania, the Russian Federation and the Slovak Republic had caused material injury or was threatening to cause material injury to the domestic industry.

On March 4, 1999, the Tribunal issued a notice of commencement of inquiry.<sup>4</sup> As part of the inquiry, the Tribunal sent detailed questionnaires to domestic producers, foreign producers, importers and purchasers of certain hot-rolled steel sheet products. Respondents provided production, financial, import, sales, pricing and market information, as well as other information relating to certain hot-rolled steel sheet products, for the period from January 1, 1996, to December 31, 1998. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

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1. R.S.C. 1985, c. S-15.
  2. *Canada Gazette* Part I, Vol. 133, No. 11, March 13, 1999, at 662.
  3. *Ibid.* No. 25, June 19, 1999, at 1819.
  4. *Ibid.* No. 11, March 13, 1999, at 666.

Parties submitted and replied to requests for information with respect to matters relevant to the inquiry, in accordance with directions from the Tribunal.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires and requests for information, all public and protected 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 June 1 to 11, 1999. All five domestic producers of certain hot-rolled steel sheet products were represented by counsel at the hearing. Foreign manufacturers, importers and certain users of certain hot-rolled steel sheet products were also represented by counsel at the hearing. The Tribunal heard testimony from witnesses for the domestic industry, for foreign manufacturers, for importers and for certain end users of certain hot-rolled steel sheet products.

A number of matters were raised prior to and during the hearing. The Tribunal made a number of rulings on these matters which form part of the record.

During the hearing, counsel for the domestic producers brought a motion requesting a ruling to exclude a witness, called on behalf of Atlas Tube Inc. (Atlas), and to strike the witness statement from the record on the grounds that: (1) the statement was new evidence and to accept it was contrary to the Tribunal's direction of May 26, 1999, with respect to the filing of documents at the hearing; (2) there was no opportunity to deal with the evidence or to prepare for rebuttal evidence; (3) the statement was an attempt at putting in expert opinion contrary to rule 21 of the *Canadian International Trade Tribunal Rules*;<sup>5</sup> and (4) the statement did not relate to the subject goods.

Counsel for the domestic producers argued that to permit the witness to give evidence and to allow his statement to be filed at this late date would be highly prejudicial to the domestic producers' case, as they had a right to know the case to which they had to respond prior to the hearing. They further argued that to accept new documents and a new witness would create a precedent and might prolong future hearings.

Counsel for Atlas submitted that the witness is a consultant for Atlas and that his witness statement essentially recasts data already on the record, except for one piece of information which is an extrapolation of the data. The data were developed during the course of the hearing to respond to the Tribunal's request for more detailed data on the use of hot-rolled steel sheet produced by the domestic mills for the manufacture of different types of pipe and tube and to respond to the industry's case. Counsel submitted that there was no prejudice to the domestic producers, as the witness and his evidence would be the subject of cross-examination and counsel could request an opportunity to present rebuttal evidence if they so wished.

After careful consideration of the arguments, the Tribunal dismissed the motion on the grounds that: (1) while there might be some manipulation of the data, much of the evidence was already on the record; (2) the statement was, to some extent, a reply to evidence introduced during the hearing by the domestic producers regarding sales of hot-rolled steel sheet to pipe and tube manufacturers and that information is

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

incomplete; (3) counsel was given an opportunity to cross-examine the witness; (4) the witness was not an expert witness and that he based his opinion on his knowledge of the business and his years of experience; therefore, rule 21 of the *Canadian International Trade Tribunal Rules* had no application in this instance; and (5) while the goods were not the subject goods, the Tribunal was interested in the use of hot-rolled steel sheet for the production of pipe and tube, an important market for hot-rolled steel sheet. As a practical matter, the Tribunal adjourned early in the afternoon, in order to provide counsel for the domestic producers an opportunity to review the witness statement and to confer with their clients before the witnesses' appearances the next day.

The Tribunal wishes to address more generally the matter of new witnesses and the filing of witness statements at a hearing. The Tribunal recognizes that there is extensive filing of documentation in the period leading up to the hearing and that there are usually many witnesses called to testify at the hearing. Being mindful of this, the Tribunal has an obligation to carefully manage the inquiry and hearing processes. In doing so, the Tribunal has sought the co-operation of all parties in ensuring that documents are filed, and that witnesses are identified, prior to the hearing.

The Tribunal recognizes that there may be circumstances unknown to the parties or outside their control where compliance with the above practice may not always be possible. However, the Tribunal is of the view that those circumstances are to be limited and that such occasions should remain rare.

On March 25, 1999, counsel for Atlas and Bolton Steel Tube Co. Ltd. (Bolton) requested an opportunity to make representations on the public interest question pursuant to subsection 45(2) of SIMA. By letter dated April 6, 1999, the Tribunal advised counsel and parties of record that, in the event of an injury finding, it would consider the question of public interest. Therefore, in accordance with the *Guidelines for Public Interest Investigations*, the Tribunal will proceed as follows in respect of the filing of representations on the public interest question. Interested persons wishing to make representations in support of a public interest investigation shall file with the Tribunal, on or before August 3, 1999, their representations, pursuant to subsection 45(2) of SIMA, on whether the Tribunal should make a report on the public interest question to the Minister of Finance. Interested persons wishing to respond to these representations shall file their responses with the Tribunal on or before August 20, 1999. The Tribunal will advise counsel, parties and interested persons, on or before September 3, 1999, whether it is of the opinion that there is a public interest concern worthy of further investigation.<sup>6</sup>

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

The Deputy Minister's investigation into this matter covered imports of certain hot-rolled steel sheet products originating in or exported from France, Romania, the Russian Federation and the Slovak Republic during the period from January 1 to September 30, 1998.

The investigation revealed that close to 100 percent of the subject goods that entered Canada during the period of investigation were dumped by a margin ranging from 0.03 to 49 percent. The following table shows the weighted average margins of dumping, by country and exporter, expressed as a percentage of the normal values.

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6. Tribunal letters dated July 2 and 15, 1999, to counsel and parties.

**TABLE 1**  
**WEIGHTED AVERAGE MARGINS OF DUMPING**

Country	Exporter	Weighted Average Margin of Dumping <sup>1</sup> (%)
France	Sollac (Fos Plant)	12
	Sollac (Dunkerque Plant)	11
Romania	Sidex Galati S.A.	42
Russian Federation	JSC "Severstal"	30
	Magnitogorsk Iron and Steel Works	43
	Novolipetsk Iron & Steel Corporation	42
Slovak Republic	VSZ Holding, a.s.	35
All Other Exporters of the Subject Goods		43

1. Expressed as a percentage of total normal values for all imported goods (dumped and non-dumped).  
Source: Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, June 1, 1999, Tribunal Exhibit NQ-98-004-4, Administrative Record, Vol. 1 at 99.40.

## **PRODUCT**

### **Product Definition and Description**

The product that is the subject of the Tribunal's inquiry is defined as:

flat hot-rolled carbon and alloy steel sheet and strip, including secondary or non-prime material, originating in or exported from France, Romania, the Russian Federation and the Slovak Republic, in various widths from ¾ in. (19 mm) and wider, and (a) for product in coil form, in thicknesses from 0.054 in. to 0.625 in. (1.37 mm to 15.88 mm) inclusive, (b) for product that is cut to length, in thicknesses from 0.054 in. up to but not including 0.187 in. (1.37 mm up to but not including 4.75 mm), excluding stainless steel sheet and strip.

Certain hot-rolled steel sheet products include strip and sheet, but do not include floor plate. Strip is usually produced in widths up to 12 in. (305 mm). Sheet is usually produced in widths greater than 12 in. Hot-rolled stainless steel sheet and strip are also excluded from the product definition. Hot-rolled stainless steel sheet contains, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

Hot-rolled steel sheet products are normally produced to ASTM standards or some other international standards or to proprietary specifications. ASTM specifications for flat hot-rolled carbon and alloy steel strip and sheet include, but are not limited to, A505, A506, A507, A568, A569, A570, A606, A607, A621, A622, A635, A659, A715, A749, A907, A935 and A936.

## **Production Process**

Hot-rolled steel sheet is rolled on a continuous strip mill at temperatures above 1600°F (870°C) from an incoming hot slab up to 9 in. (229 mm) thick. The slabs can be produced from steel produced in the basic oxygen furnace or the electric arc furnace. The slab is progressively reduced to a sheet of the required thickness, 0.625 in. (15.88 mm) or less. Edges can be slit to remove minor edge imperfections and to provide closer width tolerances. Processing on the mill may include slitting or shearing to remove tongues and tails from the sheet. During hot-rolling, surface oxide (scale) forms, which is not acceptable for some applications. This scale may be removed by acid pickling. After pickling, rinsing and drying, an oil can be applied as a temporary protection against rust.

## **Product Uses**

Hot-rolled steel sheet products are used in the automotive industry in the manufacture of frames, bumpers, wheels and some powertrain components. Hot-rolled steel sheet products are also used in the manufacture of sheet piling and guard rails for use in construction. Significant quantities of hot-rolled steel sheet products are also consumed by non-automotive stampers, steel fabricators and producers of agricultural and other machinery.

A significant portion of hot-rolled steel sheet is used in the production of pipe and tube. Grades, thicknesses, weights, content and tolerances of hot-rolled steel sheet used for pipe and tube production may vary. However, large volumes of the most basic unprocessed hot-rolled steel sheet are used by pipe and tube producers in the production of hollow structural products. This sheet is often referred to as “skelp” when it is used in the manufacture of pipe and tube.

In addition to the above-noted uses of hot-rolled steel sheet, a large portion of Canadian production is used as feedstock for further internal processing by the Canadian producers into downstream products, such as cold-rolled steel sheet, corrosion-resistant (galvanized) sheet and tin mill products.

## **DOMESTIC INDUSTRY**

There are five Canadian producers of hot-rolled steel sheet: Stelco Inc. (Stelco), of Hamilton, Ontario; Dofasco Inc. (Dofasco), of Hamilton; Algoma Steel Inc. (Algoma), of Sault Ste. Marie, Ontario; IPSCO Inc. (IPSCO), of Regina, Saskatchewan; and Ispat Sidbec Inc. (Ispat), of Montréal, Quebec. In 1998, these five producers together shipped approximately 3.9 million net tons of hot-rolled steel sheet valued at approximately \$2 billion. In the same year, they produced 5.6 million net tons as feedstock for further processing.

### **Stelco**

Stelco is a fully integrated steelmaker and Canada’s largest steel producer, with an annual steelmaking capacity of 5.3 million net tons. It has four business units: Hilton Works, in Hamilton; Lake Erie Steel Co., in Nanticoke, Ontario; Stelco-McMaster Ltée, in Contrecoeur, Quebec; and AltaSteel Ltd., in Edmonton, Alberta. Stelco also owns a number of steel-fabricating businesses. Steel products supplied by Stelco businesses to the North American market include hot-rolled, cold-rolled, corrosion-resistant and coated sheet, plate, bars and wire rod, and manufactured products, such as wire and wire products, and pipe and tubular products.

Stelco is the second largest producer of hot-rolled steel sheet in Canada. Hot-rolled steel sheet is produced at Hilton Works. Most of the sheet produced at Hilton Works is sold on the merchant market. Hot-rolled steel sheet is also produced at the Lake Erie Steel Co. plant. It produces hot-rolled steel sheet for use as feedstock at Hilton Works and Lake Erie Steel Co. and for sale to the market.

Stelco has ownership in two producers of pipe and tube that use hot-rolled steel sheet produced by Stelco. It has 100 percent ownership of Stelpipe Ltd., in Welland, Ontario, and 40 percent ownership of Camrose Pipe Co., in Camrose, Alberta.

### **Dofasco**

Dofasco is a fully integrated steelmaker. It produces a wide range of steel products which are sold to customers in the automotive, construction, energy, manufacturing, pipe and tube, appliance and container industries. Raw steel production and purchased semi-finished steel processed in 1997 totalled 4.621 million net tons. Steelmaking and processing facilities are located at Dofasco's Hamilton plant.

At Dofasco, slabs can be produced by two methods: in the basic oxygen furnace or in the electric arc furnace. Dofasco has a single mill for the production of hot-rolled steel sheet and is the largest producer of hot-rolled steel sheet in Canada.

Products manufactured by Dofasco and its several steel-related joint ventures include: flat rolled steel (both hot-rolled and cold-rolled); galvanized and Galvalume<sup>TM</sup> steel; prepainted steel; tinplate and chromium-coated steel in coils; cut lengths and strip; and welded pipe and tubular steel.

