



Ottawa, Friday, August 27, 1999

Inquiry No.: NQ-99-001

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

**CERTAIN COLD-ROLLED STEEL SHEET PRODUCTS ORIGINATING IN
OR EXPORTED FROM ARGENTINA, BELGIUM, NEW ZEALAND, THE
RUSSIAN FEDERATION, THE SLOVAK REPUBLIC, SPAIN AND TURKEY**

FINDINGS

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 April 29, 1999, and of a final determination dated July 28, 1999, respecting the dumping in Canada of cold-reduced flat-rolled sheet products of carbon steel (including high-strength low-alloy steel), in coils or cut lengths (not painted, clad, plated or coated), in widths up to and including 80 in. (2,032 mm) and in thicknesses from 0.014 in. to 0.142 in. (0.35 mm to 3.61 mm) inclusive, originating in or exported from Argentina, Belgium, New Zealand, the Russian Federation, the Slovak Republic, Spain and Turkey.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds:

- (a) that the dumping in Canada of the aforementioned goods originating in or exported from New Zealand and Spain has not caused and is not threatening to cause material injury to the domestic industry;
- (b) that the dumping in Canada of the aforementioned goods originating in or exported from Argentina, Belgium, the Russian Federation, the Slovak Republic and Turkey has not caused material injury to the domestic industry; and
- (c) that, with respect to the dumping in Canada of the aforementioned goods originating in or exported from Argentina, Belgium, the Russian Federation, the Slovak Republic and Turkey, the dumping of the goods from these countries is threatening to cause material injury to the domestic industry, with the exclusion of the dumping of the goods from Argentina.

Patricia M. Close
Patricia M. Close
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: July 26 to 30, 1999
Date of Findings: August 27, 1999

Tribunal: Patricia M. Close, Presiding Member
Peter F. Thalheimer, Member
Richard Lafontaine, Member

Director of Research: Sandy Greig

Research Manager: Daryl Poirier

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Economist: Ihn Ho Uhm

Statisticians: Joël J. Joyal
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Warren J. Sheffer
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John W. Boscarior
Sven M. Spengemann
for Stelco Inc.

Ronald C. Cheng
Benjamin P. Bedard
for Ispat Sidbec Inc.

(Domestic Manufacturers)

Simon V. Potter
Denis Gascon
Dominic Gourgues
for Aciers Francosteel Canada Inc.
Sollac, Aciers d'Usinor

C.J. Michael Flavell, Q.C.
Geoffrey C. Kubrick
Yasir A. Naqvi
Martin Reesink
for Borçelik Çelik Sanayii Ticaret A.S.

Richard S. Gottlieb
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BHP New Zealand Steel Limited
TradeARBED Canada Inc.
BHP Steel Canada Inc.
JSC Severstal

Peter Clark
Gordon LaFortune
Chris Hines
Sean Clark
for Magna International Inc.
The Narmco Group
Krupp Fabco
Maksteel Inc.
Titan Tool & Die Limited
Karmax Heavy Stamping
A.G. Simpson Automotive Inc.

Peter A. Magnus
James D. McAnsh
for SlovCan Steel Limited

(Importers/Exporters/Others)



Ottawa, Monday, September 13, 1999

Inquiry No.: NQ-99-001

**CERTAIN COLD-ROLLED STEEL SHEET PRODUCTS ORIGINATING IN
OR EXPORTED FROM ARGENTINA, BELGIUM, NEW ZEALAND, THE
RUSSIAN FEDERATION, THE SLOVAK REPUBLIC, SPAIN AND TURKEY**

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

DECISION: The Canadian International Trade Tribunal hereby finds:

- (a) that the dumping in Canada of the aforementioned goods originating in or exported from New Zealand and Spain has not caused and is not threatening to cause material injury to the domestic industry;
- (b) that the dumping in Canada of the aforementioned goods originating in or exported from Argentina, Belgium, the Russian Federation, the Slovak Republic and Turkey has not caused material injury to the domestic industry; and
- (c) that, with respect to the dumping in Canada of the aforementioned goods originating in or exported from Argentina, Belgium, the Russian Federation, the Slovak Republic and Turkey, the dumping of the goods from these countries is threatening to cause material injury to the domestic industry, with the exclusion of the dumping of the goods from Argentina.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	July 26 to 30, 1999
Date of Findings:	August 27, 1999
Date of Reasons:	September 13, 1999
Tribunal:	Patricia M. Close, Presiding Member Peter F. Thalheimer, Member Richard Lafontaine, Member
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Economist:	Ihn Ho Uhm
Statisticians:	Joël J. Joyal Julie Charlebois Nynon Pelland Lise Lacombe

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BHP New Zealand Steel Limited
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BHP Steel Canada Inc.
JSC Severstal

Peter Clark
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Sean Clark
for Magna International Inc.
The Narmco Group
Krupp Fabco
Maksteel Inc.
Titan Tool & Die Limited
Karmax Heavy Stamping
A.G. Simpson Automotive Inc.

Peter A. Magnus
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for SlovCan Steel Limited

(Importers/Exporters/Others)

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Stelco Inc.

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Ottawa, Monday, September 13, 1999

Inquiry No.: NQ-99-001

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

**CERTAIN COLD-ROLLED STEEL SHEET PRODUCTS ORIGINATING IN
OR EXPORTED FROM ARGENTINA, BELGIUM, NEW ZEALAND, THE
RUSSIAN FEDERATION, THE SLOVAK REPUBLIC, SPAIN AND TURKEY**

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member
PETER F. THALHEIMER, Member
RICHARD LAFONTAINE, Member

STATEMENT OF REASONS

BACKGROUND

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry following the issuance by the Deputy Minister of National Revenue (the Deputy Minister) of a preliminary determination² dated April 29, 1999, and of a final determination³ dated July 28, 1999, respecting the dumping in Canada of certain cold-rolled steel sheet products (hereinafter referred to as cold-rolled steel sheet products) originating in or exported from Argentina, Belgium, New Zealand, the Russian Federation, the Slovak Republic, Spain and Turkey.

On April 29, 1999, the Tribunal issued a notice of commencement of inquiry.⁴ The notice invited persons to notify the Tribunal by May 19, 1999, whether they intended to make representations on the question of public interest if the Tribunal made a finding of material injury or threat of material injury. No requests to make representations on the public interest question were received.

As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian manufacturers, importers, purchasers and foreign manufacturers of cold-rolled steel sheet products. Respondents provided production, financial, import, export, sales, pricing and market information, as well as other information relating to cold-rolled steel sheet products for the years from 1996 to 1998. In some questions, information was requested on a quarterly basis for 1998 and for the first quarter of 1999. Production and capacity data were also requested for 1995, and additional import data were requested for the period from November 1, 1997, to October 31, 1998. From replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports. Parties submitted, and replied to, requests for information with respect to matters relevant to the inquiry, in accordance with directions from the Tribunal.

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1. R.S.C. 1985, c. S-15 [hereinafter SIMA].
 2. C. Gaz. 1999.I.1351.
 3. C. Gaz. 1999.I.2344.
 4. C. Gaz. 1999.I.1268.

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 July 26 to 30, 1999. Three of the four domestic producers of cold-rolled steel sheet products were represented by counsel at the hearing. Certain foreign manufacturers, importers and users of cold-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 end users of cold-rolled steel sheet products.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION

On December 10, 1998, Dofasco Inc. (Dofasco), Ispat Sidbec Inc. (Ispat) and Stelco Inc. (Stelco) filed a complaint concerning the alleged injurious dumping of cold-rolled steel sheet products originating in or exported from Argentina, Belgium, New Zealand, the Russian Federation, the Slovak Republic, Spain and Turkey. The only other Canadian producer, Algoma Steel Inc. (Algoma), filed a letter with the Department of National Revenue (Revenue Canada) supporting the industry's complaint. On December 31, 1998, Revenue Canada informed the complainants that the complaint was properly documented and notified the named countries that a complaint had been filed. The Deputy Minister's investigation into this matter covered imports of cold-rolled steel sheet products from November 1, 1997, to October 31, 1998.

Before making a final determination of dumping, the Deputy Minister must be satisfied that the actual or potential volumes of the dumped goods are not negligible. If the volume of dumped goods of a country is less than 3 percent of the total volume of the goods of the same description that are imported into Canada from all countries, the volume is considered to be negligible. However, if there are three or more countries, each of whose dumped goods represent less than 3 percent of total imports, but which collectively represent more than 7 percent of the total imports into Canada, the imports of these countries are not considered to be negligible.

On July 28, 1999, the Deputy Minister made a final determination of dumping. The Deputy Minister found that imports of dumped goods from Belgium, the Russian Federation and the Slovak Republic exceeded the 3 percent negligibility threshold. Dumped goods, however, from each of the remaining four countries, Argentina, New Zealand, Spain and Turkey, were below the 3 percent threshold, but collectively accounted for 8.28 percent of imports. Accordingly, none of the dumped imports from the named countries were considered to have been of negligible quantities. The investigation revealed that most of the subject goods that entered Canada during the period of investigation were dumped, with weighted average margins of dumping ranging from 7 to 29 percent.⁵

5. The weighted average margins of dumping for each country/exporter were: Argentina (all exporters) - 29 percent, Belgium (Sidmar N.V.) - 7 percent, New Zealand (BHP New Zealand Steel Limited) - 29 percent, the Russian Federation (all exporters) - 29 percent, the Slovak Republic (VSZ Holding, a.s.) - 24 percent, Spain (Sollac, Aciers d'Usinor) - 13 percent, Turkey (Borçelik Çelik Sanayii Ticaret A.S.) - 10 percent, Turkey (all other exporters) - 29 percent, all other exporters in the named countries - 29 percent.