### **Algoma**

Algoma operates a major steelworks at Sault Ste. Marie. Algoma, with its subsidiaries, is a vertically integrated primary iron and steel producer having a present capacity to produce approximately 2.5 million net tons of raw steel annually, or 2.2 million net tons of finished steel products, including carbon steel plate, hot-rolled steel sheet and cold-rolled steel sheet. Algoma's discontinuance of the production of seamless pipe and tubing and of wide flange steel shapes has freed up liquid steel capacity for the production of flat rolled steel products.

Algoma is the third largest producer of hot-rolled steel sheet in Canada. Until 1998, Algoma produced hot-rolled steel sheet on a combined plate/sheet complex. Algoma's new Direct Strip Production Complex (DSPC), which began producing hot-rolled steel sheet in 1998, expands Algoma's capacity, thickness range and capabilities in high-strength, low-alloy (HSLA) and formable grades of hot-rolled steel sheet.

### **IPSCO**

IPSCO has a steelmaking capacity of 2.25 million net tons per year: 1 million net tons in Regina, Saskatchewan, and 1.25 million net tons in Montpelier, Iowa. Both facilities operate hot-rolled steel sheet mills. Further processing into higher value-added steel products takes place in IPSCO's six pipemaking facilities and four coil processing facilities.

IPSCO is comprised of three units: Raw Materials and Coil Processing Operations, Canadian Steel Mill Operations and Tubular Products. Both the Raw Materials and Coil Processing Operations and the Canadian Steel Mill Operations manufacture and sell hot-rolled steel sheet. Products manufactured by the company include hot-rolled sheet and plate, hollow structural sections, line pipe, standard pipe, piling pipe, oil and gas tubing and casing, and waterwell casing.

## **Ispat**

Ispat is wholly owned by Ispat International N.V., Rotterdam, the Netherlands, having been purchased by that company in August 1994.

Ispat produces and fabricates steel from slab produced at its Primary Operation unit (with electric arc and ladle furnaces). It manufactures hot-rolled steel sheet, strip and plate and cold-rolled steel sheet at its plant in Contrecoeur. Other steel products produced by Ispat include pipe and tube, wire, bars and rod. Ispat is the smallest producer of hot-rolled steel sheet in Canada.

## **EXPORTERS**

Of the five exporters, from three of the named countries, appearing before the Tribunal in this inquiry, Sollac, the only producer of the subject goods in France, is the largest. Its volume of production for further processing is higher than its volume of production for sale. Sollac's products are marketed in Canada exclusively by Francosteel.

The smallest producer of this group, Sidex S.A. Galati (Sidex), is the only producer of the subject goods in Romania. Sidex reported significant growth in its volume of production for sale, from somewhat higher than the volume of production for further processing in 1996 to more than twice the volume of production for downstream use in 1998. Sidex exports its products through Metalexportimport S.A. (MEI) and through five other trading companies.

The three other exporters are from the Russian Federation. They are SeverStal, Magnitogorsk Iron and Steel Works and Novolipetsk Iron & Steel Corporation. These three producers account for over three quarters of total production of the subject goods in the Russian Federation, with volumes of production for sale slightly higher than the volumes of production for further processing. These Russian producers rely on international trading companies to market and export their products. They have little knowledge of or control over where their products are sold.

Together, these five exporters produced about 31 million net tons of hot-rolled steel sheet products in 1998 for sale and for further processing.

The Slovak exporter, VSZ Holding, a.s. (VSZ), was represented by its Canadian distributor SlovCan Steel Limited (SlovCan), which is also VSZ's sole distributor in the United States and Mexico. SlovCan purchased VSZ products from Barkos, an international trading company.

## **IMPORTERS**

There are many importers of hot-rolled steel sheet products into Canada. Major importers of the subject goods into Canada are Thyssen Canada Limited (Thyssen), TradeARBED Canada Inc., Francosteel, Klockner Steel Trade Inc., WeBco International LLC, J.B. Multinational Trade Inc., Salzgitter Trade Inc.,

SlovCan and Venture Steel Inc. (Venture). In 1998, these importers accounted for 93 percent of imports of the subject goods and 59 percent of imports of hot-rolled steel sheet products from all countries. Either as wholly owned subsidiaries of foreign steel mills or as affiliates of international steel trading companies, most of these importers are involved in steel trading on a worldwide basis.

### **CERTAIN END USERS**

In addition to the exporters and importers identified earlier, certain end users of hot-rolled steel sheet products participated in the inquiry. These include two pipe and tube producers, Atlas and Bolton, Maksteel Inc. (Maksteel), a service centre, and five automotive parts stampers, Titan Tool & Die Ltd., A.G. Simpson, National Auto Radiator Mfg. Co. Ltd., Krupp Fabco and Magna International Inc.

Atlas is a hollow structural steel tube manufacturer with facilities in Harrow, Ontario, and Plymouth, Michigan, and is privately owned. In 1994, Atlas invested about \$25 million in its Ontario facility and has recently invested almost \$50 million in a new structural tube mill that will bring Atlas's annual capacity to well over 800,000 net tons. This new mill is scheduled to come on line in August 1999.

Bolton, a tube manufacturer located in Bolton and Mississauga, Ontario, is also privately owned. Its products are used in fencing (residential and commercial), greenhouses, playground equipment, agriculture, scaffolding and racks.

### **MARKETING AND DISTRIBUTION**

#### **Domestic Product**

Hot-rolled steel sheet products are sold directly to end users or marketed through steel service centres, which may further process the steel and supply smaller end users, contractors, etc. These service centres may also supply the more immediate needs of accounts that would normally purchase directly from mills. For 1998, it is estimated that approximately 37 percent of the domestic production of hot-rolled steel sheet for sale in the merchant market was shipped directly to end users, 23 percent to pipe and tube producers and 39 percent to steel service centres.

Most sales of hot-rolled steel sheet are made on a spot price basis. Each sale made on a spot price basis is negotiated individually with the client. However, a still significant amount of hot-rolled steel sheet is sold on a contract basis, mainly to the automotive manufacturing industry. Under these arrangements, domestic mills negotiate price, volume, parts specifications and duration of the contract with their clients. These contracts usually last a year. In some instances, there are multi-year agreements.

The price of hot-rolled steel sheet consists of a "base coil price" to which charges are added for a variety of features that may be specified by the customer to meet the technical requirements of the application for which the steel is intended. The important features in determining the price of hot-rolled steel sheet are grade, thickness, width, processing and surface finish.

#### **Imported Product**

The vast majority of imported hot-rolled steel sheet products are sold directly by traders to end users and service centres. Certain steel trading companies receive inquiries from domestic users, such as pipe and tube manufacturers or service centres. They then determine the availability and prices from foreign suppliers



and book the business. Therefore, the product that they import is already pre-sold. Other companies call customers directly to offer imported hot-rolled steel sheet products. Still other importers operate in both ways, that is, they fill orders and solicit orders.

Generally, sales of imports are made on a spot price basis. However, certain pipe and tube manufacturers have longer-term supply agreements or arrangements with importers. For example, sales made by Thyssen to Atlas and Bolton were often based on such agreements.<sup>7</sup> Importers do not publish price lists for sales in Canada; generally transaction prices are negotiated on the basis of prevailing market prices of hot-rolled steel sheet.

## **POSITION OF PARTIES**

### **Domestic Producers**

Counsel for the domestic producers requested that the Tribunal make an injury finding with respect to the subject goods and a finding of massive importation of the subject goods.

In addressing the issue of injury, counsel for the domestic producers submitted that the sales and market share of Canadian mills declined during 1998, while the market share of imports of the subject goods steadily increased, starting in the second quarter. In order to contain the loss of revenue and market share, counsel argued that the domestic producers were forced to discount prices significantly, resulting in substantial price erosion in the last two quarters of 1998. Counsel further stressed that prices continued to decline in the first quarter of 1999, even after the initiation of the dumping investigation.

Counsel for the domestic producers noted the injury suffered by the domestic producers in terms of the significant increase in inventories at the end of 1998, resulting in substantial increases in carrying costs. Counsel argued that, in some instances, their customers did not take timely delivery of products ordered, due to the buildup of import inventories and the continuous decline in prices after their orders were placed. Because of decreases in sales and increases in inventory, according to counsel, the capacity utilization of domestic producers decreased during this period.

As a result of the decline in selling prices, the loss of sales, the increase in inventories and the reduction in capacity utilization, counsel for the domestic producers stated that all domestic producers suffered a reduction in profitability. Counsel noted that, while the costs were about the same in the second and fourth quarters of 1998, the profit per net ton had dropped dramatically. Counsel claimed that, if domestic producers had been forced to sell at fourth quarter pricing levels throughout 1998, their profits from sales of hot-rolled steel sheet would have nearly disappeared. Counsel argued that domestic producers do not have to be in a loss position, or that their period of loss does not have to last a full year, to be materially injured. The reduction in profitability precludes the domestic producers, according to counsel, from making capital investments in order to be competitive in the future.

With respect to the issue of causation, counsel for the domestic producers attributed the material injury suffered by domestic producers to the severe competition that they faced in 1998 and the first quarter of 1999 from low-priced dumped subject goods. Counsel argued that this injury was not caused by factors such as an economic recession or labour disruptions, which were absent during the period of inquiry.

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7. *Transcript of Public Hearing*, Vol. 7, June 9, 1999, at 1030 and 1031, and Vol. 8, June 10, 1999, at 1230.

To provide a context, counsel for the domestic producers noted the grave and continuing crisis in the global steel markets, particularly the huge volumes of hot-rolled steel sheet resulting from overcapacity in the Russian Federation and the Commonwealth of Independent States and the financial crisis in Asia, causing offshore producers to seek outlets and to dump in other markets, such as Canada. Counsel further argued that, in the midst of this crisis, the situation was made more difficult by the action of international trading companies, which were involved in financing production of certain foreign mills, in finding the export markets and in negotiating the lowest prices possible, even to the degree of selling at dumped prices.

During this crisis period, counsel for the domestic producers argued that the surge in imports led to a tremendous oversupply situation in the domestic market, which caused a severe erosion in selling prices. Counsel claimed that the subject goods were imported and offered for sale and/or sold to domestic producers' customers at prices that were consistently and substantially lower than those of domestic producers. Counsel submitted that all exporters and importers participated in the spiralling downward price competition, resulting in pricing chaos in 1998. While price erosion was very severe in the two market sectors that are dominated by spot prices, the service centres and the pipe and tube markets, counsel suggested that the end-user market was not immune, as pricing in longer-term contracts in the end-use sector were linked to prevailing spot prices.

Counsel for the domestic producers recognized that dumping was not the only cause of material injury, but dismissed the other factors as insignificant, compared to dumping, in affecting the developments observed in the market.

On the issue of supply to Atlas in the pipe and tube industry, counsel for the domestic producers concluded that it is a non-factor. Counsel suggested that, even if the domestic industry had never supplied Atlas, the importation of dumped product by Atlas would still cause injury to the domestic producers. Counsel attributed this to the fact that the low price at which it imported 500,000 net tons of dumped products was well known in the trade, thus destroying the existing pricing structure in the market. In addressing the issue of supply, counsel also asserted that the pipe and tube industry is an important market for the domestic industry, which continued to offer and supply substantial volumes to this sector, although not necessarily at the low dumped prices which some pipe and tube producers demanded.

On the issue of the internal demand for feedstock for further processing, counsel for the domestic producers acknowledged that the industry did add some volume to feedstock from 1996 to 1998. Nevertheless, counsel maintained that there remained a steady level of hot-rolled steel sheet for sale to the domestic market, including the pipe and tube sector. With the anticipated significant increase in hot-rolled steel sheet capacity, counsel claimed that there will be even more hot-rolled steel sheet available to serve the merchant market.

Regarding the effect of the strike at General Motors, counsel for the domestic producers concluded that the tonnage unexpectedly available to the market in the third quarter of 1998, resulting from the work stoppage, was relatively small and was quickly made up by sales to this company in the fourth quarter of 1998. This surplus volume was even more insignificant, according to counsel, when compared to the volume of dumped imports in the market during this period.

On the effect of the slowdown in the energy market on supply, counsel for the domestic producers suggested that any reduction in shipments to the energy part of the pipe and tube sector simply freed up additional volume available to supply other parts of the pipe and tube sector. Counsel noted that it was the

dumped imports which prevented the excess supply available from the energy sector from being diverted to the hollow structural steel side.

With respect to the automotive market, counsel for the domestic producers noted the negative impact of the spot market pricing on long-term contracts in this sector. As an example, counsel pointed to the decline in selling prices to General Motors in the first quarter of 1999, which was in the order of 4 to 5 percent below 1998 contract levels. Counsel suggested that, in some cases, the term “contract” may be a misnomer, as it merely refers to a long-term supply agreement without fixed prices.

Turning to the threat of injury, counsel for the domestic producers concluded that there is a strong likelihood that these foreign mills will continue to dump in Canada if a finding is not in place. Counsel pointed to the continued glut of supply in the world steel market because of the continuing economic crisis in Asia and the Russian Federation as well as the weak markets in other countries. Against this backdrop, counsel argued that anti-dumping and other trade actions in other countries, particularly in the United States and the European Union, made diversion of the subject goods to Canada a high probability. Counsel also cited other factors that increase the threat of increased dumped volumes and continued price deterioration to the domestic industry. These include the huge inventory of dumped imports already in the Canadian market, the foreign producers’ dependence on exports, their excess capacity and the activities of international traders which facilitate exports of dumped products.

On the issue of massive importation and the potential application of retroactive duties, counsel for the domestic producers submitted that there is clear evidence that the volume of importation is massive, either on a specific month basis or accumulated over the 1998 period. As well, given the pattern of imports and the experience of the brokers involved, counsel suggested that the importers were aware, or should have been aware, that the exporters were dumping and causing injury. For these reasons, counsel concluded that the evidence supports a finding of massive importation.

## **Exporters**

### France

Counsel for Francosteel and Sollac submitted that any injury suffered by the domestic industry during the second half of 1998 was not material. Counsel noted that the basis for claiming material injury by the domestic industry was the comparison of its performance in the latter half of 1998 with that in 1997 and the first half of 1998. Given that steel is a cyclical industry and that 1997 was a record year, counsel argued that a more apt comparison would be the annual results of 1998 versus the annual results of 1996. Counsel suggested that, if comparisons were made using the proper time period, it would reveal that the domestic industry did not suffer material injury.

Even if the domestic industry suffered material injury, counsel for Francosteel and Sollac attributed the injury to factors other than dumping. On a global basis, counsel noted that the demand for steel was at a peak in 1997, followed by a steep decline in the latter half of 1998, and that steel prices in the Canadian market were not immune to these developments. Turning to the domestic situation, counsel argued that, initially, the domestic industry simply did not have the capacity to serve its customers during the buoyant time in the market. The General Motors strike and the collapse of the oil country tubular goods market resulted in excess supply of domestically produced hot-rolled steel sheet. Finally, counsel argued that the DSPC start-up problem at Algoma contributed significantly to the financial injuries claimed by the domestic industry.

In the event of an injury finding, counsel for Francosteel and Sollac requested that France be excluded, on the basis that its imports did not cause or threaten to cause injury to the domestic industry. Counsel dismissed claims of injury against French imports with respect to lost sales, loss of market share and price erosion and/or suppression as lacking factual support. On the issue of future injury, counsel stated that both prices and demand are increasing in Europe, Sollac's largest market, and that Sollac does not have any excess capacity. Finally, if the Tribunal were to cumulate France in an injury finding, counsel requested an exclusion for the French subject goods for automotive use. Counsel made this request based on the assertion that dumping did not cause injury in this sector, as average prices went up in 1998 from 1997.

On the issue of massive importation, counsel for Francosteel and Sollac submitted that, in light of the lead time required for imported goods to arrive and the closure of the seaway in the winter, there is no basis for such a finding.

#### Russian Federation

Counsel for the Russian exporters submitted that steel is very much a global business. From this global perspective, counsel noted that some regions of the world may experience strong demand for steel because of economic growth, while, in others, demand for steel is declining because of a recession. In this context, counsel suggested that Asia, the Federative Republic of Brazil and the Russian Federation experienced significant declines in economic activity over the last two to three years. In particular, counsel pointed to the August 1998 financial crisis in the Russian Federation. At the same time, counsel noted that there was a shortage of steel in Canada, where the demand for hot-rolled steel sheet by certain end users could not be met by domestic producers. As a result, counsel noted that imports of Russian steel into Canada grew during this period to meet market demand.

With respect to price erosion/suppression, counsel for the Russian exporters stated that steel prices in the world were also subject to cyclical changes, with 1998 as the trough, in response to global supply and demand. Prices in Canada, counsel submitted, demonstrate cycles reflecting highs and lows in the global market, in spite of efforts by Canadian mills to restrain imports in order to stabilize prices. Accordingly, counsel argued that, if the domestic industry suffered injury, a claim dismissed by counsel, it was caused by the global pricing of the subject goods rather than by the dumping of Russian products in the Canadian market.

Turning to the threat of injury, counsel for the Russian exporters noted that the demand for steel in Canada promises to remain buoyant in 1999 and 2000. As well, counsel suggested that the demand for steel in the Russian Federation is increasing and that at least one of the Russian exporters is using more of its products for further processing. Additionally, counsel cited new foreign markets for Russian products, such as the Middle East oil industry. Finally, counsel concluded that the pricing cycle of the subject goods bottomed out in 1998 and was on its way up. Accordingly, counsel requested that the Tribunal find no past injury and no likelihood of injury.

#### Romania

Counsel for Sidex and MEI requested a finding of no injury in respect of imports from Romania and/or an exclusion, should the Tribunal cumulate Romania. Counsel submitted that Sidex's capacity is small, relative to the other named exporters. As well, counsel argued that the market share of Romanian imports into Canada was insignificant. According to counsel, these imports into Canada were made to order,

in response to demand for “skelp”, and were facilitated by favourable exchange rates. Counsel also emphasized Sidex’s exemplary export behaviour in other markets and the strict export control at the factory.

Turning to the future, counsel for Sidex and MEI submitted that it is not likely that Romanian exports to Canada will increase. Counsel referred to the need to service the increasing demand in the home market. With respect to export plans, counsel submitted that there are excellent opportunities closer to home, as prices are increasing in Europe, that there is a strong market in Turkey and that the demand is expected to increase in the former Yugoslavia, when post-war reconstruction begins.

## **Importers**

### Thyssen

Counsel for Thyssen submitted that Thyssen’s “skelp” imports from Romania and the Russian Federation for sale to pipe and tube producers have not caused injury and do not threaten to cause injury to Canadian producers. As an importer since 1967, Thyssen, counsel maintained, has always been a responsible marketer, importing products on a pre-sold basis and mainly supplying three pipe and tube producers. Counsel observed that the volume of its imports fluctuated over the years, in response to the demand in the Canadian market, when its customers were not able to secure their required supplies from domestic mills.

With respect to the current inquiry, counsel for Thyssen attributed the increase in imports from Romania and the Russian Federation to the increased demand by the pipe and tube producers, the inability and/or unwillingness of domestic producers to supply them and, to some extent, the devaluation of Romanian and Russian currencies against the Canadian currency.

### SlovCan

Counsel for SlovCan requested an exclusion for Slovak products in the event of an injury finding. At the outset, counsel submitted that the Slovak Republic should not have been included in this dumping case because of its marginal volume of imports into Canada and the absence of evidence regarding injury due to its imports. Counsel attributed the significant margin of dumping, as determined by the Department of National Revenue, to certain unusual circumstances regarding imports from the Slovak Republic during the period of investigation. In fact, counsel claimed that the average selling price of hot-rolled steel sheet by SlovCan in 1998 was higher than the normal value established by the Department of National Revenue in its investigation.

Turning to the question of injury, counsel for SlovCan argued that imports from the Slovak Republic actually declined somewhat in the last six months of 1998 and that the prices remained at virtually the same level throughout the year. On the issue of price undercutting, counsel stated that SlovCan’s average prices were higher than the domestic industry’s selling prices to service centres. Counsel further noted the disciplined and responsible approach in the way that SlovCan priced the Slovak products in the Canadian market, to the extent that it declined to drop its prices and suffered significant injury itself in the fourth quarter of 1998. Counsel dismissed the injury allegation against Slovak imports as based on incorrect facts and concluded that there is no threat of injury from Slovak imports, as VSZ has terminated its arrangement with Barkos with respect to its sales to Canada, and that significant tonnage is destined for internal feedstock for new further processing facilities in 1999 and 2000.

### Venture

Venture's representative submitted that, until supplies from domestic sources are assured, it must have access to alternative quality sources of supply from imports. The representative claimed that, although the company began operations in September 1997, it was not able to secure a supply from domestic mills until November 1998, when Stelco started selling to Venture. In order to service its customers, Venture was obliged to source offshore products, principally from the Slovak Republic. The representative stated that Venture's selling prices to its customers have not caused injury to domestic producers.

### **Certain End Users**

#### Atlas and Bolton

Counsel for Atlas and Bolton submitted that the dumping of the subject goods from Romania and the Russian Federation had not caused and was not threatening to cause material injury to domestic producers. In the event of an injury finding, counsel requested an exclusion for certain hot-rolled steel sheet imported by Thyssen for sale to Atlas and Bolton for their use solely in the manufacture of pipe and tube. As an alternative, counsel submitted two subsidiary requests of greater specificity in defining the product for which an exclusion was sought.

Counsel for Atlas and Bolton argued that the companies were forced to import hot-rolled steel sheet because domestic mills were not able nor willing to supply them with the quantities that they required. Since the "skelp" that Atlas and Bolton require is the basic low-end product, counsel claimed that domestic mills did not want to supply these tube producers because available capacity was directed to higher-value products, with higher profit margins.

Counsel for Atlas and Bolton claimed that the supply problem of "skelp" was exacerbated during times of shortages in 1996, 1997 and the first half of 1998, during which there was a buoyant demand for the subject goods. Counsel stated that compounding the tight supply situation was Algoma's start-up problem with its DSPC. To demonstrate the severity of the circumstances, counsel stressed that even the automotive stampers appeared before the Tribunal to make it known that, at times, they are faced with shortages of supply of the higher value-added products and that even domestic producers imported the subject goods to meet their requirements during this period. Counsel noted that, as domestic producers were committed to supply their traditional customers and their own pipe mills, they advised independent pipe and tube producers, such as Atlas and Bolton, to seek offshore sources for "skelp".

Turning to the issue of causation, counsel for Atlas and Bolton argued that the importation of dumped hot-rolled steel sheet by Atlas and Bolton did not cause injury to the domestic producers. Rather, any injury is due to factors other than dumping. Counsel pointed to the timing of their imports, suggesting that goods were purchased in the first and second quarters of 1998, before any injury occurring in the third and fourth quarters. Counsel further noted that these sales were made by Thyssen mainly to Atlas and Bolton, which could not obtain supply from domestic sources and, therefore, were not competing with Canadian mills or causing price erosion in the market.

Counsel for Atlas and Bolton stated that any injury suffered by the domestic producers is due to factors such as the strike at General Motors in the third quarter of 1998, the slowdown of the energy sector causing collapse of demand for hot-rolled steel sheet by producers of oil country tubular goods, the worldwide glut of steel and some diversion of products from the United States due to its anti-dumping

actions. Counsel further noted that the erosion of prices in the Canadian market appeared to be linked more closely to the decline in prices of hot-rolled steel sheet from non-subject countries than to the decline in prices of the subject goods.

### Maksteel and Automotive Stampers

Counsel for Maksteel and the automotive stampers requested an exclusion from an injury finding for the subject goods used in the automotive industry originating in or exported from France. As a basis for seeking this exclusion, counsel noted the distinctive market characteristics of the automotive sector, such as the requirements for stringent certification in order to become a supplier, just-in-time delivery and consistent defect-free and customized grades, and the fact that adequate supply, rather than pricing, is of prime consideration in order to meet the continuing and anticipated buoyant demand in this sector. To support their exclusion request, counsel further noted that the domestic industry submitted very few injury allegations with respect to the automotive market in general and absolutely no specific allegations with respect to the importation of automotive end-use products from France. Accordingly, counsel concluded that the domestic industry has suffered no injury as a result of imports of the subject goods for automotive end uses. To conclude their case for an exclusion, counsel claimed that the domestic industry is not able to adequately supply the needs of the automotive end-use market and that there is currently a shortage of supply from domestic producers, citing, as an example, the necessity for Maksteel to purchase imports in 1998.