PRODUCTS

Product Definition and Description

The products that are the subject of the Tribunal's inquiry are defined as:

cold-reduced flat-rolled sheet products of carbon steel (including high-strength low-alloy steel), in coils or cut lengths (not painted, clad, plated or coated), in widths up to and including 80 inches (2,032 mm) and in thicknesses from 0.014 inches to 0.142 inches (0.35 mm to 3.61 mm) inclusive, originating in or exported from Argentina, Belgium, New Zealand, the Russian Federation, the Slovak Republic, Spain and Turkey.⁶

The cold-rolled steel sheet products subject to this inquiry include products in coil form and products cut from a coil, including cut lengths from slit coils, having a square or rectangular shape, regardless of whether the products are referred to as blanks.⁷

Cold-rolled steel sheet is normally produced to an ASTM standard or some other international standard or to a proprietary specification. The following types of cold-rolled steel are illustrative of the types of products that meet the above-noted definition:

- commercial quality (CQ) steel (ASTM A366/A366M);
- sheet for porcelain enameling (ASTM A424/A424M, Type 1);
- structural (physical) steel (ASTM A611/A611M);
- drawing quality steel (ASTM A620/A620M, formerly ASTM A619/A619M and A620/A620M);
- deep drawing steel - special killed (ASTM A963/A963M, formerly A620/A620M);
- extra deep drawing quality sheet/interstice free (ASTM A969/A969M, formerly A620/A620M);
- intermediate temper;
- full hard temper; and
- high-strength low-alloy steel, including:
 - ASTM A606;
 - ASTM A607/A607M, Class 1, Type 1 or equivalent;
 - ASTM A607/A607M, Class 2, Type 1 or equivalent; and
 - ASTM A715.

Cold-rolled steel strip made to ASTM A109/A109M, A682/A682M and A684/A684M specifications is not part of the product definition. These specifications cover cold-rolled carbon strip in cut lengths or coils which is finished to closer tolerances than cold-rolled carbon steel sheets, which has a specific temper, edge and finish and a maximum thickness of 0.2499 in. (6 mm) and which comes in widths from 1/2 in. (12.5 mm) to 23 15/16 in. (600 mm).

Manufacturing Process

Cold-rolled steel sheet is produced from hot-rolled pickled and oiled coils. Hot-rolled coil is produced by rolling an incoming 100- to 225-mm thick hot slab on a continuous strip mill. This slab is

6. Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, July 28, 1999, Tribunal Exhibit NQ-99-001-4, Administrative Record, Vol. 1 at 104.5.

7. According to the industry, the word "blanks" in this context refers to rectangular pieces, or sheets, of steel which may be used for any application. *Transcript of In Camera Hearing*, Vol. 1, July 26, 1999, at 112.

progressively reduced to a coil of the required sheet thickness. This coil is then “cold-rolled” by subjecting it to a cold reduction process on a continuous or reversing mill under tension and pressure. After cold reduction, the steel is in a highly strained condition and possesses very little ductility. It is said to be “full hard”. The amount of cold reduction varies between 40 and 80 percent. Usually, the steel is annealed at temperatures above 650°C (1200°F) to recrystallize the highly stressed grains in the steel. The resultant product is very soft and ductile. It is then classified as being in a “dead soft” condition.

After the sheet is annealed, it is normally temper rolled. This process extends the strip by up to 1 percent in length. This process improves the shape of the steel sheet and gives it a proper surface finish. Temper rolling also reduces the tendency of the sheet to flute and/or undergo stretcher strain during fabrication.

Cold-rolled steel sheet is generally produced in matte, tubular bright and commercial bright finishes. Matte, the most common finish, is produced by temper rolling the cold-rolled sheet with rolls which have been roughened by mechanical or chemical means to various degrees of surface texture. Tubular bright is a moderately bright finish produced on ground rolls. It is primarily intended to be used in the manufacture of tubing. Tubular bright is not suitable for plating. The commercial bright finish is attained by temper rolling the cold-rolled sheet on smooth ground rolls. With additional surface preparation, the commercial bright finish can be used for plating.

Product Uses

Some of the more common end products manufactured from cold-rolled steel sheet include household appliances, automotive and truck parts, drums and pails, tubing, strapping and office furniture. Cold-rolled sheet is also used as a substrate in the production of corrosion-resistant steel and tin plate.

DOMESTIC PRODUCERS

There are four Canadian producers of cold-rolled steel sheet products: Dofasco of Hamilton, Ontario; Stelco of Hamilton; Ispat of Montréal, Quebec; and Algoma of Sault Ste. Marie, Ontario.

Dofasco

Dofasco is an integrated steel maker and the largest domestic producer of cold-rolled steel sheet products. Dofasco’s integrated steelmaking facilities are located in Hamilton. Products manufactured by Dofasco and its several steel-related joint ventures include: flat-rolled sheets (both hot-rolled and cold-rolled); galvanized and Galvalume® steel; pre-painted steel; tin plate; and chromium-coated steel, in coils, cut lengths and strip. As well, the firm produces welded pipe and tubular steel.

Dofasco’s centralized sales force, located in Hamilton, sells directly to major end users and independent consumer and industrial product manufacturers in the automotive, construction, pipe and tube, consumer and industrial packaging and manufacturing market segments.

Stelco

Stelco is an integrated steel maker and the second largest producer of cold-rolled steel sheet products in Canada. Stelco’s cold-rolling facilities, located at its Hilton Works in Hamilton, consist of two tandem mills: a five-stand mill built in 1948 and a four-stand mill built in 1967. These facilities have

been modernized to meet the increasingly stringent requirements of several of Stelco's customer groups, especially those in the automotive sector.

Stelco maintains a significant sales force, including both outside sales and inside sales representatives supported by a sales management team.

Ispat

Ispat is the third largest producer of cold-rolled steel sheet products in Canada. It is wholly owned by Ispat International N.V., Rotterdam, Netherlands.

The company consists of five strategic business units: Primary Operations, Wire Rod, Bars and Shapes, Flat-rolled Products and Pipes. Using steel produced by its Primary Operations unit in Contrecoeur, Quebec, it manufactures both hot-rolled and cold-rolled steel sheet, among other products, at that same facility.

Algoma

Algoma is a vertically integrated primary iron and steel producer. It is the smallest producer of cold-rolled steel sheet products in Canada.

Algoma is approximately 26 percent employee owned, with the remaining shares held by other investors. It sells its cold-rolled steel sheet products directly to end users and steel service centres.

EXPORTERS

Responses to the Tribunal's foreign manufacturer's questionnaire were received from: Borçelik Çelik Sanayii Ticaret A.S. (Borçelik) and Ereğli Iron and Steel Works Co. (Ereğli) of Turkey; Sollac, Aciers d'Usinor (Sollac) of Spain; Sidmar N.V. (Sidmar) of Belgium; Siderar S.A.I.C. (Siderar) of Argentina; BHP New Zealand Steel Limited of New Zealand (BHP-NZ); VSZ Holding, a.s. (VSZ) of the Slovak Republic; and JCS Severstal (Severstal) of the Russian Federation. With the exception of Ereğli and VSZ, each of the exporters was represented at the hearing.

These firms may be grouped in three size ranges, in terms of practical production capacity. The largest are Sidmar and Severstal. Sidmar is largely owned by ARBED S.A. of Luxembourg, which produces about 20 million net tons of crude steel a year and is one of the four largest steel groups in the world. Since 1995, Sidstahl N.V. has been the umbrella sales organization of Sidmar's flat products sector. Sidstahl N.V. cooperates with the worldwide TradeARBED network in its major export markets. Severstal is a publicly owned Russian steel maker. The firm sells its cold-rolled steel exports to trading companies in Canada, which act either as the importers of record or as intermediaries between Severstal and the importers of record.

VSZ, Siderar and Ereğli fall in the mid-size range. VSZ produces a wide variety of flat hot-rolled and cold-rolled steel products. Exports account for 79 percent of its total sales. Sales to Canada are to trading companies. Siderar is the largest steel company in Argentina, producing about 2 million net tons of steel annually. Its sales to Canada are made directly or through trading companies. Ereğli, the only integrated flat steel producer in Turkey, currently has the capacity to produce 3.3 million net tons of flat steel products annually. Ereğli exports mostly through trading companies. It does not deal directly with importers or end users.

The other producers are smaller in terms of capacity. Siderurgica del Mediterraneo, S.A. (Sidmed) in Spain produces the cold-rolled steel sheet products that Sollac exports to Canada. Sollac, a subsidiary of Usinor, is one of Europe's leading producers of flat-rolled products and has an interest in Sidmed. Borçelik is the only privately owned cold rolling mill in Turkey. With a capacity of 350,000 net tons of cold-rolled production, Borçelik buys its hot-rolled steel from Sollac and Ereğli. The firm exports about 30 percent of its production, selling to importers in Canada that have pre-sold the steel to end users and/or service centres. BHP-NZ is a fully integrated iron and steel works. As a small mill, BHP-NZ looks to supply small- to medium-size service centres and end users. Its product is not suitable for automotive end use.

IMPORTERS

Many firms import cold-rolled steel sheet products into Canada. Of this group, Aciers Francosteel Canada Inc. (Francosteel), BHP Steel Canada Inc. (BHP Canada), SloVCan Steel Limited (SloVCan) and TradeARBED Canada Inc. (TradeARBED Canada) accounted for a considerable majority of the imports from Argentina, New Zealand, Belgium, the Slovak Republic, Spain and Turkey. These importers were represented at the hearing. The majority of the imports from the Russian Federation were brought in by Klockner Steel Trade Corporation, Salzgitter Trade, Inc. and Thyssen Canada Limited. These importers were not represented at the hearing.

Francosteel is owned by Sollac, which is part of Usinor. The firm is a steel trader. Imports are pre-sold and shipped directly to customers. BHP Canada is owned by The Broken Hill Proprietary Company Ltd. of Melbourne, Australia. It has been importing steel into the west coast of Canada since 1988. SloVCan is the exclusive representative of VSZ Kosice of the Slovak Republic. SloVCan distributes steel directly to service centres in Canada. TradeARBED is owned by ARBED Americas Inc. of New York, which, in turn, is part of ARBED S.A. of Luxembourg. TradeARBED acts as a sales agent for ARBED and also trades steel imported from non-related mills or suppliers.

MARKETING AND DISTRIBUTION

Cold-rolled steel sheet products may be sold directly to end users or through steel service centres. A substantial portion of Canadian mill shipments of cold-rolled steel sheet products is marketed through steel service centres which stock standard sizes for resale in smaller quantities to end users. As well, service centres offer custom cutting, slitting and warehouse services. The balance of Canadian mill shipments goes directly to end users throughout Canada, including the automotive stampers. Several automotive stampers, Karmax Heavy Stamping, Magna International Inc., The Narmco Group, Krupp Fabco, Titan Tool & Die Limited and A.G. Simpson Automotive Inc., and a steel service centre, Maksteel Inc., were represented at the hearing.

POSITION OF PARTIES

Domestic Producers⁸

The domestic producers submitted that the dumping of cold-rolled steel sheet products in Canada has caused and threatens to cause material injury to the domestic industry in the form of lost sales and market share, price erosion, price suppression and reduced revenues and profitability.

8. Of the four domestic producers, only Dofasco, Stelco and Ispat were represented at the hearing.

The domestic producers argued that their loss of sales volume and market share to the dumped imports became evident by the end of the first half of 1997. Between 1996 and 1997, the volume of the dumped imports increased fivefold, with a corresponding increase in their market share. The domestic producers' share recovered in the first quarter of 1999 following, they claimed, extensive discounting in 1998 to meet lower dumped export prices and after the initiation of the dumping investigation in January 1999.

According to the domestic producers, price declines were evident in the market for cold-rolled steel sheet products overall and, in particular, in the service centre segment of the market. Steel service centres, in their view, are prime targets for the low-priced subject goods due to the large inventories that they maintain, the commodity nature of the product that they purchase and their knowledge of the domestic marketplace. Their business is based on high volumes, low margins and a need to purchase steel at the same price as their competitors. The domestic producers also submitted that they suffered price erosion and suppression in the end user segment of the market, as evidenced by domestic producers' prices in the first quarter of 1999.

The domestic producers argued that the only explanation for the significant price erosion and suppression during a period of strong demand for cold-rolled steel sheet products in Canada is the dumping of the subject goods. To confirm this conclusion, the domestic producers reviewed: (1) prices of benchmark products sold by them and the importers on an account-by-account basis; (2) the industry's allegations of the subject goods offered and sold on an account-by-account basis; and (3) the pricing of Russian and Slovak products. The detailed pricing information, in the domestic producers' view, showed that the dumped imports were undercutting their prices, leading to lost sales, price erosion and price suppression.

Ispat argued that another aspect of the material injury caused by the dumping was that the pre-tax profits for all producers as a group had been driven too low to continue to finance capital improvements and to maintain and improve their highly capital-intensive facilities. The firm further argued that the injury to the domestic producers did not have to be uniform among the producers for the Tribunal to find material injury.

The domestic producers submitted that there was little evidence that other factors, such as costs, the GM strike, intra-industry competition or imports from non-subject countries, were causes of the industry's material injury. Stelco referred to its cost of production of cold-rolled steel sheet products as compared to other domestic suppliers. The firm argued that there was clear evidence that the quick-roll change technology and the phase two investments are going to be significant in achieving a better cost position. Regarding the effect of the GM strike, the domestic producers argued that there was no evidence that the strike caused the domestic industry to reduce prices in the market, largely because the strike came at a time of tight demand. Furthermore, there was no evidence that the competition among the domestic producers caused prices to fall in the market.

With respect to the impact of Korean imports, the domestic producers argued that imports from the subject countries were increasing their market share and that the price erosion was being felt in the Canadian market long before Korean cold-rolled steel sheet products arrived in Canada in the second, third and fourth quarters of 1998. While the Korean products may have contributed to the injury, they were not the precipitating cause of the price erosion that the industry experienced. The domestic producers submitted that, although exporters and importers inevitably point to competition from low-priced imports from other countries as being responsible for the price erosion, it has always been the Tribunal's view that participation in a decline in Canadian market prices for subject goods and like goods is sufficient to find that imports from named countries have caused material injury to domestic producers. The domestic producers submitted that this would be true even if the imports of the subject goods did not lead prices down and even if the domestic producers engaged in price competition with non-named countries.

Regarding the question of threat of material injury, the domestic producers submitted that the worldwide oversupply condition in the market for cold-rolled steel, which is linked to the economic crises in Asia and the Russian Federation and the weak economies in a number of the named countries, has caused an oversupply situation in the named countries, a severe drop in their domestic selling prices for cold-rolled steel and an even larger drop in their export prices for cold-rolled steel. They also argued that: (1) because of the capital-intensive nature of the steel industry, it is imperative that they maximize the utilization of the cold-rolled steel facilities; and (2) producers in Europe, Asia, the Pacific region and South America are dependent on exports to maintain high utilization rates.

For the above reasons, the producers in the named countries are continuously searching for a home for their production of cold-rolled steel sheet products, and there is a strong likelihood that the foreign producers will continue to dump in Canada if an injury finding is not in place. Compounding the situation are recent trade actions in the United States against imports of cold-rolled steel sheet from 12 countries, including Argentina, the Russian Federation, the Slovak Republic and Turkey, and anti-dumping actions filed, or about to be filed, by other countries or trade regions. These trade actions create a significant risk that cold-rolled steel sheet products from these countries will be diverted to Canada.

Ispat asked the Tribunal to pay specific attention to the Russian Federation and the Slovak Republic with respect to threat of material injury. Given the Tribunal's recent injury finding in *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products*⁹ and the significant overcapacity and the export orientation of the steel producers in those countries, Ispat argued that it is inevitable that those same producers that also produce the subject goods will move hot-rolled export capacity to cold-rolled steel sheet product exports to the Canadian market, particularly since they already have the sales and marketing contacts amongst the importers and international traders.

Moreover, Ispat submitted that, since the preliminary determination of dumping, a number of countries not named in this inquiry have begun competing in the market for cold-rolled steel sheet products at prices lower than those from the named countries. Ispat argued that this situation was exacerbated by the actions of international trading companies which, after anti-dumping measures were put in place against the named countries, found new sources and negotiated the lowest prices possible.

If an injury finding is not in place, the domestic producers argued, it is likely that the subject countries will continue to dump the subject goods in Canada and that the domestic industry will suffer a downward spiral in prices causing material injury. Both the service centres and end users will be affected, since the end users, when renegotiating their annual contracts, will demand the same pricing as that extended to service centres.

Ispat submitted that cumulation of the effects of dumped pricing from all named sources has always been applied by the Tribunal and that this inquiry should not be an exception to that general application. On the issue of negligibility, Ispat submitted that: (1) the Tribunal can only use the concept of negligibility for the purpose of determining whether to cumulate the effect of dumped imports under subsection 42(3) of SIMA; (2) the Tribunal may use the Deputy Minister's analysis or its own analysis for a period that is the same as, or falls within, the Deputy Minister's period of investigation; and (3) the Tribunal shall only consider actual, not potential, volumes of imports.

9. *Finding* (July 2, 1999), *Statement of Reasons* (July 19, 1999), NQ-98-004 (C.I.T.T.).

Regarding the requested exclusions, the domestic producers did not consent to the automotive stampers' request that cold-rolled steel sheet products for use in automotive applications be excluded, since these goods are available from domestic production and the imports compete directly with domestic production. Imports of these products have caused and can cause material injury in the marketplace. Moreover, the stampers failed to demonstrate that they required automotive-grade cold-rolled steel sheet products from the named countries or even that they had knowledge as to the capabilities of the named countries to meet their specialized needs. The domestic producers did, however, consent to the exclusion of certain full hard cold-rolled steel sheet¹⁰ from Spain because this product, not being annealed and tempered, does not compete directly with domestic production and cannot be resold in the marketplace as cold-rolled steel sheet products.

Exporters/Importers

The exporters and importers argued that the domestic industry has not been materially injured by dumped imports of cold-rolled steel sheet products and that there is no threat of material injury from the dumping.

Spain (Sollac and Francosteel)

At the outset, Sollac, the exporter, and Francosteel, the importer, spoke to the issues of cumulation and negligibility, arguing that, under the provisions of SIMA, the exercise of cumulation is discretionary. They argued that cumulation is prejudicial to exporters and importers and that it must be applied restrictively, since it is an exception to the rule that a finding against a country must be based on evidence of material injury that is causally linked to that country. They argued further that cumulation is inappropriate in circumstances where there is no evidence that a specific country caused material injury when, at the same time, it is known that a non-named country, such as the Republic of Korea, did cause material injury or that a named country, such as Spain, was just as injured as the Canadian producers by the Korean imports into Canada. Moreover, it was argued that cumulation is inappropriate if the weight of the evidence suggests that a country acted responsibly in the Canadian market, withdrawing from the Canadian market when prices became unattractive.

On the issue of negligibility, Sollac and Francosteel submitted that, under the provisions of paragraph 42(3)(a) of SIMA and on the basis of its own statistics, the Tribunal must conclude that dumped imports from Spain and New Zealand are negligible and that it cannot cumulate with regard to these two countries. The Tribunal must, at a minimum, come to an independent assessment of the impact of Spain's and New Zealand's dumped imports on the market. Preferably, in their view, the Tribunal would simply terminate an inquiry once it had arrived at the conclusion of negligibility. Such termination would be consistent with the World Trade Organization *Agreement on Implementation of Article VI of GATT 1994*¹¹ and avoid the illogical conclusion that a negligible amount of dumped product independently caused material injury.

On the issue of conditions of competition, under the provisions of paragraph 42(3)(b) of SIMA, Sollac and Francosteel argued that the Spanish subject goods are sold at prices that are noticeably different from and higher than Canadian mill prices for cold-rolled steel sheet products. Spain does not offer end-of-year discounts nor does it sell seconds or excess prime steel sheet. Moreover, they argued, Francosteel's marketing philosophy is markedly different from that of other exporters, and Sollac is in a joint venture with Dofasco to produce corrosion-resistant steel for the Canadian market.

10. The request for the product exclusion was amended at the hearing. See discussion below.

11. Signed at Marrakesh on April 15, 1994 [hereinafter *WTO Anti-dumping Agreement*].

Dealing with the question of injury, Francosteel and Sollac argued that imports from Spain could not have caused material injury, stressing that the bulk of the injury to the domestic industry occurred in 1998, a year in which Spanish steel nearly disappeared from the market and much of its volume was displaced by imports from the Republic of Korea. Moreover, they argued that much of the competition that the domestic industry faces in that market is generated among the domestic producers and that the domestic industry is shifting its production in favour of value-added products, such as galvanized steel, rather than cold-rolled steel, thereby inviting alternative sourcing.