### ANALYSIS

Pursuant to section 42 of SIMA, as amended by the *World Trade Organization Agreement Implementation Act*,<sup>8</sup> the Tribunal is required to “make inquiry . . . as to whether the dumping or subsidizing of the goods [to which the preliminary determination applies] . . . has caused injury or retardation or is threatening to cause injury”. “Injury” is defined in subsection 2(1) of SIMA as “material injury to a domestic industry”. Since its decision in Inquiry No. NQ-95-001,<sup>9</sup> 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)<sup>10</sup> unless it first makes a finding of no injury. The Tribunal in this inquiry adopts the position taken in the past.

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8. S.C. 1994, c. 47.

9. *Caps, Lids and Jars Suitable for Home Canning, Whether Imported Separately or Packaged Together, Originating in or Exported from the United States of America, Finding* (October 20, 1995), *Statement of Reasons* (November 6, 1995) (C.I.T.T.). See, also, *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, Findings* (November 6, 1995), *Statement of Reasons* (November 21, 1995) NQ-95-002 (C.I.T.T.); and *Faced Rigid Cellular Polyurethane-Modified Polyisocyanurate Thermal Insulation Board Originating in or Exported from the United States of America, Finding* (April 11, 1997), *Statement of Reasons* (April 28, 1997), NQ-96-003 (C.I.T.T.).

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

## Like Goods

In arriving at its decision in the present inquiry, the Tribunal will, first, determine which domestically produced hot-rolled steel sheet is “like goods” to imported hot-rolled steel sheet. In this inquiry, the Tribunal had to determine whether “skelp, skelp coil and/or skelp in coil” should be considered a separate class of like goods.

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

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

By letter dated April 22, 1999, the Tribunal advised parties that intended to raise this issue to provide it with submissions giving a precise description of the product and sufficient evidence and argument to allow the Tribunal to address the matter. The Tribunal also set out a non-exhaustive list of factors.<sup>11</sup>

After carefully considering the submissions, the Tribunal advised the parties by letter dated May 26, 1999, that it was not persuaded that hot-rolled steel sheet used in the production of pipe and tube or “skelp” is a separate class of like goods from the other like goods in issue.<sup>12</sup> The Tribunal stated that it would provide its reasons in its statement of reasons.

Counsel for Thyssen and others<sup>13</sup> submitted that “skelp, skelp coil and/or skelp in coil” should be considered a separate class of like goods. In support of their submission, counsel stated that “skelp” is described in Dofasco’s pricing books as “steel in coil form to be used exclusively in the production of continuously welded tubes or pipes. Further processing steps may include pickling and slitting”.<sup>14</sup>

With respect to the manufacturing process, counsel for Thyssen and others submitted that “skelp” is continuous cast, hot-rolled direct to finish gauge. It is composed of carbon steel with a low carbon requirement. The common chemical compositions are found in SAE<sup>15</sup> 1018 and SAE 1021, although a broader range can be supplied. This product, which is targeted to pipe and tube makers as end users, is the least expensive of all hot-rolled steel sheet in coil and does not require additional processing, as does the higher-grade steel sheet. Counsel submitted that “skelp” and other commercial hot-rolled steel sheet products are not interchangeable.

Counsel for four out of the five domestic producers opposed the submission.<sup>16</sup>

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11. The factors listed were: physical characteristics (e.g. chemical properties, performance requirements, appearance, finish, quality, dimensions, product form), manufacturing process, composition of the goods (raw materials), selling patterns (target customers, distribution channels, contracting arrangements), generic v. specific use of the goods, price and interchangeability; whether the alleged class of goods competes with other hot-rolled steel sheet products; whether the goods fulfil the same end-use requirements; and customer and producer perceptions of the products. Tribunal Exhibit NQ-98-004-35, Administrative Record, Vol. 1B at 7.
  12. Tribunal Exhibit NQ-98-004-45, Administrative Record, Vol. 1B at 120.
  13. MEI, Sidex, Atlas and Bolton.
  14. Tribunal Exhibit NQ-98-004-35A, Administrative Record, Vol. 1B at 13.
  15. The Society of Automotive Engineers.
  16. Ispat was the only producer that did not respond.



Counsel for Stelco submitted that the Tribunal is bound by the Deputy Minister's definition of the subject goods, which applies to hot-rolled steel sheet and which is defined as a single class of goods. Furthermore, there is no legal basis in SIMA for re-defining the subject goods and, even if the Tribunal could "look behind" the preliminary determination of dumping, which counsel argued it cannot do, there are no different chemical or physical properties that separate hot-rolled steel sheet sold to the pipe and tube sector as "skelp" from the same goods sold to other purchasers. The mere fact that customers purchase "skelp" to make pipe and tube does not justify creating a separate class of goods. Service centres, for example, also buy hot-rolled steel sheet used for making pipes and tubes and sell it to the pipe and tube sector. Therefore, sales of this product are intermingled.

Counsel for the three other domestic producers concurred with the submissions of counsel for Stelco. Counsel stated that there is no universally accepted definition or scientific definition of the term "skelp" in internationally recognized standards or specifications and that it is merely a general term of the trade referring to goods sold to the pipe and tube sector.

Counsel for the domestic producers also submitted that the hot-rolled steel sheet sold for the production of pipe and tube is of general commercial quality. Counsel argued that none of the characteristics referred to by counsel for Thyssen and others consist of such distinct properties as to make such goods distinguishable from one another in physical, mechanical, chemical and commercial terms. Counsel indicated that some domestic producers sell "substantial quantities of high-grade steel to pipe and tube manufacturers, including HSLA steel"<sup>17</sup> and that not only "[t]he lowest quality skelp is used for tube production",<sup>18</sup> as asserted by counsel for Thyssen and others. Counsel also submitted that the qualities of steel used for making pipe and tube are no different from the qualities of steel used to produce other types of hot-rolled steel sheet products. Furthermore, "substantial quantities of pickled and oiled hot rolled steel sheet (including both commercial quality and HSLA)"<sup>19</sup> are sold to pipe and tube producers.

In the submission of counsel for the domestic producers, the manufacturing process described by counsel for Thyssen and others refers in very general terms to the manufacture of all hot-rolled steel sheet. With respect to the reference to SAE specifications, counsel noted that they are quoted on many end-use specifications. Counsel went on to state that the SAE 1018 and SAE 1021 carbon range is used for many other applications, such as automotive parts, brackets and domestic hot water tanks, as well as in the manufacture of pipe and tube.

Counsel for the domestic producers also submitted that there are no differences between "skelp" and the other subject goods in terms of physical appearance and that both products are manufactured on the same equipment and in the same manner. Like the other subject goods, counsel noted that sales of hot-rolled coil to pipe and tube manufacturers can be mill or slit edged, skin or non-skin passed and with or without heads and tails cropped off. Furthermore, the range of gauges of hot-rolled steel sheet products used in the making of pipe and tube is similar to the range of gauges used in the production of other hot-rolled steel sheet products, which are substitutable even when dealing with different grades of steel.

With respect to selling patterns, counsel for the domestic producers referred to evidence on the record to support the position that domestic producers use the same methods to sell their products to all their customers and that the distribution channels are the same regardless of whether the goods are being sold to

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17. Tribunal Exhibit NQ-98-004-38, Administrative Record, Vol. 1B at 50.

18. *Ibid.*

19. *Ibid.*

the pipe and tube sector or to the other sheet markets. In terms of pricing, counsel noted that the pipe and tube manufacturers buy a wide range of hot-rolled steel sheet products and purchase them from the same price book as all other customers.

The Tribunal has considered the submission of counsel for Stelco that the Tribunal is bound by the definition of the subject goods as provided by the Deputy Minister in the preliminary determination of dumping. The Tribunal agrees that it cannot re-cast the Deputy Minister's definition of the subject goods. However, based on the Deputy Minister's definition of the subject goods, the Tribunal has the jurisdiction to decide which domestically produced goods are separate classes of like goods for the purposes of its inquiry.<sup>20</sup>

In *Sarco Canada Limited v. Anti-dumping Tribunal*,<sup>21</sup> the Federal Court of Appeal accepted the Anti-dumping Tribunal's approach to the analysis of like goods, where the Anti-dumping Tribunal stated that:

the question of whether goods are "like" is to be determined by market considerations. Do they compete directly with one another? Are the same consumers being sought? Do they have the same end-use functionally? Do they fulfill the same need? Can they be substituted one for the other?<sup>22</sup>

The Federal Court of Appeal noted that the Anti-dumping Tribunal was required to consider all the characteristics or qualities of the goods, including physical similarities and dissimilarities, in considering whether they were like goods. The Tribunal has adopted this approach in its consideration as to whether or not "skelp" is a separate class of like goods in the present inquiry.

On the basis of the evidence, the Tribunal is not persuaded that "skelp" is a separate class of like goods. The Tribunal finds that "skelp" is a lower-quality hot-rolled steel sheet product suitable for ordinary manufacturing operations, such as bending, galvanizing and welding, used in the production of hollow structural steel tube. While there is ample evidence that this product is targeted to pipe and tube makers as end users, the Tribunal finds that there is also ample evidence that "skelp" is bought by service centres for sale to other customers for other end uses (e.g. brake shoe manufacture) and that sales are not restricted to the pipe and tube sector.

In its determination of the physical characteristics, the Tribunal finds that the application of the SAE 1018 and SAE 1021 carbon range is not restricted to the manufacture of pipe and tube and that it may be used for other applications, such as certain automotive parts. The Tribunal is not persuaded that the fact that hot-rolled coil sold to pipe and tube manufacturers is either mill or slit edged, skin or non-skin passed and with or without heads and tails cropped off is determinative of a separate class of like goods. The fact that there are little or no differences between "skelp" and the other subject goods in terms of physical appearance and that all products are produced on the same equipment and in the same manner convinces the Tribunal that "skelp" is not a separate class of like goods. Moreover, the range of gauges of hot-rolled steel sheet products used in the making of pipe and tube is similar to the range of gauges used in the production of other hot-rolled steel sheet products.

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20. *Re Y.Y.K. Zipper Co. of Canada Ltd.*, [1975] F.C. 68 (C.A.).

21. [1979] 1 F.C. 247 (C.A.).

22. *Ibid.* at 250.

These factors, coupled with the fact that “skelp” and other hot-rolled steel sheet products are sold through the same distribution channels to various end users, persuade the Tribunal that the products are substitutable and interchangeable and, therefore, that “skelp” is not a separate class of like goods.

### Domestic Industry

Next, the Tribunal will proceed to determine which producers constitute the domestic industry. The term “domestic industry” is defined in subsection 2(1) of SIMA as follows:

“domestic industry” means, other than for the purposes of section 31 and subject to subsection (1.1), the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

At the outset of the hearing, the issue that the Tribunal had to address was whether IPSCO should be excluded from the domestic industry on the basis that it imported the subject goods during the period of inquiry.<sup>23</sup> The request for exclusion was based on a reference found in the preliminary determination of dumping.<sup>24</sup>

The Tribunal notes that the wording of the definition of “domestic industry” in SIMA uses the word “may”, thereby indicating that the Tribunal has the discretion to exclude, or not, those producers that are themselves importers of dumped goods. The Tribunal notes further that its predecessors, as well as itself, have not exercised its discretion in favour of such exclusions, where to do so would effectively deny the existence of a domestic industry.<sup>25</sup>

In Inquiry No. NQ-93-007,<sup>26</sup> in determining whether the domestic producers met the definition of “domestic industry”, the Tribunal held that:

although Dofasco imported small amounts of the subject goods during the period of inquiry, the Tribunal is of the opinion that these volumes are not sufficient to warrant interpreting the domestic industry as referring to the rest of the producers.<sup>27</sup>

With respect to this inquiry, the Tribunal is of the opinion that, while IPSCO did import the subject goods during the period of inquiry, these goods were imported on an occasional basis and that the volumes

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23. *Transcript of Public Hearing*, Vol. 1, June 1, 1999, at 28.

24. Tribunal Exhibit NQ-98-004-1, Appendix 2, Administrative Record, Vol. 1 at 36.

25. For example, see *Refined Sugar*, *supra* note 9; and *Bottoming Materials of Natural and/or Synthetic Rubber Composition Produced or Exported by or on Behalf of Goodyear Tire and Rubber Company, Windsor, Vermont and American Biltrite Incorporated, Chelsea, Massachusetts for Use in the Footwear Repair Industry, Including but not Limited to Heels, Half Soles, Full soles, Sports Soles, Soling Sheets (Commonly Referred to as Solid Slabs and Printed Slabs) and Toplifting, Finding* (September 27, 1982), *Statement of Reasons* (October 29, 1982), ADT-7-82 (A.D.T.).

26. *Certain Corrosion-resistant Steel Sheet Products, Originating in or Exported from Australia, Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden, the United Kingdom and the United States of America, Finding* (July 29, 1994), *Statement of Reasons* (August 15, 1994) (C.I.T.T.).