With respect to the issue of threat of material injury, Francosteel and Sollac argued that there is no evidence that Spanish imports threaten to cause material injury. During the period of the Tribunal's inquiry, Spain only followed market trends, increasing exports when the market went up and decreasing exports when the market fell. In addition, there is growing demand for Spanish cold-rolled sheet in Spanish galvanizing mills. As well, Spain has entered into a contract to deliver cold-rolled product to its joint venture with Dofasco, which the domestic industry actually wants. They also argued that there is no risk that Spanish imports of cold-rolled steel into other countries will be diverted to Canada.

Finally, it was noted that the industry members present agreed with the request for an exclusion for full hard cold-rolled steel sheet. The suggested wording for the exclusion, as provided to the Tribunal by counsel for Dofasco and amended by counsel for Sollac, is as follows:

full hard (i.e. not annealed or tempered) cold-rolled steel sheet product of carbon steel (including high-strength low-alloy steel), cold-rolled by Sidmed and exported to Canada by either Sidmed or Sollac for sale to either DoSol Galva Limited Partnership or its successor and to be used in the production of corrosion-resistant steel sheet on the facility currently owned by the DoSol Galva Limited Partnership and known as the DSG Line.

Sollac and Francosteel also requested an exclusion for cold-rolled steel used in the automotive sector and questioned why the conclusion about the automotive sector should be different in this case from what it was in *Certain Corrosion-resistant Steel Sheet Products*.¹²

Turkey (Borçelik)

Borçelik submitted that the production and pricing difficulties affecting the domestic industry were not unique and, in fact, were occurring everywhere in the world. Thus, it would be difficult for the Tribunal to attribute material injury to a varied group of importers with insignificant market share. With respect to pricing, Borçelik submitted that the mix of products being compared is important. It noted the weakness in using average price data, submitting that the average price of a basket of many grades of Canadian cold-rolled steel sheet products is higher than the average price of a more standard grade of steel exported from Turkey.

Borçelik questioned the absence of Algoma, submitting that Algoma is an important player in the market and that its absence could only mean that it has not been injured. Further, it argued that the evidence indicates that: (1) Dofasco has not been injured; (2) it is doubtful that Ispat has been injured; and (3) even if Stelco has been injured, and notwithstanding that such material injury was likely caused, in part, by other factors, Stelco's injury would not meet the "burden" of SIMA. In terms of other factors causing material injury, Borçelik argued that the GM strike, improvements at Stelco's Hilton Works, the requirement for

12. *Orders and Statement of Reasons* (July 28, 1999), RR-98-007 (C.I.T.T.).

minimum orders by the Canadian producers and the volume of low-priced imports from the Republic of Korea and the United States all had an impact on the domestic industry's performance.

Borçelik argued that none of the injury allegations should be given any weight because there was no disclosure and the allegations could not be tested. Just the same, Borçelik reviewed the injury allegations against Turkey and dismissed them, for example, because there were no sales to the particular account, because the volume of sales was low or because the sales did not affect the domestic prices.

With respect to the subject of threat of material injury and on the issue of the diversion of dumped imports from the United States, Borçelik argued that it is not dependent on exports and has new markets in mind that should eliminate any problem of diversion. Moreover, the threat of material injury is not from the subject countries, but rather from the non-subject or emerging countries whose low prices will force the subject countries out of the market.

On the issue of negligibility, Borçelik argued that just because the volume of imports from a country does not qualify technically within the "exception" of negligibility does not mean that the Tribunal should not conclude that the volume is negligible in terms of its contribution to the material injury and, therefore, not include that country in an injury finding.

Turning to the issue of exclusions, Borçelik argued that the Tribunal had the discretion to grant producer exclusions. It requested one on the basis that there is no evidence that its imports caused or threaten to cause material injury and that it has a low margin of dumping. Addressing the stampers' request for an exclusion for imports of automotive-grade cold-rolled carbon steel sheet, Borçelik argued that this case is really about CQ steel. According to Borçelik, the domestic industry cannot or will not supply the demand for automotive product, and the market is distinct in terms of quality, specifications and prices. There is no reason, therefore, to make an injury finding with respect to automotive product.

Argentina (Siderar)

On the question of material injury, Siderar submitted that the Tribunal should consider: (1) the volume of its exports to Canada; (2) its refusal to increase tonnage to one of its customers; (3) its prices; (4) its active role in the marketing of its own product; (5) its policy, for example, of no sales at spot prices and no speculative business; (6) that, before the complaint was filed, the firm had agreed to limit the volume of the subject goods that it shipped to Canada; and (7) that it had addressed each of the injury allegations.

On the question of threat of material injury, Siderar contended that the Tribunal should consider that the firm was substantially reducing its capacity available to the market for cold-rolled steel sheet products, as it shifted production to more value-added products, such as tin plate. If Siderar were to be foreclosed from the US market by a trade action, the firm argued that it had other markets for the relatively modest volume of shipments to the United States.

With respect to cumulation, Siderar submitted that, in order for the Tribunal to cumulate, it must first consider the behaviour of each and every one of the players at issue and then decide on the basis of that consideration whether to cumulate and, if so, for which countries. To determine negligibility, Siderar argued that the Tribunal was not obliged to use the Deputy Minister's numbers and had the discretion to select a period for analysis that was independent of the Deputy Minister's period of investigation.

Turning to the issue of exclusion, Siderar argued that, in the past, the Tribunal, where the facts justified it, has not cumulated for a particular producer or country and has also cumulated and then excluded certain producers or certain countries. According to Siderar, if the Tribunal decides to cumulate in the

present case, it can grant exclusions and, thus, should exclude Siderar on the basis of the facts and its own performance.

Belgium (Sidmar and TradeARBED), New Zealand (BHP-NZ and BHP Canada) and the Russian Federation (Severstal)

The above-mentioned firms argued that imports from New Zealand, like those from Spain, were negligible and that the cases against New Zealand and Spain be terminated. In the alternative, they submitted that the Tribunal must consider whether cumulating for all countries is appropriate, arguing that differences in dumping margins, pricing in Canada and marketing practices in Canada are enough to find that certain individual countries are not part of any cumulative effect.

New Zealand and Belgium argued that they can be distinguished from the other countries. Imports from New Zealand and Belgium have higher Canadian prices, and there has been no aggressive marketing of their exports. BHP-NZ supplies only two customers in Western Canada, encountering no Canadian mill presence at either one. It is restricted to the quantity that it can export, and this quantity has not changed in the past six or seven years. Sidmar has dumping margins on only a limited percentage of its exports, and it is not aggressive in its marketing. Moreover, neither New Zealand nor Belgium has been included in the recently initiated case in the United States, and there has never been a dumping action by any country against cold-rolled sheet produced by Sidmar.

With respect to steel pricing, it was argued that a number of exhibits had been referred to which confirm that steel prices in Canada, the United States, Europe and Asia follow similar patterns, with Canada traditionally lagging the others. It was argued that this demonstrates that steel prices are affected by world conditions and that prices follow a well-established pattern which is not influenced by dumping in one region over another. On this ground, it was argued that the price erosion claimed by the domestic industry is part of the same cycle and that, in 1999, the cycle will move upward and that price increases will accompany the rise.

Dealing with the issue of capacity utilization, BHP-NZ and Sidmar indicated that they are operating at or near capacity. These companies indicated that they have no more capacity for Canadian sales, especially considering that the economies of Asia, Europe and the Russian Federation are improving. Further, BHP-NZ and Sidmar submitted, the Canadian mills are producing at high levels, with the result that buyers of domestic product are finding that the mills are either unable to supply or late with their shipments. They noted that, despite the fact that the mills are producing at or near full capacity, there is still price competition amongst the domestic mills and that competition, along with competition with the Korean imports, is suppressing prices. In respect of the injury allegations, BHP Canada and TradeARBED argued that, for some accounts, the price information submitted was incorrect, that no sales or offers had been made to a particular account or that the volumes involved were low.

Turning to the question of Russian imports, it was noted that the Deputy Minister's final determination of dumping recognizes the Russian Federation as a market economy. The implication is that, because the Russian Federation is being treated as a market economy, normal values for Russian steel will be based on a depressed economy, coupled with a very low exchange rate. It was argued that the low prices of the Severstal exports are also due to problems with timely delivery and the quality of the Russian product.

Slovak Republic (SlovCan)

SlovCan argued that there was no evidence in support of the proposition that: (1) there was any injury, let alone material injury, in the end user segment of the market; and (2) whatever injury was sustained in the service centre segment fell short of the standard required for material injury. To support this argument, SlovCan reviewed the evidence on the domestic industry's financial results, loss of market share and return on investment.

SlovCan observed that it is easy to review after-the-fact tabulations of market prices. Because prices in the market are not transparent, however, it is difficult for people in the business to estimate prevailing prices at the time that an offer is being submitted. Even so, a comparison of average prices of the Slovak imports with the wide spread in the domestic mills' price offerings, in SlovCan's view, does not support the contention that Slovak imports eroded prices in the domestic market. Moreover, it was argued that the price of Slovak steel offered in 1998 could be offered at the present time without any anti-dumping duties being assessed.

SlovCan reviewed the evidence on causation in respect of price erosion and price suppression. It highlighted factors such as the difference in the prices of Slovak and Korean imports as they relate to the industry's prices, inventory sell-offs in the final quarters of 1997 and 1998, price competition among the domestic mills, the use of excess prime to discount prime products, rolling programs where the mills agree to supply a service centre with a specific product for a specific end use at a discounted price, price premiums for domestic product and the impact of US prices on the North American market for cold-rolled steel sheet products. On price erosion, SlovCan argued that it was self-induced by the industry and caused by factors other than the dumping. On price suppression, SlovCan argued that pricing decisions in Canada are made in reference to the US market and not the pricing of imports from the named countries.

Automotive Stampers

The automotive stampers argued that there is no evidence of material injury or threat of material injury with respect to cold-rolled steel for automotive end use. They thus requested a finding of no injury or an exclusion with respect to:

cold-rolled steel sheet product, other than CQ, i.e. ASTM A366, imported under tariff item No. 9959.00.00 for use exclusively in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses, or chassis therefor, or parts, accessories or parts thereof.

To support their exclusion request, the automotive stampers referred to certain parts of the recent statement of reasons in *Certain Corrosion-resistant Steel Sheet Products*¹³ which deal with the exclusion of automobile end use products from the orders. According to the stampers, all of the factors which led the Tribunal to exclude automotive end use steel from the continuation of the original findings apply in this case. The players and the evidence being the same in both instances, they submitted that the outcome should be the same. Moreover, the stampers expressed the concern that the domestic industry will be unable to meet its specific consumption requirements for cold-rolled steel sheet products.

13. *Ibid.*

INTERLOCUTORY MATTERS

On June 24, 1999, counsel for Francosteel and Sollac filed a motion with the Tribunal for an order terminating the Tribunal's inquiry with respect to cold-rolled steel sheet products originating in or exported from Spain, on the ground of a negligible volume of imports from this country, based on data contained in the Tribunal's pre-hearing staff report dated June 21, 1999. The motion was supported by counsel for BHP-NZ who asked that the inquiry also be terminated in respect of New Zealand on the same ground.

On June 30, 1999, following a request for other parties' views, the Tribunal issued a decision denying the motion.¹⁴ The Tribunal concluded that, at the time of the motion, there had been no determination as to whether or not the volume of imports from Spain was negligible, nor could there have been one since parties and the Tribunal, at that point, were simply dealing with a report prepared by the Tribunal's staff, not a Tribunal decision or determination. The Tribunal also stated: (1) that the question of negligibility at the Tribunal's inquiry stage only arises for the purpose of subsection 42(3) of SIMA, that is, in the context of its decision whether or not to cumulate the effects of the dumping or subsidizing of goods; (2) that subsection 42(3) is completely silent as to the Tribunal's ability to terminate an inquiry with respect to a country whose volume of dumped goods is negligible, as opposed to subsections 35(1) and 41(1) of SIMA, in the case of the Deputy Minister's preliminary and final determinations of dumping; (3) that subsection 42(3) does not direct the Tribunal to terminate an inquiry because of negligible volumes of dumped goods, nor is it ambiguous; and (4) that, should the motion be allowed, a Tribunal order immediately terminating its inquiry with respect to Spain and New Zealand would deprive the Deputy Minister of his authority to make such a determination based on actual or potential volumes of dumped imports, whichever data were used.

ANALYSIS

Paragraph 42(1)(a) of SIMA requires the Tribunal to conduct an inquiry as to whether the dumping of the subject goods "has caused injury or retardation or is threatening to cause injury". According to subsection 2(1) of SIMA, "injury" means "material injury to a domestic industry". "Domestic industry", in turn, is defined as "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".

Thus, in arriving at its decision in an inquiry under SIMA, the Tribunal first determines which domestically produced goods are like goods to the subject goods. Then, for the purpose of assessing material injury as per the definition above, the Tribunal determines which producers constitute the "domestic industry", i.e. which producers represent the whole production of like goods or a major proportion of that production. Finally, the Tribunal proceeds to determine whether the domestic industry has suffered material injury and, if so, whether a causal relationship exists between that injury and the dumping of the subject goods. Normally, the Tribunal will further proceed to consider whether the dumping of the subject goods is threatening to cause material injury only if it found that the dumping has not caused material injury or retardation.¹⁵

14. *Decision of the Tribunal* (June 30, 1999), *Statement of Reasons* (July 15, 1999), NQ-99-001 (C.I.T.T.).

15. *Caps, Lids and Jars Suitable for Home Canning, Whether Imported Separately or Packaged Together, Finding* (October 20, 1995), *Statement of Reasons* (November 6, 1995), NQ-95-001 (C.I.T.T.) at 10.

Like Goods

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

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

The evidence in this inquiry indicates that, for each specification, domestically produced cold-rolled steel sheet products compete with, have the same end uses as and can be substituted for the subject goods, as defined by the Deputy Minister.¹⁶ Therefore, the Tribunal concludes that domestically produced cold-rolled steel sheet products of grades and widths included in the Deputy Minister’s definition constitute like goods to the imported goods of the same description.

Domestic Industry

In assessing material injury, the Tribunal must be satisfied that the domestic industry is composed of the domestic producers of the like goods as a whole or those producers whose collective production of the like goods constitutes a major proportion of the total domestic production of cold-rolled steel sheet products. Dofasco, Stelco and Ispat, the three domestic producers present at the hearing, are the primary producers of like goods in Canada. These three producers represent more than 90 percent of the total production of like goods. Although representations were made that Algoma, the remaining producer, should not be included in the domestic industry because it was not present at the hearing,¹⁷ the Tribunal is of the view that it has sufficient information from Algoma’s questionnaire responses to include it with the rest of the producers in the Tribunal’s analysis of material injury and threat of material injury to the domestic industry.

Cumulation

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

- (3) In making . . . its inquiry under subsection (1), the Tribunal may make an assessment of the cumulative effect of the dumping . . . of goods to which the preliminary determination applies that are imported into Canada from more than one country if
 - (a) the margin of dumping . . . in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and
 - (b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and
 - (i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or
 - (ii) like goods of domestic producers.

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

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

16. *Supra* note 6.

17. *Transcript of Public Argument*, July 30, 1999, at 191-99.

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

The condition of negligibility raises the questions of which time period and which data the Tribunal should use for that determination. Because the Tribunal collected reliable import data during the same period as the Deputy Minister's period of investigation¹⁸ and because the parties have had an opportunity to test the Tribunal's data at the hearing, the Tribunal decided: (1) to adopt the Deputy Minister's full period of investigation; (2) to use the volume of imports (dumped and non-dumped) as determined by the Deputy Minister for the subject countries; and (3) to use the data that it compiled for the same period for the non-subject countries.¹⁹ On that basis, the Tribunal then determined negligibility by establishing, for each named country, its proportion of dumped goods compared with the total volume of imports from all sources during that period. The Tribunal found that the volumes of dumped goods from New Zealand (1.9 percent) and Spain (2.2 percent) during the relevant period were negligible.²⁰

The Tribunal also determined, on the basis of paragraph 42(3)(b) of SIMA, that an assessment of the cumulative effect of the dumping of the remaining subject goods is appropriate, considering the conditions of competition between the subjects goods with each other and with the like goods. The Tribunal has made this determination based on the fact that imports of cold-rolled steel sheet products are, for particular specifications, fungible among themselves and with the like goods. In sum, these goods all compete with one another.

Accordingly, the Tribunal has made an assessment of the cumulative effect of the dumping of cold-rolled steel sheet products originating in or exported from all of the named countries, except with respect to New Zealand and Spain, for each of which the Tribunal conducted an independent injury analysis.²¹

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18. The Tribunal's data are based on import statistics received from importers representing a high percentage of the imports of the subject goods. The Revenue Canada data are derived from information provided by the complainants and the other domestic producer, Statistics Canada import data, data obtained from Revenue Canada's internal information system, Facility for Information Retrieval Management, actual entry documentation and information obtained from importers and exporters.
 19. This approach is in keeping with the Tribunal's decision in *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products, Finding* (July 2, 1999), *Statement of Reasons* (July 19, 1999), NQ-98-004 (C.I.T.T.) at 21. See, also, *The Dumping in Canada of Refined Sugar and the Subsidizing of Refined Sugar, Findings* (November 6, 1995), *Statement of Reasons* (November 21, 1995), NQ-95-002 (C.I.T.T.) at 20; and *Stainless Steel Round Bar of Sizes 25 mm Diameter up to 570 mm Diameter Inclusive, Finding* (September 4, 1998), *Statement of Reasons* (September 21, 1998), NQ-98-001 (C.I.T.T.) at 12 and 13.
 20. *Protected Pre-hearing Staff Report*, revised July 28, 1999, Tribunal Exhibit NQ-99-001-7.5A (protected), Administrative Record, Vol. 2D at 121.
 21. *Refined Sugar*, *supra* note 19 at 33 and 38.

Material Injury

The Tribunal first examined whether the domestic industry has suffered material injury. In conducting that analysis, it looked at various factors for the years 1997 and 1998, including the size and share of the apparent market, market segmentation, pricing, capacity utilization and financial results.

The open market for cold-rolled steel sheet products in Canada increased by 17 percent between 1996 and 1997, but decreased by 5 percent in 1998. Over the entire period for which the Tribunal collected data, i.e. from 1996 to 1998, therefore, the net growth in the total apparent market was positive. By 1998, the apparent market was in excess of 1.6 million net tons.²²

The domestic industry's share of the market, however, decreased from approximately 95 percent in 1996 to about 85 percent in 1997, despite an increase in the domestic industry's sales volume in 1997 over 1996.²³ The volume of sales from imports from all sources increased 3.5 times in 1997.²⁴ The domestic industry's share of the apparent market then increased slightly in 1998, although the domestic industry's sales decreased²⁵ in that year. The overall volume of sales from imports also fell in 1998,²⁶ as the overall size of the market contracted.

There are two distinct sales segments in the domestic market: service centres and end users. The volume of sales to each segment differs considerably among sales from domestic producers, sales from subject countries and sales from non-subject countries. While the preponderance of sales by domestic producers as a whole is made to end users,²⁷ sales of imports originating in the named countries are concentrated at service centres,²⁸ with imports from the United States, which dominates non-subject countries, concentrated at end user accounts.

The importance to the individual domestic producers of sales to service centres varies considerably. Overall, in 1998, approximately 30 percent of the sales by domestic producers were made to service centres,

22. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 39. This open market consumes less than half of the total domestic production. The remaining production goes to internal transfers as substrate for higher value-added corrosion-resistant steel and tin plate.

23. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 39.

24. *Public Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-6.5, Administrative Record, Vol. 1D at 39.

25. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 39 and 41. The decline in the volume of the domestic industry's open market sales in 1998 was almost fully offset by an increase in 1998 in the domestic industry's production of cold-rolled steel sheet products for internal consumption.

26. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 39.

27. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5.1 (protected), Administrative Record, Vol. 2D.A at 8 and 16.

28. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5.1 (protected), Administrative Record, Vol. 2D.A at 8 and 16.

whereas approximately 90 percent of the sales of imports from the named countries were made to service centres.²⁹

The overall volume of purchases by service centres increased by 23 percent from 1996 to 1997 and then contracted by 11 percent from 1997 to 1998.³⁰ The domestic industry's sales to service centres decreased by 1 percent from 1996 to 1997 and decreased by a further 12 percent from 1997 to 1998. Its share of the sales to service centres fell from 95 percent in 1996 to 76 percent in 1997. It maintained this market share in 1998.³¹

The overall purchases by end users increased substantially in 1997 and then fell back marginally in 1998. In both 1997 and 1998, the domestic industry increased its volume of sales to end users.³²

Central to the case made by the domestic producers is that the dumping forced them either to meet the low dumped prices or to lose sales. Two domestic producers tried to raise prices for cold-rolled steel sheet products in March 1998.³³ Their efforts were unsuccessful. At the aggregate level, the average price of the cold-rolled steel sheet products sold by domestic producers was \$639 per net ton in 1996, \$650 per net ton in 1997 and \$647 per net ton in 1998.³⁴ More significantly, the reduction in their average price between 1997 and 1998 for sales to service centres was \$28 per net ton. Their average price for sales to end users increased by \$6 per net ton.³⁵

In terms of capacity and capacity utilization, the Tribunal notes that the industry's total capacity increased by 14 percent from 1995 to 1998. Total production for open market sales and for internal transfer increased in 1996 and 1997 and leveled off in 1998 to approximately the level in 1997. Capacity utilization decreased in both 1997 and 1998.³⁶

In terms of financial results for cold-rolled steel sheet products sold in the apparent market, the domestic industry's consolidated net income before taxes increased by \$12 million in 1997 over 1996. Net income before taxes as a percentage of net sales, however, remained constant. Consolidated net income before taxes then decreased in 1998 by almost 30 percent compared to 1997 levels. Net income before taxes as a percentage of net sales fell by several percentage points. Quarterly results for 1998 and the first quarter

29. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5.1 (protected), Administrative Record, Vol. 2D.A at 8, and Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 39.

30. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5.1 (protected), Administrative Record, Vol. 2D.A at 8.

31. *Public Pre-hearing Staff Report*, June 21, 1999, Tribunal Exhibit NQ-99-001-6.2.1, Administrative Record, Vol. 1B.A at 10.

32. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5.1 (protected), Administrative Record, Vol. 2D.A at 16.

33. Manufacturer's Exhibit C-2 at 7, Administrative Record, Vol. 13.2; and Manufacturer's Exhibit B-3 (protected) at 47, Administrative Record, Vol. 14.1.

34. *Public Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-6.5, Administrative Record, Vol. 1D at 45.

35. *Ibid.* at 14 and 22.

36. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 74.

of 1999 show a weakening of the domestic industry's financial picture, particularly in the fourth quarter of 1998 and the first quarter of 1999.³⁷

This net income before taxes differed widely among producers. Two of the four producers achieved fairly consistent and positive financial results from 1996 to 1998 and, indeed, throughout each quarter of 1998 and in the first quarter of 1999.³⁸ The remaining two producers had more uneven and substantially less satisfactory financial results, particularly through 1998 and into the first quarter of 1999.³⁹

In reviewing these indicia of injury, the Tribunal concludes that there was no material injury to the domestic industry in 1997. The volume of domestic market sales by the domestic producers was up, their average prices were higher and their financial performance for cold-rolled steel sheet products was holding steady. While domestic producers lost some market share, the increase in their internal transfer of cold-rolled steel sheet products in 1997 was almost equivalent to the increase in the volume of imports from the named countries in that year.⁴⁰

In comparison, the Tribunal concludes that there was material injury to the domestic industry in 1998. In this regard, the Tribunal notes that there was a loss of sales volume, price erosion and price suppression, with a reduction of almost one third in the industry's net income before taxes for cold-rolled steel sheet products between 1997 and 1998.

Causality

The Tribunal next considered whether there is a sufficient causal link between the material injury suffered by the domestic industry and the dumped imports. In this regard, the Tribunal notes that subsection 37.1(1) of the *Special Import Measures Regulations*⁴¹ prescribes certain factors that the Tribunal may consider in determining whether a domestic industry has been materially injured by dumped imports. These factors include the volume of dumped goods and their effect on prices in the domestic market for like goods and the consequent impact of these imports on a number of economic factors, such as actual or potential declines in output, sales, market share, profits and capacity utilization.

The Tribunal also notes that subsection 37.1(3) of the *Regulations* prescribes factors⁴² for determining whether any factors other than the dumping have caused material injury. The *Regulations* implement the WTO *Anti-dumping Agreement* provision that requires countries not to attribute to the dumped imports any injury caused by factors other than the dumping.⁴³

37. *Ibid.* at 83.

38. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5.1 (protected), Administrative Record, Vol. 2D.A at 62, 68, 74 and 80.

39. *Ibid.* at 50, 56, 86 and 92.

40. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 16 and 39.

41. S.O.R./95-26 [hereinafter *Regulations*].

42. These prescribed factors include: (1) the volumes and prices of non-dumped goods; (2) contraction in demand; (3) changes in patterns of consumption; (4) trade-restrictive practices of, and competition between, foreign and domestic producers; (5) developments in technology; and (6) export performance and productivity of the domestic industry.

43. Article 3.5 of the WTO *Anti-dumping Agreement*.

The Tribunal first examined separately and individually the effects of the dumping of the subject goods from New Zealand and Spain on the domestic industry.

With respect to imports of cold-rolled steel sheet products from New Zealand, the Tribunal notes that the volume of these imports was negligible; therefore, the effects of these dumped goods were not cumulated with the effects of other dumped goods in assessing material injury to the domestic industry. Its exports of the subject goods to Canada have remained at approximately the same level in recent years⁴⁴ and have been sold to essentially the same customers in Western Canada.⁴⁵ It has not sold product in the higher volume markets in Ontario and Quebec, which are the major focus of the domestic steel producers.⁴⁶ Furthermore, the average price for New Zealand's exports of CQ steel to Canada, its principal export of the subject goods, was always greater than the average Canadian price for the same quality of steel.⁴⁷ For the above reasons, the Tribunal finds that the dumping of the subject goods from New Zealand has not caused material injury to the domestic industry.

With respect to imports of cold-rolled steel sheet products from Spain, the Tribunal also notes that the volume of these imports was negligible; therefore, the effects of these dumped goods were not cumulated with the effects of other dumped goods. The Tribunal notes that imports of the subject goods from Spain in 1998, the year in which the industry was materially injured, were only about one fifth of their level in 1997.⁴⁸ Furthermore, the average price for CQ steel from Spain, its major export of the subject goods, was generally above the average domestic price for the same quality of steel and the second highest among the subject countries, after New Zealand.⁴⁹ For the above reasons, the Tribunal finds that the dumping of the subject goods from Spain has not caused material injury to the domestic industry.

The Tribunal next considered the effects of the dumping of the subject goods from Argentina, Belgium, the Russian Federation, the Slovak Republic and Turkey (hereinafter referred to as the cumulated countries) on the domestic industry.

In the Tribunal's view, there were many potential causes of the material injury suffered by the domestic producers in 1998. These include a contraction in the domestic market of 5 percent,⁵⁰ an oversupply of some 4 million net tons of cold-rolled steel sheet in the global market,⁵¹ a decline in world cold-rolled steel spot prices,⁵² an increase in the cost of goods manufactured by two domestic producers,⁵³

44. *Transcript of Public Hearing*, Vol. 4, July 29, 1999, at 544.

45. *Ibid.* at 545-46.

46. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 39.

47. Protected replies to Schedule XV and Schedule VI of the manufacturer's questionnaire and the importer's questionnaire respectively, Administrative Record, Vols. 4, 4A, 4B, 4C, 6, 6A, 6B and 6C; and Tribunal Exhibit NQ-99-001-60 (protected), Administrative Record, Vol. 2 at 33.

48. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 22.

49. *Supra* note 47.

50. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 40.

51. *Public Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-6.5, Administrative Record, Vol. 1D at 108 and 109.

52. *Ibid.* at 111.

53. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5.1 (protected), Administrative Record, Vol. 2D.A at 151 and 162; and *Transcript of In Camera Hearing*, Vol. 1, July 26, 1999, at 67.

the GM strike in the third quarter,⁵⁴ production problems experienced by two of the domestic producers,⁵⁵ a surge of non-subject Korean imports during the second, third and fourth quarters,⁵⁶ and a significant volume of sales of dumped goods from the cumulated countries at service centres.⁵⁷

In order to disentangle the many causes of the material injury to the domestic industry, the Tribunal attempted to isolate the effects of the dumping on the domestic industry in terms of the three types of injury identified earlier, that is, loss of sales volume, price suppression and price erosion.

The Tribunal focused its attention on the service centres. It is at the service centres that the domestic industry experienced reduced sales volumes and reduced prices between 1997 and 1998. In fact, the domestic industry's lost sales and price reductions were greater in this segment of the market than in the market as a whole.⁵⁸ Moreover, it is at the service centres, characterized by high volumes and low margins, that the domestic industry concentrated its allegations of lost sales and price erosion.⁵⁹ The Tribunal focused its attention on sales to the service centres of CQ steel, which is the most common grade of cold-rolled steel sheet products.⁶⁰ Reported sales of CQ steel from the cumulated countries to service centres amounted to close to three quarters of their total sales in 1998.⁶¹

The Tribunal first considered the question of lost sales. Given the decline in the volume of sales at service centres,⁶² the presence of imports from non-subject countries at service centres, the delivery problems of two of the producers⁶³ and the GM strike, the Tribunal was convinced that not all of the lost sales in this market segment could be attributed to the dumping. Given the volume of dumped imports at service centres, however, the Tribunal was also convinced that some portion of the lost sales could have been caused by the dumping.

In order to assess the relative injury caused by the dumped imports, the Tribunal first considered that the volume of sales of cold-rolled steel sheet products to service centres fell by 11 percent in 1998.⁶⁴ In this declining market, the domestic industry lost sales volume, as did the cumulated countries. Only the

54. *Transcript of Public Hearing*, Vol. 1, July 26, 1999, at 89.

55. *Transcript of In Camera Hearing*, Vol. 1, July 26, 1999, at 67 and 116; and Tribunal Exhibit NQ-99-001-9.4, Administrative Record, Vol. 3C at 34.

56. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 30.

57. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5.1 (protected), Administrative Record, Vol. 2D.A at 8; and Tribunal Exhibit NQ-99-001-7.5A (protected), Administrative Record, Vol. 2D at 121.

58. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 39 and 45, and Tribunal Exhibit NQ-99-001-7.5.1 (protected), Administrative Record, Vol. 2D.A at 8 and 14.