27. *Ibid.* at 17.

were small.<sup>28</sup> Given the above, the Tribunal is of the opinion that the small quantity of subject goods involved represented only a small proportion of the domestic industry's total sales and that it is not sufficient to warrant excluding IPSCO from the domestic industry for the purposes of its injury analysis.

Furthermore, in assessing injury, the Tribunal must be satisfied that the domestic industry constitutes a major proportion of the total domestic production of like goods. The Tribunal finds that this requirement is met, as Stelco, Dofasco, Algoma, Ispat and IPSCO represent 100 percent of the total domestic production of like goods.

### Cumulation and Negligibility

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. This is if the goods are imported into Canada from more than one source and if, among other conditions, the margin of dumping of the goods from each country is not insignificant and the volume of the goods from each country is not negligible. The terms "insignificant" and "negligible" are defined in subsection 2(1) of SIMA.

There was some discussion as to whether or not the Tribunal should make a cumulative assessment of the effect of the dumping of the subject goods from all four named countries and whether certain countries should be "excluded" from the cumulative assessment.<sup>29</sup> Prior to the addition of subsection 42(3), SIMA did not provide the Tribunal with the express authority to make cumulative assessments of the effects of the importation of dumped or subsidized goods. Subsection 42(3), as it is currently worded, states that "the Tribunal may make an assessment of the cumulative effect of the dumping or subsidizing of goods" [emphasis added]. While the Tribunal is of the view that the term "may" gives it the discretion to make or not to make a cumulative assessment of the effects of dumping or subsidizing of goods, it has been its practice, in inquiries which included goods from more than one source country, to make a cumulative assessment of the effects of imports of all subject goods on the domestic industry.<sup>30</sup> Furthermore, the Tribunal notes that this practice has been "codified" in the amendment to subsection 42(3),<sup>31</sup> wherein it states that the Tribunal "shall make an assessment of the cumulative effect of the dumping or subsidizing of goods" [emphasis added]. Therefore, the Tribunal does not find any reason why it would depart from this practice in this inquiry.

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28. *Protected Pre-hearing Staff Report*, revised June 4, 1999, Tribunal Exhibit NQ-98-004-7D (protected), Administrative Record, Vol. 2A at .140.

29. *Transcript of Public Argument*, June 11, 1999, at 82 and 213.

30. See, for example, *Polyphase Induction Motors Originating in or Exported from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America, Findings* (April 28, 1989), *Statement of Reasons* (May 12, 1989), CIT-5-88 (C.I.T.T.); and *Refill Paper, also Known as Filler Paper or Looseleaf Paper, Originating in or Exported from the Republic of Indonesia, and Notebooks with a Coiled or Spiral Binding, Originating in or Exported from the Republic of Indonesia and the Federative Republic of Brazil, Findings* (September 27, 1996), *Statement of Reasons* (October 15, 1996), NQ-96-001 (C.I.T.T.); and *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* (September 4, 1998), *Statement of Reasons* (September 21, 1998), NQ-98-001 (C.I.T.T.).

31. See *An Act to amend the Special Import Measures Act and the Canadian International Trade Tribunal Act*, S.C. 1999, c. 12.

In this inquiry, the evidence shows that the weighted average margin of dumping of hot-rolled steel sheet products from each of the four named countries is more than 2 percent of the export price of the goods and, therefore, it is not insignificant. The evidence also shows that the volume of dumped imports from each of the four named countries exceeds 3 percent of the total volume of goods imported into Canada from all countries and, therefore, it is not negligible.

There was discussion by some counsel for the domestic producers as to the Tribunal's ability to determine a period within which to consider negligibility, independent of the period established by the Deputy Minister.<sup>32</sup> In examining this question in a recent case, the Tribunal stated the following:

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.<sup>33</sup>

The Tribunal, in that case, was of the view that it was only appropriate to use its import numbers in making a determination as to "negligibility" for the 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 *Stainless Steel Round Bar*, unlike in *Refined Sugar* where the Tribunal had information on a full calendar year basis which fell within the Deputy Minister's period of investigation, the Tribunal had import data for one quarter of the calendar year which fell outside the period during which the Deputy Minister calculated margins of dumping. The Tribunal felt it appropriate to choose the Deputy Minister's import data in that case. The Tribunal adopts the position taken in *Stainless Steel Round Bar*. It has decided that, for this inquiry, it would adopt the period of investigation established by the Deputy Minister, that is, the first nine months of 1998.<sup>34</sup> Furthermore, in its determination regarding negligibility, the Tribunal has used the volume of dumped imports as determined by the Deputy Minister for that period. With respect to the volume of non-dumped imports, the Tribunal has used data that it compiled for the same period.

In conclusion, the evidence clearly indicates that the dumped goods from the named countries not only compete against each other but also with the like goods of the domestic producers. In light of the foregoing, the Tribunal considers it appropriate to make a cumulative assessment of the effects of the dumped imports of hot-rolled steel sheet products from the four named countries on the domestic industry.

## Injury

Next, the Tribunal determined whether the domestic industry has suffered injury and, if so, whether a causal relationship exists between that injury and the dumping of certain hot-rolled steel sheet. Subsection 37.1(1) of the *Special Import Measures Regulations*<sup>35</sup> 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

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32. *Transcript of Public Argument*, June 11, 1999, at 93.

33. *Stainless Steel Round Bar*, *supra* note 30 at 12.

34. *Protected Pre-hearing Staff Report*, revised May 26, 1999, Tribunal Exhibit NQ-98-004-7C (protected), Administrative Record, Vol. 2A at .108.

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

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 and profits.

Table 2 provides a summary of certain key economic indicators for this inquiry.

The Tribunal examined the developments of the market in Canada for certain hot-rolled steel sheet. It observed that the macro indicators show that the Canadian market increased by over 24 percent between 1996 and 1998, increasing from 4.5 million net tons to 5.6 million net tons. Domestic producers' share of this growing market declined from 87 percent in 1996 to 69 percent in 1998.<sup>36</sup> The 1998 quarterly data show a dramatic drop to 67 percent in the second quarter of 1998 and a further fall to 64 percent in the third quarter, all from an 80 percent share of the market in the first quarter of 1998.

The market share held by domestic producers improved somewhat in the fourth quarter of 1998 at the expense of imports from non-subject countries. During the same period, 1996 to 1998, imports from the four named countries increased their share of the market from 5 to 17 percent and accounted for approximately two thirds of total imports. Imports from non-subject countries also increased their market share, but to a lesser degree, from 8 to 14 percent.

A review of the three major sectors of the Canadian market identified in this inquiry, specifically end users, service centres and pipe and tube producers, discloses that the volume of sales to each sector differs significantly among sales from domestic production, sales of the subject goods and sales of non-subject goods. Compared to importers, domestic producers make relatively more sales to end users and fewer sales to pipe and tube producers.<sup>37</sup> While imports from the named countries were sold into all sectors of the market, they were concentrated in the pipe and tube and service centre sectors. Data collected by the Tribunal staff show that, in 1998, approximately 60 percent of the hot-rolled steel sheet imported from the named countries were imported specifically for or by pipe and tube producers and that these imports were, for the most part, the most basic unprocessed type of hot-rolled steel sheet. Thus, these data demonstrate that the industry's loss of market share occurred primarily in the pipe and tube sector, but also in the service centre sector.

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36. *Protected Pre-hearing Staff Report*, revised May 19, 1999, Tribunal Exhibit NQ-98-004-7A (protected), Administrative Record, Vol. 2A at .17.

37. *Protected Pre-hearing Staff Report*, revised May 19, 1999, Tribunal Exhibit NQ-98-004-7A (protected), Administrative Record, Vol. 2A at .23 and .24, and revised June 4, 1999, Tribunal Exhibit NQ-98-004-7D (protected), Administrative Record, Vol. 2A at .131.

**TABLE 2**  
**KEY ECONOMIC INDICATORS**

	1996	1997	1998	1998			
				Q1	Q2	Q3	Q4
<b>Apparent Imports (net tons)</b>	583,001	1,152,216	1,803,790	217,581	529,584	521,776	534,797
Subject Countries	205,209	545,998	1,030,741	57,632	320,795	277,580	374,682
Non-subject Countries	377,792	606,219	773,048	159,949	208,788	244,196	160,115
<b>Production (net tons)</b>	9,514,180	9,905,490	10,025,740	2,495,733	2,404,985	2,655,452	2,469,570
For Sale	4,414,119	4,585,048	4,436,821	1,098,780	1,087,152	1,218,001	1,032,888
For Further Processing	5,100,061	5,320,442	5,588,919	1,396,953	1,317,833	1,437,451	1,436,682
<b>Apparent Market (net tons)</b>	4,513,536	5,208,160	5,609,610	1,302,538	1,480,830	1,480,784	1,345,460
<b>Apparent Market (\$000)</b>	2,273,563	2,694,116	2,754,503	676,933	733,674	719,296	624,600
<b>Market Share (%)</b>							
Domestic Producers	87	78	69	80	67	64	69
Subject Goods	5	10	17	8	19	20	20
Non-subject Goods	8	12	14	12	14	17	12
<b>Average Prices to: (\$/net ton)<sup>1</sup></b>							
<b>End Users</b>							
- Domestic Producers	575	577	564	572	565	564	557
- Subject Goods	547	527	500	544	498	466	516
- Non-subject Goods	611	561	535	582	495	531	481
<b>Service Centres</b>							
- Domestic Producers	454	478	454	469	478	461	405
- Subject Goods	466	465	452	498	449	444	449
- Non-subject Goods	501	513	493	518	510	486	477
<b>Pipe and Tube</b>							
- Domestic Producers	514	545	513	530	515	518	481
- Subject Goods	419	420	413	451	405	414	405
- Non-subject Goods	482	548	478	552	473	490	408
<b>Production Capacity (net tons)</b>	11,209,163	11,366,200	11,810,567	2,937,525	2,868,594	3,009,946	2,994,502
<b>Utilization Rate (%)</b>	90	92	90	90	91	94	86
<b>Financial Total Industry (%)</b>							
Gross Margin	21	23	18	19	20	20	11
Net Income Before Taxes	10	14	6	9	9	8	(2)

1. The average prices for sales from imports do not include producers' sales from imports.

Note: Numbers may not add up due to rounding.

Central to the case made by the domestic producers is that the low-priced imports forced Canadian producers either to meet these low prices or to lose sales. The overall market price in 1998 was marked by price declines throughout the year. At the aggregate levels, this phenomenon began to manifest itself at the beginning of 1998 and increased in intensity as the year wore on. Specifically, average selling prices of hot-rolled steel sheet increased by 3 percent in 1997 and then declined by 5 percent in 1998. On a quarterly basis, these declines were more marked, dropping from \$520 per net ton in the first quarter of 1998

to \$464 per net ton in the fourth quarter.<sup>38</sup> Prices of domestic products and of imports from the subject and non-subject countries mirrored this trend. In 1998, the average price of domestic products was \$509 per net ton, while that of the subject goods was \$431 per net ton and that of non-subject goods was \$475 per net ton. The data on the record show that the prices of the subject goods undercut the prices of like goods in many instances.<sup>39</sup> While the price pressure varied in severity across sectors, the deepest undercutting was in the pipe and tube and service centre sectors. However, it was present in all sectors of the market, including the end-use/automotive sector, but to a lesser degree.

Looking in more detail at certain hot-rolled steel sheet price movements in Canada over the period of inquiry, the evidence shows that the average selling prices of imports from the subject countries to end users and pipe and tube producers were below those of domestic producers, whereas the prices of the subject goods to service centres were somewhat closer to those of domestic producers.<sup>40</sup> A review of the quarterly data, particularly for the pipe and tube sector, shows that the domestic price in the first quarter of 1998 was considerably higher than the price of imports from the named countries, but lower than the price of imports from non-subject countries. The evidence shows that, as the year progressed, the quarterly price of imports from the named countries maintained a level which was significantly below the domestic price. In addition, the decline in the price of the subject goods was much greater than the decline in the price of domestic products.

The Tribunal heard testimony that the low price levels observed in the last quarter of 1998 continued into the first quarter of 1999<sup>41</sup> and resulted in further price erosion. Evidence shows that the attempts made by domestic producers to increase prices in the first quarter of 1999 were unsuccessful.<sup>42</sup> The Tribunal observes that the price effects of the dumped imports were still being felt in the marketplace, notwithstanding the Deputy Minister's preliminary determination of dumping. It is clear to the Tribunal that the large inventories of low-priced dumped imports into Canada for the winter months influenced the prices in the marketplace in the first quarter of 1999.

Turning to the domestic industry's financial results, the gross margin earned by domestic producers fell from a high of 23 percent in 1997 to 18 percent in 1998. On a quarterly basis, it is clear that the erosion of gross margin accelerated throughout the year, as the industry tried to preserve sales volume at the expense of gross margin and net income. As to the latter, it fell from 14 percent in 1997 to a quarterly loss of 2 percent in the fourth quarter of 1998.<sup>43</sup> The Tribunal is convinced that the decrease in both the gross margin and the net income is directly related to the significant price discounting brought on by large volumes of dumped imports.

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38. *Protected Pre-hearing Staff Report*, revised June 7, 1999, Tribunal Exhibit NQ-98-004-7D (protected), Administrative Record, Vol. 2A at .129.

39. *Protected Pre-hearing Staff Report*, revised June 1, 1999, Tribunal Exhibit NQ-98-004-7D (protected), Administrative Record, Vol. 2A at .137.

40. *Ibid.* and *supra* note 38.

41. *Transcript of Public Hearing*, Vol. 3, June 3, 1999, at 470 and 517.

42. *Transcript of In Camera Hearing*, Vol. 3, June 3, 1999, at 231 and 232; and *Transcript of Public Hearing*, Vol. 3, June 3, 1999, at 470 and 517.

43. *Protected Pre-hearing Staff Report*, revised May 11, 1999, Tribunal Exhibit NQ-98-004-7A (protected), Administrative Record, Vol. 2A at .36.



Domestic mills suffered diminished revenue and profitability. The reduction in net income in 1998 was over \$80 million, when measured against the levels achieved in 1996, and much higher if measured against the net income realized in 1997.<sup>44</sup> The Tribunal notes that counsel for the importers and for the exporters argued that it was not appropriate to use 1997 or the first quarter of 1998 as a benchmark for comparison to the last two quarters of 1998 because 1997 and the first half of 1998 were banner periods for the domestic steel producers. According to counsel, the subsequent declines in sales and prices of certain hot-rolled steel sheet and certain industry financial indicators are exaggerated when measured against the record high price levels and profitability achieved in 1997 and the first half of 1998. The Tribunal does not accept counsel's argument. The Tribunal believes that, if all things had been equal, the last two quarters of 1998 should also have resulted in good profits, had it not been for the volume of dumped imports exerting downward pressure on prices in all sectors of the market, but mainly in the pipe and tube and service centre sectors. Furthermore, the Tribunal heard testimony and submissions that poor financial performance continued into the first quarter of 1999.<sup>45</sup> The continued low prices in the marketplace impacted on the domestic producers' ability to raise prices and increase profits in the first quarter of 1999.<sup>46</sup>

In conclusion, the Tribunal finds that the domestic producers of certain hot-rolled steel sheet experienced a significant loss of market share. In addition, they experienced serious price declines, particularly in the pipe and tube and service centre sectors, which resulted in a major decline in the overall price level of hot-rolled steel sheet. These lower prices resulted in a significant negative impact on the revenues and profitability of the domestic producers of hot-rolled steel sheet, especially in the latter part of 1998 and in the first quarter of 1999. The Tribunal finds that the magnitude of the price declines and the resulting financial injury are such that the domestic producers have been materially injured.

## Causation

The Tribunal next considered whether there is a causal link between the material injury suffered by the domestic industry and the dumped imports. The Tribunal also examined other factors to ensure that any 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 Tribunal notes that these witnesses represented a full spectrum of industry players from the domestic producers, to steel service centres, to automotive stampers and to certain pipe and tube producers. The Tribunal finds that these witnesses, collectively, provided it with a comprehensive and generally consistent view of market developments in Canada since 1996.

According to the Deputy Minister, close to 100 percent of the subject goods were dumped during the period of investigation.<sup>47</sup> In 1998, dumped imports accounted for close to two thirds of total imports and amounted to approximately 1 million net tons, up from 545,000 net tons in 1997. In considering the issue of causation, the Tribunal commenced its analysis by determining if this large volume of dumped imports caused the significant decrease in market share held by the domestic producers.

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44. *Protected Pre-hearing Staff Report*, revised May 11, 1999, Tribunal Exhibit NQ-98-004-7A (protected), Administrative Record, Vol. 2A at .36.

45. *Transcript of Public Hearing*, Vol. 3, June 3, 1999, at 470 and 518; and *Transcript of In Camera Hearing*, Vol. 3, June 3, 1999, at 210.

46. Tribunal Exhibit NQ-98-004-RI-3, Attachment 4, Administrative Record, Vol. 11.2; and *Transcript of In Camera Hearing*, Vol. 4, June 4, 1999, at 380.

47. Tribunal Exhibit NQ-98-004-4, Administrative Record, Vol. 1 at 99.39.

During 1996, 1997 and the first half of 1998, the market was generally characterized as buoyant with a strong demand for certain hot-rolled steel sheet, resulting in high prices and a tight supply situation. The Tribunal heard considerable testimony regarding the issue of availability of supply from domestic mills of hot-rolled steel sheet to certain users during this buoyant period. The evidence is clear that there was and still is an increasing demand for certain hot-rolled steel sheet in the Canadian market. In addition, the evidence shows that a significant portion of this increase in demand is directly related to the large increase in the hot-rolled steel sheet requirements of Atlas.<sup>48</sup> As previously noted, Atlas invested about \$25 million in its Ontario facility and has recently invested an additional \$50 million in a new structural tube mill. This new facility will bring Atlas's annual capacity to well over 800,000 net tons.

The Tribunal recognizes that there were certain factors that affected the availability of hot-rolled steel sheet in the market and, in particular, to non-traditional customers of the domestic mills in 1997 and the first two quarters of 1998. This general limited availability of domestic hot-rolled steel sheet in 1997 and the first two quarters of 1998 was due to the buoyant Canadian market<sup>49</sup> and the strategic plans by domestic mills to produce more value-added products,<sup>50</sup> which led to increases in the growth of production of hot-rolled steel sheet for use as feedstock. The combined impact of these factors resulted in the tight supply of hot-rolled steel sheet in the Canadian market.

Further to the arguments heard regarding the ability of domestic producers to supply the growing needs of the Canadian market and, in particular, those of certain users such as Atlas, Bolton, Venture, Maksteel and certain automotive stampers, the Tribunal understands and accepts that there have been availability problems for hot-rolled steel sheet required by a number of users and, particularly, for unprocessed coil required by Atlas. In this regard, the Tribunal refers to testimony given by the witness for Atlas regarding his efforts to secure product from domestic producers and, in particular, Algoma, a producer that has little direct activity in the pipe and tube business. He stated that Algoma "has really tried, but I think in ramping up their DSPC and the various problems they have had there, both financially and labour-wise, along with tough winters, they couldn't supply me with the product".<sup>51</sup>

The witness for Atlas also noted specific problems that the company encountered in trying to secure supply from the other domestic mills. The reported inefficiencies of using small coils produced by both Ispat and Stelco's Hilton Works plant are understandable and accepted by the Tribunal. The large and growing internal demands of companies like Dofasco and Stelco for feedstock and the resulting tighter supply of product for sale into the market are also appreciated. The Tribunal also believes that the fact that IPSCO is a major competitor of Atlas's in the pipe and tube market introduces certain complications in reaching a mutually agreeable supply arrangement.

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48. *Transcript of Public Hearing*, Vol. 6, June 8, 1999, at 950, 951 and 981.

49. *Transcript of Public Hearing*, Vol. 2, June 2, 1999, at 280, Vol. 3, June 3, 1999, at 402 and 423, and Vol. 1, June 1, 1999, at 104.

50. Manufacturer's Exhibit A-1B, Annex 1 at 2, Administrative Record, Vol. 13; Manufacturer's Exhibit A-1B, Annex 2 at 11, Administrative Record, Vol. 13A; and Tribunal Exhibit NQ-98-004-RI-2, Administrative Record, Vol. 11.1.

51. *Transcript of Public Hearing*, Vol. 6, June 8, 1999, at 984. The Tribunal notes that when Algoma's new DSPC line begins to produce at capacity, pipe and tube producers should be able to obtain certain requirements, at least in part, from the production from this new facility, together with certain volumes from other Canadian producers.

During this time of strong market demand, in 1997 and the first half of 1998, Atlas was also expanding its business. Atlas's expansion and subsequent growth resulted in an extraordinary increase in the demand for low-end, unprocessed hot-rolled steel sheet. This increase in demand came at a time when domestic producers were already running at capacity and servicing a very buoyant market. In addition, the expansion of Algoma's hot-rolled steel sheet capacity with its DSPC line was not able to deliver consistent product on a timely basis.<sup>52</sup> As a result, the Tribunal notes that Atlas was forced to obtain its supply of hot-rolled steel sheet from imports. Supply arrangements and commitments were made by Atlas in 1997 and through the first half of 1998 with offshore suppliers. Evidence on the record indicates that a lead time of three to four months is required when purchasing from overseas.<sup>53</sup> In fact, some orders for product requirements for the winter months were placed in the second quarter of 1998<sup>54</sup> for delivery before the waterways freeze.<sup>55</sup>

From the macro data, it is clear that the apparent market for hot-rolled steel sheet grew from approximately 4.5 million net tons in 1996 to 5.6 million net tons in 1998. During that period, domestic producers' sales were relatively stable at 3.9 million net tons to 4 million net tons. During the same time period, the volume of hot-rolled steel sheet produced which was allocated to feedstock for further processing increased from 5.1 million net tons to 5.6 million net tons. From this data, it can be argued that domestic producers could have sold an additional 500,000 net tons into the market. They chose not to do so. During the hearing, the Tribunal heard numerous allegations that domestic producers were shorting the low end of the market, preferring to allocate the product to more profitable downstream products. It is clear to the Tribunal that, in 1997 and the first half of 1998, if domestic producers had decided to supply the growing needs of certain pipe and tube producers, they would have had to accept much lower prices for those goods because they would have been in direct competition with low-priced imports from the subject countries which were found to have been dumped. Based on the above, the Tribunal is of the opinion that the loss of market share is, in part, the result of the domestic industry's unwillingness to meet the low prices and, partly, the result of supply constraints in 1997 and the first two quarters of 1998.

As a result of the strong market conditions in 1997 and the first half of 1998, the domestic producers were running their mills at capacity and began to increase efforts to increase this capacity.<sup>56</sup> However, this increase in capacity started to come on stream at the same time as market conditions in Canada changed during the second half of 1998. Specifically, the market changes included the slowdown in the energy market and the resulting troubles in the oil and gas sector, as well as the General Motors strike which occurred in the third quarter of 1998. The Tribunal recognizes that these events had an impact on the market psychology, as domestic producers saw demand weakening rapidly and imports taking on an even larger share of the market. Indeed, over the period from 1996 to 1998, the apparent market grew by 1.1 million net tons and imports grew by 1.2 million net tons. Of that substantial growth, the subject countries took 800,000 net tons, a five-fold increase over the period. The timing of these events may have triggered an overreaction by the domestic industry, as it fought to sell product originally destined for the automotive and oil and gas markets.

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52. *Transcript of Public Hearing*, Vol. 2, June 2, 1999, at 290 and 310.

53. *Transcript of Public Hearing*, Vol. 4, June 4, 1999, at 594; and *Transcript of In Camera Hearing*, Vol. 4, June 4, 1999, at 33. The witness for Atlas stated that there are very long lead times, four or five months, to effect these types of purchases from foreign producers, *Transcript of Public Hearing*, Vol. 6, June 6, 1999, at 987.

54. *Transcript of Public Hearing*, Vol. 8, June 10, 1999, at 1231.

55. *Transcript of Public Hearing*, Vol. 6, June 6, 1999, at 919, 986 and 1066.

56. *Transcript of Public Hearing*, Vol. 1, June 1, 1999, at 144, and Vol. 2, June 2, 1999, at 297.