59. Manufacturer's Exhibit A-1 at 8, Administrative Record, Vol. 13.

60. The Tribunal did not consider the sales of drawing-quality, special-killed steel to the service centres because of the small volume of sales reported by the cumulated countries.

61. *Supra* note 47.

62. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5.1 (protected), Administrative Record, Vol. 2D.A at 8.

63. *Transcript of In Camera Hearing*, Vol. 4, July 29, 1999, at 667; and Tribunal Exhibit NQ-99-001-9.4, Administrative Record, Vol. 3C at 34.

64. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5.1 (protected), Administrative Record, Vol. 2D.A at 9

non-subject countries, particularly the Republic of Korea, gained sales at service centres. Given that the domestic industry maintained its market share, the Tribunal is of the view that the lost sales in 1998 were more the result of an overall contraction in the demand at service centres for cold-rolled steel sheet products and the increase of non-subject countries' goods than the result of dumped imports.

In order to confirm this conclusion, the Tribunal assessed the information available from the evidence and the questionnaires for sales, on a quarterly basis, of the benchmark CQ steel at nine of the largest service centre accounts.⁶⁵ For the purposes of its assessment, the Tribunal considers this information to be the best available to it.

Two of the service centres accounted for the vast majority of the volume of CQ sales lost by the domestic industry. At one of these service centres, the Tribunal could find no causal link between the dumped imports and the lost sales and, at the other, a causal relation to only part of the lost sales. At the first service centre, there were no reported sales of imports from the cumulated countries, but rather sales from several non-subject countries, including the Republic of Korea. The Korean product was sold at very low prices. At the second service centre, there were reported sales of imports from several of the cumulated countries, but, as well, a large volume of sales of very low-priced imports from the Republic of Korea. Korean imports in 1998 accounted for two thirds of the imports at the account. Additionally, there was a significant contraction of business at the account. A similar review was conducted on the other service centre accounts. In the final analysis, the Tribunal is of the view that factors other than dumping appear to have been the major reason for the lost sales at service centre accounts.

On the question of price erosion, the Tribunal notes that the domestic industry's average selling price for CQ steel sold to service centres fell by \$15 per net ton between 1997 and 1998. From the first quarter of 1998 to the first quarter of 1999, it fell by \$21 per net ton.⁶⁶ If the decrease in domestic industry prices for CQ product at service centres was all due to the dumped goods, then the domestic producers could have gained significant additional revenues, had this price reduction not taken place. Once again, the Tribunal looked closely at the reasons for this price erosion.

With respect to the first quarter of 1998, the Tribunal is not convinced that there is a causal link between the drop in the domestic industry's average price and the average price of the subject goods from the cumulated countries. There is no correlation between the changes in the domestic price and the prices of the imports in this quarter. While the domestic industry's average price for CQ steel to service centres turned down in the first quarter of 1998 compared to its 1997 average price, the average price for CQ steel from the cumulated countries sold to service centres by importers increased. In the first quarter of 1998, the average price for CQ steel from the cumulated countries was also higher than the domestic industry's average price in the same quarter.⁶⁷

During the rest of 1998, the average price for CQ steel from the cumulated countries was below the domestic average price for CQ steel. In the second quarter of 1998, when Korean CQ steel entered the

65. These accounts include Alliance Steel, Cold Metal Products, Gatsteel, Maksteel, Namasco, Nova Steel, Renown, Samuel and Winston. At these accounts, the Tribunal has information on the prices and volumes of sales for both domestic producers and importers. The information is that reported by the manufacturers and the importers for their top 10 accounts in Schedule XV and Schedule VI of the manufacturer's questionnaire and the importer's questionnaire respectively.

66. *Supra* note 47.

67. *Ibid.*

service centre market segment at very low prices, the average prices for CQ steel from both the domestic industry and the cumulated countries fell. The subsequent price decrease in the fourth quarter of both the domestic and subject goods to their lowest average price levels of the year appears to be the result of Korean pricing. The Korean average price was significantly lower than the average price of both the domestic producers and the importers of the subject goods from the cumulated countries.⁶⁸

The fact that the average prices of the dumped imports from the cumulated countries, except for Argentina, followed the Korean average prices in 1998 is noteworthy.⁶⁹ On this basis, it could be argued that some of the price erosion was caused by the dumped imports. In this particular case, however, the Tribunal accepts this argument only in part. In the Tribunal's view, the more significant cause of the price erosion is the large volume and very low price of Korean steel at service centres. As stated by one of the witnesses for the domestic industry, price negotiation is based on price levels set by the lowest-priced steel available in the market.⁷⁰ That price appears to have been the Korean price, which, in the second, third and fourth quarters of 1998, averaged close to \$150 per net ton below the average prices of the cumulated countries.

The Tribunal, therefore, concludes that the decrease in prices for CQ steel at service centres in 1998 cannot be attributed, to a significant degree, to the dumped imports. The price declines in the first quarter of 1998 occurred when the subject goods were higher priced. In the other quarters, the Korean prices were the lowest.

Turning to the question of price suppression, the Tribunal notes that, throughout 1998, cold-rolled steel sheet prices were falling between 25 and 30 percent in all the world's major markets.⁷¹ Cold-rolled steel is a globally traded commodity, and there was oversupply in Europe, Asia and Latin America in 1998. Although the unrealized attempt at price increases⁷² by two domestic producers in March 1998 would have provided them with considerably increased profits, such price increases were not viable, given market realities. Cold-rolled steel sheet products were available from non-dumped imports in Canada in 1998 at less than 1997 prices.⁷³ The very low prices of imports from the Republic of Korea in 1998 bear witness to these global price trends. Given the falling world prices and the global oversupply situation, the Tribunal cannot conclude that there was any significant price suppression due to the dumping.

Overall, in terms of lost sales, price erosion and price suppression, the Tribunal does not find a sufficient causal link between the dumped imports from the cumulated countries and the material injury to the domestic industry to make a finding of material injury caused by the dumping.

Finally, in terms of other factors causing material injury to the domestic industry, the Tribunal observes cost increases in 1998, due largely to unusual repair and maintenance expenses, modifications to existing equipment and the installation of new equipment. In brief, the reduced profitability of the domestic industry in 1998 was due not only to a reduction in the volume of sales and reduced average prices but also to increased unit costs of production unrelated to the dumping.

68. *Ibid.*

69. *Ibid.*

70. Manufacturer's Exhibit C-2 at 8, Administrative Record, Vol. 13.2.

71. Manufacturer's Exhibit A-3 at 12, 13, 15, 17 and 18, Administrative Record, Vol. 13A.

72. Manufacturer's Exhibit C-2 at 7, Administrative Record, Vol. 13.2; and Manufacturer's Exhibit B-3 (protected) at 47, Administrative Record, Vol. 14.1.

73. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 45.

Threat of Material Injury

Having found that dumping has not caused material injury, the Tribunal must consider whether dumping is threatening to cause material injury. In considering this question, the Tribunal is guided by subsection 37.1(2) of the *Regulations*, which prescribes factors which the Tribunal may take into account for the purposes of determining whether the dumping of goods is threatening to cause material injury.

The following factors are prescribed: (1) whether there has been a significant rate of increase of dumped imports of cold-rolled steel sheet products into Canada; (2) whether there is sufficient freely disposable capacity, or an imminent substantial increase in the capacity of exporters in the subject countries, that indicates a likelihood of a substantial increase in exports of dumped goods, taking into account the availability of other export markets to absorb any increase; (3) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods; and (4) other relevant factors.

Moreover, to establish whether a causal relationship exists between the dumping and the threat of material injury, paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to examine other prescribed factors.⁷⁴ Finally, the Tribunal notes that, in making a finding of threat of material injury to the domestic industry, subsection 2(1.5) of SIMA requires that the circumstances in which the dumping or subsidizing of goods would cause material injury must be clearly foreseen and imminent.

In considering the question of threat of material injury, the Tribunal again examined separately and individually the threat posed by the dumping of the subject goods from New Zealand and Spain.

The participation of New Zealand in the Canadian market for cold-rolled steel sheet products has been one of consistency. It has been exporting to Canada for over a decade.⁷⁵ Imports have not increased, but remained at essentially the same low volume.⁷⁶ The witness for BHP Canada testified that it is allocated a relatively fixed volume of the subject goods on a monthly basis and, given that BHP-NZ is operating at or near capacity, it has no excess capacity for increased sales to Canada.⁷⁷ The Tribunal notes that, even when the New Zealand economy was in a recession, BHP-NZ continued to ship the same amount to Canada.⁷⁸

Despite a high margin of dumping, the average price of the subject goods from New Zealand has consistently been higher than the domestic industry's average selling price of CQ steel. Moreover, sales by BHP-NZ in the past three years have been directed to only two customers in the western Canadian market.⁷⁹ The Tribunal is of the view, therefore, that not only have these imports from New Zealand acted in a responsible and non-disruptive manner in responding to a need in the western Canadian market but they will continue to do so.

74. *Supra* note 42.

75. *Transcript of Public Hearing*, Vol. 4, July 29, 1999, at 544.

76. *Ibid.*

77. *Transcript of Public Argument*, July 30, 1999, at 249. This was confirmed in BHP-NZ's questionnaire response, Tribunal Exhibit NQ-99-001-24.5, Administrative Record, Vol. 5.3A at 6.

78. *Transcript of Public Hearing*, Vol. 4, July 29, 1999, at 574-75.

79. *Ibid.* at 546.

On the basis of the foregoing evidence, the Tribunal concludes that there is no imminent and foreseeable threat of material injury to the domestic industry from the dumping in Canada of cold-rolled steel sheet products from New Zealand.