Notwithstanding the fact that the domestic mills did not supply Atlas with its growing needs for unprocessed hot-rolled steel sheet, the Tribunal is of the view that the low-priced dumped imports destined for the hollow structural steel market through Atlas did have a negative effect on the ability of domestic mills to maintain price levels in that sector. Three of the five domestic producers have certain close affiliations or arrangements with pipe and tube producers. The domestic mills either supply long-time, traditional pipe and tube customers<sup>57</sup> or themselves produce pipe and tube products.<sup>58</sup> The Tribunal heard testimony that the market for pipe and tube and, in particular, the market for hollow structural steel are very competitive.<sup>59</sup> Based on the evidence, the Tribunal believes that most pipe and tube producers would necessarily be aware<sup>60</sup> of the low-priced imports of certain hot-rolled steel sheet in the market and being used by Atlas. Since approximately 70 percent<sup>61</sup> of the cost to pipe and tube producers is the hot-rolled steel sheet, these producers would undoubtedly demand similar low competitive prices from domestic mills so that they would remain competitive with Atlas.

In this regard, a witness for Copperweld Canada, Sonco Steel Tube Division (Sonco), a pipe and tube producer, stated that, given the highly competitive business, it is important that the company have a general sense of where its competitors are. Sonco attempts to benchmark its competitors' cost structures, both in terms of its conversion costs and perhaps, even more importantly, the cost of the steel that it uses.<sup>62</sup> Further, the witness for Sonco submitted that he advised Algoma and Dofasco, traditional suppliers to Sonco, that if they proceeded with certain price increases for April and May 1998, Sonco would begin to import hot-rolled steel sheet. By August, Sonco's orders to Algoma and Dofasco were reduced. In December 1998, at the same time as the arrival of additional low-priced imports, both Algoma and Dofasco reduced their prices to Sonco. It was submitted that these price reductions made these mills competitive with offshore prices, and Sonco resumed purchasing from domestic mills.<sup>63</sup>

The Tribunal observes that the volume of dumped imports purchased by Atlas in 1998 represents about half of the volume of dumped imports that entered the Canadian market in that year. In the Tribunal's view, the balance of approximately 500,000 net tons of dumped hot-rolled steel sheet also had an impact on the prices in the Canadian market, as these dumped imports found their way to end users such as automotive stampers, but more so to service centres and to other pipe and tube producers. The presence and availability of these low-priced dumped imports also caused the price erosion experienced by the domestic producers.

The average prices of hot-rolled steel sheet sold by domestic producers changed dramatically over the course of 1998 and into the first quarter of 1999. In the first half of 1998, prices were high and relatively stable, continuing on from the strong market in 1997. Against this backdrop of a strong market, there arose concerns from some end users about the industry's ability to meet their growing needs.<sup>64</sup> At the same time,

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57. *Transcript of In Camera Hearing*, Vol. 2, June 2, 1999, at 181.

58. Stelco owns Stelpipe Ltd. of Welland, Ontario, and a 40 percent ownership of Camrose Pipe Co. of Camrose, Alberta; Dofasco produces welded pipe and tubular steels; IPSCO produces hollow structural sections, line pipe, standard pipe, piling pipe, oil and gas tubing and casing; and Ispat produces some pipe and tube products as well.

59. *Transcript of Public Hearing*, Vol. 8, June 10, 1999, at 1260; and *Transcript of In Camera Hearing*, Vol. 8, June 10, 1999, at 788.

60. *Transcript of Public Hearing*, Vol. 6, June 8, 1999, at 869.

61. Manufacturer's Exhibit B-1 at 28, Administrative Record, Vol. 13.1; and *Transcript of Public Hearing*, Vol. 2, June 2, 1999, at 255.

62. *Transcript of Public Hearing*, Vol. 3, June 3, 1999, at 360.

63. Manufacturer's Exhibit C-5 at 2 and 3, Administrative Record, Vol. 13.2.

64. *Transcript of Public Hearing*, Vol. 2, June 2, 1999, at 292, and Vol. 6, June 6, 1999, at 984-86.

the market had discovered the Russian Federation as a source of low-priced steel, over 400,000 net tons in 1997. There were very low-priced subject goods being offered in the market and substantial orders were placed.<sup>65</sup> These dumped goods began appearing in increasing volumes in the second quarter of 1998. Their presence and the increasing volumes of such goods at falling prices put substantial pressure on the domestic industry to follow suit.

The full impact of the substantial quantities of dumped imports on prices in the market became apparent in the fourth quarter of 1998 and in the first quarter of 1999, as the domestic industry's production capacity utilization declined and as it was, at times, scrambling to fill its production schedule. The industry was able to resist the price pressure for a time. However, in the third quarter of 1998, with the beginning of the General Motors strike and the continuing softness of the oil country tubular goods market and certain other industries, the domestic industry, to feed its plants, began discounting the price of like goods and continued to do so through the first quarter of 1999 to meet the dumped import competition. In some instances, this reaction was too late, as end users and service centres had already purchased large volumes of the dumped product and were unwilling or unable to take on more inventory. This left the domestic industry, in the fourth quarter of 1998 and in the first quarter of 1999, chasing sales by severely discounting prices, to the point of selling below the dumped prices just to fill their plants.<sup>66</sup> This was made more difficult by the high levels of inventories already in the market.

In addition to a detailed analysis of the pipe and tube sector, the Tribunal examined and carefully considered the sales and penetration of dumped imports in the service centre and end-use sectors. Witnesses for Sollac, Francosteel and SlovCan testified that they are responsible marketers and that they attempt to price their steel at the prevailing price in the Canadian market.<sup>67</sup> Further, it was argued that the steel from France was destined for specific automotive customers that could not obtain supply from their traditional domestic sources. The Tribunal's review revealed that a large portion of these sales were, in fact, at prices below the prevailing prices of the domestic mills and that these low price levels affected the domestic producers' ability to maintain their prices to customers in these sectors.

As the Tribunal and its predecessors have noted before,<sup>68</sup> even where imports are simply meeting or tracking falling domestic prices, they are not entitled to "cross the line" into injurious dumping. The Tribunal is of the view that the volume of dumped imports from the named countries that made their way into the Canadian market to end users and service centres below Canadian prices is significant enough to influence the price of hot-rolled steel sheet in the market in general. Therefore, evidence which may suggest 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

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65. *Protected Pre-hearing Staff Report*, revised May 19, 1999, Tribunal Exhibit NQ-98-004-7A (protected), Administrative Record, Vol. 2A at .60-.63.

66. *Transcript of Public Hearing*, Vol. 7, June 9, 1999, at 1050.

67. Importer's Exhibit W-1 at 1, Administrative Record, Vol. 15.4; Importer's Exhibit I-2 at 2, Administrative Record, Vol. 15.1; and *Transcript of Public Hearing*, Vol. 6, June 8, 1999, at 851 and 859.

68. *Commercial Grade Sodium Carbonate, Commonly Known as Soda Ash, Originating in or Exported from the United States of America* (July 7, 1983), ADT-7-83 (A.D.T.) at 12.

dumped imports are not causing injury. There is evidence that the dumped prices of these products in the Canadian market have caused significant price erosion.<sup>69</sup>

Accordingly, the Tribunal concludes that the material injury suffered by the domestic industry in the form of price erosion was caused primarily by the low prices at which dumped imports were being sold in the Canadian market. Further, this price erosion accounts for a significant part<sup>70</sup> of the financial losses incurred by the domestic producers of hot-rolled steel sheet.

### Other Factors

The Tribunal notes that counsel for the importers, for the exporters and for certain users of hot-rolled steel sheet argued that certain factors other than the dumping have caused the injury suffered by the domestic producers.

First, the Tribunal addressed the prices and volumes of imports of hot-rolled steel sheet from non-subject countries. Counsel argued that, during the period of investigation, the prices of hot-rolled steel sheet from non-subject countries were often below the prevailing prices of domestic product.<sup>71</sup> Counsel suggested that, if there is any connection to Canadian price levels, that connection is by far closer to US and non-subject products than to products of the subject countries. Counsel also noted that the average US prices in the second, third and fourth quarters of 1998 were below the average prices of the Canadian mills. Indeed, in the fourth quarter of 1998, the average US price was \$59 per net ton lower than the average Canadian price. Counsel claimed that imports from non-subject countries were responsible for any price erosion suffered by domestic producers. The Tribunal notes that much of the volume of imports from non-subject countries was destined for the service centre sector and, to a lesser extent, to the pipe and tube sector,<sup>72</sup> but there is no evidence that these imports were leading the prices down. Moreover, there is no evidence that these imports were dumped. The Tribunal observes that the imports from the named countries were the main cause of the price erosion suffered by the domestic producers and that imports of hot-rolled steel sheet from non-subject countries were similarly affected.

Finally, the Tribunal heard argument that the real causes of the price pressures and declines felt in the Canadian market were the developments in the world market for steel. Witnesses also referred to the “world spot price” of hot-rolled coil and to the fact that Canadian prices were bound to follow world prices.<sup>73</sup> In this connection, the evidence shows that, since the third and fourth quarters of 1996, world prices for hot-rolled coil remained relatively stable until the last quarter of 1997 and have been on a steady downward trend since that time.<sup>74</sup> The Tribunal notes that price trends in one part of the world influence prices in other

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69. *Protected Pre-hearing Staff Report*, revised June 1, 1999, Tribunal Exhibit NQ-98-004-7D (protected), Administrative Record, Vol. 2A at .148-.157, and revised May 5, 1999, Tribunal Exhibit NQ-98-004-7A (protected), Administrative Record, Vol. 2A at .90-91.

70. The Tribunal recognizes that there were other factors, such as Algoma’s struggles with its DSPC line, that had some influence on the industry’s overall financial performance.

71. *Transcript of Public Argument*, June 11, 1999, at 154-56.

72. *Protected Pre-hearing Staff Report*, revised June 1, 1999, Tribunal Exhibit NQ-98-004-7D (protected), Administrative Record, Vol. 2A at .147.

73. *Transcript of Public Hearing*, Vol. 2, June 2, 1999, at 262.

74. *Protected Pre-hearing Staff Report*, April 19, 1999, Tribunal Exhibit NQ-98-004-7 (protected), Administrative Record, Vol. 2 at 156; and *Transcript of Public Hearing*, Vol. 3, June 3, 1999, at 444.

parts of the world.<sup>75</sup> The evidence also shows that, over the period of this inquiry, average Canadian prices declined significantly in conjunction with the decline in world prices. It is evident to the Tribunal that the Canadian market is not and cannot be insulated from world price pressures. However, to the extent that foreign producers sell hot-rolled steel sheet in the Canadian market at low dumped prices and to the extent that it is determined that the exports are causing injury to the domestic industry, as the Tribunal has found in this instance, the explanation that the low prices of hot-rolled steel sheet sold in Canada were caused by “low world prices” is of no significance in the context of SIMA.

For the foregoing reasons, the Tribunal finds that the dumping of certain hot-rolled steel sheet has caused material injury to the domestic industry.

### **MASSIVE IMPORTATION**

Counsel for the domestic producers submitted that, in addition to finding injury or threat of injury, the Tribunal should also make a finding of massive importation. Paragraph 42(1)(b) of SIMA, counsel argued, allows for such a finding where importations of the subject goods are considerable or where the importer of the goods is aware or should be aware that the exporter was dumping and causing injury, and where such importations are massive or form part of a series of importations which, in the aggregate, are massive and have occurred within a relatively short period of time.

Counsel for the domestic industry pointed out that, between 1996 and 1998, imports of the subject goods grew from 4 percent of the market in 1996 to 17 percent of the market in 1998, a four-fold increase in volume.<sup>76</sup> Furthermore, they indicated that imports of the subject goods went from 28 percent of all imports in the first quarter of 1998 to 75 percent of all imports in the last quarter of 1998. Counsel indicated that of critical importance in these numbers was the huge volume of Russian subject goods which entered Canada between April and November 1998.<sup>77</sup> In their estimation, the fact that 1 million net tons of the subject goods were imported into Canada in 1998 is considered massive importation.

Moreover, counsel for the domestic industry noted that the trading companies that imported the dumped goods were aware or should have been aware that these goods were being dumped and were causing injury to the domestic industry, as these companies are sophisticated operators that understand the relationship between the pricing and the volume of the products that they import. Furthermore, counsel noted that some end users built up such large inventories of dumped product that they were unable to take possession of their orders from the domestic producers. Finally, counsel indicated that significant volumes of hot-rolled steel sheet from the named countries were being sold into all the market segments in significant volumes.

Counsel for Thyssen pointed out that its witnesses testified that they were unaware of whether the goods were dumped and, in some cases, of the ultimate use of the subject goods. They also indicated that they have always acted as responsible marketers and seek to provide their customers with the goods that they need, but which are unavailable. Counsel for the importers, for the exporters and for certain end users submitted that, in order to secure offshore supplies, Atlas and Bolton, in particular, had to order the subject

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75. *Transcript of Public Hearing*, Vol. 2, June 2, 1999, at 229, 255 and 256.

76. Manufacturer's Exhibit A-1 at 85, Administrative Record, Vol. 13. See, also, *Protected Pre-hearing Staff Report*, revised May 19, 1999, Tribunal Exhibit NQ-98-004-7D (protected), Administrative Record, Vol. 2A at .17.

77. Manufacturer's Exhibit A-1 at 86, Administrative Record, Vol. 13.

goods some two to four months prior to receiving them, in this case in April and June 1998, some six months prior to the initiation by the Deputy Minister of the investigation in December 1998. These shipments of the subject goods happened to arrive in Canada in the last two quarters of 1998. Counsel concluded that there was no evidence pointing to the massive importation of the subject goods.

The Tribunal notes that the witnesses for Thyssen testified that they were unaware that the subject goods that they imported were being dumped. There is no evidence which would indicate that Thyssen and other importers were aware or should have been aware that the subject goods were being dumped. In addition, there is no evidence to suggest that Thyssen and other importers had knowledge or were aware that the dumping of the subject goods would cause injury to the domestic industry. The Tribunal is not convinced that Thyssen, which accounted for the vast majority of the increase in imports in 1998, was aware or should have been aware that the subject goods that it imported were dumped and that they caused injury.

The Tribunal accepts that some of the domestic producers had suggested to certain end users that they seek offshore supplies. This is, in effect, what Atlas and Bolton did by securing offshore supplies of the subject goods in the amounts needed through their trader, Thyssen. Furthermore, the Tribunal believes that the reason for the large inventory by Atlas and Bolton is due to the fact that they were unable to secure a steady supply of hot-rolled steel sheet from domestic producers and required product for their winter program.

Finally, based on the evidence, the Tribunal notes that the imports of subject goods did not occur within a relatively short period of time. In fact, the series of importations involved in this case occurred over the last three quarters of 1998. Thus, the Tribunal is not persuaded that importers and others were importing the subject goods prior to the preliminary determination of dumping in order to avoid paying provisional duties.

In light of the foregoing, the Tribunal finds that the requirements for making a finding of massive importation have not been met and that it is not necessary to take action under paragraph 42(1)(b) of SIMA to prevent the recurrence of injury.

## **REQUESTS FOR EXCLUSIONS**

As noted earlier, counsel for the importers, for the exporters and for certain end users requested product and country exclusions. In one case, the domestic producers agreed to an exclusion for a particular product. The Tribunal notes that it is within its discretion to grant exclusions.<sup>78</sup> It has, in the past, granted product and country exclusions.

### **Product Exclusions**

#### Automotive End Use

Counsel for the importers, for the exporters and for certain end users<sup>79</sup> requested an exclusion for hot-rolled steel sheet originating or exported from France for automotive end uses on the basis that the product is, at times, in short supply from the domestic producers. Furthermore, counsel for the importers and for the exporters submitted that the French product meets the needs and specifications of the automotive end users.

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78. See, for example, *Sacilor Acières v. The Anti-dumping Tribunal* (1985), 9 C.E.R. 210 (C. A.).

79. Those requesting the exclusion were: Francosteel, Sollac, Maksteel and certain automotive stampers, namely, Magna International Inc., Titan Tool & Die Ltd., A.G. Simpson, National Auto Radiator Mfg. Co. Ltd. and Krupp Fabco.



Counsel for the domestic producers objected to the exclusion on the grounds that domestic producers manufacture like goods to the subject goods and that these goods are available from the domestic producers. Furthermore, counsel submitted that the subject goods compete directly with the domestically produced goods.

In the past, the Tribunal has granted product exclusions in exceptional circumstances when, for instance, the domestic industry does not produce the particular product.<sup>80</sup> The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods,<sup>81</sup> whether the domestic industry is an “active supplier” of the product or whether it normally produces the product.<sup>82</sup>

Based on the evidence and testimony, the Tribunal notes that the hot-rolled steel sheet products produced by the domestic industry are “like goods” to the subject goods. Moreover, the evidence clearly shows that the domestic goods are substitutable for the subject goods and that they compete directly with the subject goods. The exporters and importers admit that the reason for requesting an exclusion is to ensure an adequate supply of hot-rolled steel sheet when there is a short supply of domestically produced goods. The Tribunal does not find this latter argument to be persuasive.

As it noted in *Certain Corrosion-resistant Steel Sheet Products*,<sup>83</sup> a request for exclusion was made by an end user for a particular type of galvanized steel imported from the United States on the basis that it was not able to obtain the product in Canada in the volumes that it wished because of the domestic mills’ minimum purchase quantity requirements. The Tribunal concluded that the request for exclusion should not be granted, on the basis that the product is produced and available in Canada. It was also of the view that it could not grant a product exclusion to a single end user on the basis that the domestic industry would not supply the product in minimal quantities.

Therefore, the Tribunal is of the opinion that the request for exclusion should not be granted, on the basis that there may be an inadequate supply or a short supply of like goods from domestic producers, simply because exporters and importers have expressed such a concern. Furthermore, the evidence shows that the domestic industry can and does produce the product and makes it available. Based on the foregoing, the Tribunal rejects this request for exclusion for automotive end use.

#### Manufacture of Pipe and Tube

Counsel for Thyssen, Atlas and Bolton requested a product exclusion for hot-rolled steel sheet imported by Thyssen for use by Atlas and Bolton solely in the manufacture of pipe and tube. In the event that the Tribunal were not to grant this exclusion, counsel submitted two alternative requests for exclusions. In the first alternative, the request for exclusion was for certain hot-rolled steel sheet imported by Thyssen for use by Atlas and Bolton solely in the manufacture of hollow structural steel tubing. In the second alternative, the exclusion was for certain hot-rolled steel sheet as defined by specifications and limitations as amended with respect to low sulphur to read “.025.” max. and to be further restricted to widths of 47 in. to 55 in.

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80. See, for example, *Certain Corrosion-resistant Steel Sheet Products*, *supra* note 26. See, also, *Stainless Steel Round Bar*, *supra* note 30.

81. See, for example, *Machine Tufted Carpeting Originating in or Exported from the United States of America*, *Finding* (April 21, 1992), *Statement of Reasons* (May 6, 1992), NQ-91-006 (C.I.T.T.). See, also, *Stainless Steel Round Bar*, *supra* note 30.

82. *Stainless Steel Round Bar*, *ibid.*

83. See *supra* note 26 at 41.

imported by Thyssen for use by Atlas and Bolton solely in the manufacture of hollow structural steel tubing.<sup>84</sup>

Counsel for the domestic producers objected to all three requests for exclusions on the grounds that domestic producers manufacture like goods and that the subject goods compete directly with the like goods. Counsel also submitted that the products for which the exclusion was requested were not unique or special nor did they fill a particular market niche.

The witness for Atlas explained that the request for exclusion was based on the fact that his company purchases “skelp” with specific chemical properties of carbon, sulphur and manganese content, as well as steel of very precise widths and thicknesses, which help in the galvanizing and welding processes.<sup>85</sup> When asked by counsel for the domestic producers if the products for which the request for exclusion was made could be used for a multitude of applications other than for pipe and tube end uses, the witness for Atlas admitted that the products could be used for a limited number of other applications.<sup>86</sup>

The evidence shows that the domestic industry produces and sells like goods to the hot-rolled steel sheet for which the exclusion is requested. Moreover, the evidence and testimony indicate that the products for which the request for exclusion was made are the subject goods which could be used for applications other than solely in the manufacture of pipe and tube. The Tribunal also notes that the products for which the exclusion was requested do not fill a market niche, are not unique or special and compete directly with domestically produced like goods. The evidence shows that the dumped subject goods used by pipe and tube producers made up a significant part of the market. Furthermore, the evidence shows that the margins of dumping of the subject goods were high, which, in the Tribunal’s opinion, had a major impact on the prices of like goods in Canada. In light of the foregoing, the Tribunal rejects this request for exclusion and the alternative requests.

#### Other

Le Groupe Canan Manac Inc. (Manac) also made a specific request for exclusion for flat hot-rolled steel sheet A715, grade 80F, in 52-in. and 54-in. widths for the manufacture of trailer hitches.<sup>87</sup> In its submission, Manac admitted that, while some domestic producers can manufacture the specific flat hot-rolled steel sheet for which it seeks an exclusion, only Dofasco currently produces the like goods and has, in fact, supplied Manac with some 150 tonnes. Manac stated, in its submission, that the tonnage was insufficient to meet its current needs and that Dofasco could not supply it with the quantities that it needed. Manac asks that flat hot-rolled steel sheet, grade 80F, be exempt from the injury finding or that it be allowed to purchase the subject goods until such time as domestic producers are able to produce like goods and able to guarantee the supply to meet its needs.

In response, counsel for the domestic producers objected to the request for exclusion on the basis that the domestic producers can manufacture and have manufactured the same grade of like goods.

The evidence shows that some domestic producers can supply and have supplied hot-rolled steel sheet to Manac in the past. In addition, there is no evidence that the subject goods are, in any material way,

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84. Importer’s Exhibit H-32, Administrative Record, Vol. 15.

85. *Transcript of Public Hearing*, Vol. 6, June 8, 1999, at 952.

86. *Transcript of Public Hearing*, Vol. 7, June 9, 1999, at 1062.

87. Tribunal Exhibit NQ-98-004-47, Administrative Record, Vol. 1B at 124.

different from the domestic flat hot-rolled steel sheet and that these products do not compete with one another. As in *Certain Corrosion-resistant Steel Sheet Products*,<sup>88</sup> the Tribunal is not persuaded that an exclusion should be granted on the basis that Manac may not be able to obtain the product in Canada in the volumes that it wishes. For these reasons, the Tribunal rejects this request for exclusion.

Finally, the Tribunal finds persuasive the evidence relating to the request for an exclusion from Creusot-Loire Industrie for flat hot-rolled cut-to-length alloy steel products containing no less than 11.5 percent manganese, in thicknesses from 3 mm to 4.75 mm. The Tribunal notes that the domestic industry agreed to this request for exclusion.<sup>89</sup> In accordance with its previous practice with respect to such agreements, the Tribunal will only act upon them if they are supported by cogent evidence on the record.<sup>90</sup> Creusot-Loire Industrie and its Canadian distributor<sup>91</sup> indicated in their submissions that the goods are not produced in Canada or North America. The Tribunal notes that this assertion was not challenged by the domestic producers. Further, Creusot-Loire Industrie argued that the goods are sold to only one Canadian distributor and in very small quantities.

Based on the foregoing, the Tribunal grants an exclusion for flat hot-rolled cut-to-length alloy steel products containing no less than 11.5 percent manganese and in thicknesses from 3 mm to 4.75 mm from any source.

### **Country Exclusions**

The Tribunal received requests for exclusions for France, Romania and the Slovak Republic on the basis that there was no evidence that their imports had caused and were threatening to cause material injury to the domestic industry. As noted earlier, the Tribunal considers the overall cumulative effects of the dumped imports in its injury analysis on the domestic industry.

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 nearly all the hot-rolled steel sheet products originating in or exported from France and 100 percent of the hot-rolled steel sheet products originating in or exported from Romania and the Slovak Republic were found to be dumped. The Tribunal also notes that the weighted average margins of dumping for these three countries ranged from 12 to 42 percent, which, in the Tribunal's view, had a significant impact on the prices of like goods in Canada.<sup>92</sup> For these reasons, the Tribunal will not grant these requests for country exclusions.

### **CONCLUSION**

For the reasons stated above, the Tribunal concludes that the dumping in Canada of certain hot-rolled steel sheet products originating in or exported from France, Romania, the Russian Federation and

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88. *Supra* note 26 at 41.

89. Importer's Exhibit V-4, Administrative Record, Vol. 15.4.

90. See *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, Finding* (May 6, 1993), *Statement of Reasons* (May 21, 1993), NQ-92-007 (C.I.T.T.).

91. The Canadian distributor of the subject goods is Titus Steel Company Limited.

92. Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, June 1, 1999, Tribunal Exhibit NQ-98-004-4, Administrative Record, Vol. 1 at 99.40.

the Slovak Republic has caused material injury to the production in Canada of like goods, excluding flat hot-rolled, cut-to-length alloy steel products containing no less than 11.5 percent manganese, in thicknesses from 3 mm to 4.75 mm.

The Tribunal also finds that the requirements of paragraph 42(1)(b) of SIMA with respect to massive importation have not been met.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Peter F. Thalheimer  
Peter F. Thalheimer  
Member

Richard Lafontaine  
Richard Lafontaine  
Member