Spain, in 1996, was the largest supplier of the subject goods from the named countries. In 1997, imports from Spain increased by 20 percent, while imports from the other named countries combined increased almost tenfold. In 1998, sales of imports from Spain fell by 80 percent from their level in 1997.⁸⁰ The margins of dumping by Spain during the period of investigation were found by the Deputy Minister to be among the lowest of the seven named countries.⁸¹

The witness for Francosteel stated that it was not the company's desire to sell hundreds of thousands of tons of the subject goods, but, rather, it wanted to respond to its clients' needs at specific times in accordance with its capacity to do so.⁸² With regard to the company's reduced participation in the Canadian market in 1998, the witness offered two reasons: a stronger demand for the product in Europe and a wish not to increase sales into the Canadian market at a time when other importers were increasing their volumes.⁸³ More specifically, the witness testified that Francosteel's policy was not to follow every variation in the market and that, because prices were eroding, it preferred to lessen its presence in the market rather than fight for market share.⁸⁴

This preference for maintaining reasonable price levels over retaining market share is supported by the evidence. A comparison of Spanish and domestic industry prices for sales of CQ steel at service centres, where almost all of the Spanish cold-rolled steel sheet products were sold, shows that Spanish average prices exceeded the domestic industry's average prices in 1997 and in the last two quarters of 1998.⁸⁵

The witness for Francosteel testified that the Spanish "full hard" steel to be imported for further processing at the DoSol Galva Limited Partnership joint facility will be in larger widths than the steel that can be produced in Canada by Dofasco and, thus, will be complementary to the domestically produced goods.⁸⁶ He testified that, other than for the volume required to satisfy Francosteel's joint venture participation in the DoSol Galva Limited Partnership facility, there was no foreseeable excess Spanish capacity available for the Canadian market.⁸⁷ Furthermore, Sollac's partnership with another European producer of galvanized steel meant that Spanish production of "full hard" cold-rolled steel would also be committed to that partnership, thereby reducing even further the available cold-rolled steel that could potentially enter the Canadian market.⁸⁸

On the basis of the foregoing evidence, the Tribunal concludes that there is no imminent and foreseeable threat of material injury to the domestic industry from the dumping in Canada of cold-rolled steel sheet products from Spain.

80. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 39.

81. *Supra* note 6 at 104.38.

82. *Transcript of In Camera Hearing*, Vol. 3, July 28, 1999, at 517.

83. *Ibid.* at 530.

84. *Transcript of Public Hearing*, Vol. 3, July 28, 1999, at 525.

85. *Supra* note 47.

86. *Transcript of In Camera Hearing*, Vol. 3, July 28, 1999, at 525.

87. *Ibid.* at 518.

88. *Ibid.* at 527.

The Tribunal next examined the threat of material injury posed by the dumping of the subject goods from the cumulated countries.

The Tribunal first examined the extent to which there had been growth in imports from the cumulated countries, both individually and collectively, and considered what the trends in imports would be in the absence of anti-dumping duties. The Tribunal notes, in the period from November 1, 1997, to October 31, 1998, the Deputy Minister's period of investigation, that: 100 percent of imports from Argentina were found to be dumped, at a weighted average margin of 29 percent; 67 percent of imports from Belgium were found to be dumped, at a weighted average margin of 7 percent; 100 percent of imports from the Russian Federation were found to be dumped, at a weighted average margin of 29 percent; 100 percent of imports from the Slovak Republic were found to be dumped, at a weighted average margin of 24 percent; 99 percent of imports from Borçelik were found to be dumped, at a weighted average margin of 10 percent; and 100 percent of imports from all other exporters in Turkey were found to be dumped, at a weighted average margin of 29 percent.⁸⁹

The aggregate volume of imports into Canada from the cumulated countries increased from almost 8,000 net tons in 1996 to 105,000 net tons in 1998. Although the volume in 1998 was lower than the volume in 1997, the Tribunal notes that, between the first and fourth quarters of 1998, the volume increased from 3,000 to almost 48,000 net tons. After a dumping investigation was launched by the Deputy Minister in January 1999, imports then declined markedly to less than 20,000 net tons in the first quarter of 1999, but were still high compared to the first quarter of 1998.⁹⁰

Imports from the Russian Federation and from the Slovak Republic showed the greatest increase of the cumulated countries in 1997 over 1996. Although their import volumes then decreased in 1998, they continued to rank first and second in terms of the total volume of imports into Canada from the cumulated countries. The decrease in imports from these two countries in 1998, therefore, cannot be interpreted as a sign of disinterest in the Canadian market, but attributed to other factors, such as the contraction that took place in the market and competition with Korean imports.

From 1996 to 1997, imports into Canada from Belgium increased by over 250 percent and imports from Turkey increased by an even larger percentage, to a level comparable with that of Belgium. From 1997 to 1998, there was continued growth in the volume of imports of cold-rolled steel sheet products into Canada from these two countries. Notwithstanding the large increase in their import volumes in 1997, imports from each of these countries increased by an additional 50 percent in 1998. The Tribunal takes particular note of the large increase in imports from Belgium in the fourth quarter of 1998.⁹¹

There were no imports from Argentina in 1996. In 1997, there were two shipments and, in 1998, there was a single shipment. In 1997, imports from Argentina were the lowest among the subject countries, including New Zealand and Spain. In 1998, imports from Argentina doubled in volume and, although above the level of New Zealand and Spain, continued to rank well below the import volumes from each of the other cumulated countries.

89. *Supra* note 6 at 104.38.

90. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 30.

91. *Ibid.* at 22 and 30.

Low capacity utilization rates are evident for the production of cold-rolled steel sheet products in Argentina, the Slovak Republic, the Russian Federation and Turkey, and exports, as a percentage of total sales, are high in these countries. Capacity utilization in Belgium was at a high level in both 1997 and 1998, but fell back in the first quarter of 1999. Of the cumulated countries, Belgium has the highest practical production capacity.⁹²

The Tribunal also notes that there was a decrease in the level of the Russian import quota for cold-rolled steel into the US market as of July 12, 1999.⁹³ This reduced quota effectively frees up nearly 200,000 net tons of Russian cold-rolled capacity that will be seeking new markets and that could readily seek an outlet in Canada. This volume exceeds the total volume of imports of cold-rolled steel sheet products sold to service centres in Canada from all sources in 1998.⁹⁴ As well, trade actions have been initiated against Russian exports of cold-rolled steel in six other countries.⁹⁵

In addition, the Tribunal recently found that the dumping of Russian and Slovak hot-rolled steel sheet products had caused material injury to Canadian steel producers. As a result, the Russian Federation and the Slovak Republic will be seeking new export markets for this hot-rolled steel. By converting the hot-rolled steel sheet formerly exported to Canada to cold-rolled steel sheet products, they could not only maintain their exports to Canada but also substitute higher-value cold-rolled steel sheet products for their former exports of hot-rolled steel sheet products.

The growth in imports from the cumulated countries from 1996 to 1998, the volume of their imports to Canada, low capacity utilization rates, the importance of exports as a way of maintaining capacity utilization and trade measures in place in other countries against Russian cold-rolled steel and against Russian and Slovak hot-rolled steel sheet products in Canada all indicate a threat of a substantial increase of dumped goods in Canada by the cumulated countries in the near future, if there is no finding against these countries.

Average prices for CQ steel from the cumulated countries sold to service centres declined by \$14 per net ton between 1997 and 1998. However, compared to the first quarter of 1998, average prices fell by \$32 per net ton in the fourth quarter of 1998 and by an additional \$19 per net ton in the first quarter of 1999. This represents a drop of 8 percent, or \$51 per net ton, from the first quarter of 1998 to the first quarter of 1999. During this period, average prices for Belgium, the Russian Federation, the Slovak Republic and Turkey⁹⁶ trended downward, with average prices from the Russian Federation falling the most, at \$145 per net ton. By the first quarter of 1999, imports from the Russian Federation were lower priced than imports

92. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5.1 (protected), Administrative Record, Vol. 2D.A at 135-42.

93. Tribunal Exhibit NQ-99-001-40, Administrative Record, Vol. 1 at 204; and Tribunal Exhibit NQ-99-001-58, Administrative Record, Vol. 1.1 at 58.

94. *Public Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-6.5.1, Administrative Record, Vol. 1D.A at 8.

95. These countries are Argentina, Columbia, Mexico, the Philippines, the Republic of South Africa and Venezuela. *Transcript of Public Hearing*, Vol. 1, July 26, 1999, at 43, and Vol. 2, July 27, 1999, at 229; and Tribunal Exhibit NQ-99-001-6A, Administrative Record, Vol. 1A at 47.

96. For the third and fourth quarters of 1998 only.

from any of the other countries, including the non-subject countries. Argentina participated in the Canadian market in 1998 during the third quarter only. It did not participate in the market in the first quarter of 1999.⁹⁷

The continuing and substantial declines in prices of the Belgian, Russian, Slovak and Turkish subject goods in the periods noted earlier indicate the likelihood of lower prices in the foreseeable future in the absence of anti-dumping measures. With the exception of the first quarter of 1998, these average prices have been consistently below the average prices of the domestic producers. Moreover, as indicated by average prices in the first quarter of 1999, import prices are undercutting domestic prices by an increasing amount.⁹⁸ The Tribunal is of the view that these prices threaten to have a significant depressing effect on the price of like goods and threaten to increase demand for further imports of the subject goods from these countries.

The evidence indicates that the world market for steel products is still plagued by falling demand and excess supply.⁹⁹ In April 1999, the Organisation for Economic Co-operation and Development (OECD) Steel Committee forecast that world steel consumption is expected to remain weak in 1999, with demand falling in North America and Europe, but picking up in Asia from severely depressed levels. Weak market conditions limit the availability of other export markets to absorb exports from the cumulated countries and have a depressing effect on prices.

The Tribunal notes the fragile state of the economies of the Slovak Republic and the Russian Federation in particular and their dependency on exports to earn hard currency. As stated by the OECD, "Slovakia is a small economy with a strong dependence on the external sector. On the one hand, Slovakia was endowed . . . with large production capacities in heavy industries that cannot possibly find outlets either in the domestic market or even in its former Eastern trade partners, for the simple reason that these countries also have excess capacity in the same sectors. These heavy industries have been a major source of export revenues from new markets in the West".¹⁰⁰ As for the Russian Federation, the delegate for Severstal attending the OECD Steel Committee meetings in November 1998 indicated that the Russian economy was depressed and could only absorb a small portion of total Russian steel production.¹⁰¹

The Tribunal is also concerned about the export potential of the Turkish companies and, in particular, about the marketing practice of one of the exporters. The firm exports via block sales tendered to trading companies.¹⁰² In the Tribunal's view, this heightens the likelihood of dumping on the part of that exporter, as it increases the likelihood of export prices being below domestic prices for like goods.

The Tribunal acknowledges the human tragedy that took place recently in Turkey as a result of a major earthquake. At the time of its findings in this inquiry, however, the Tribunal had not received any information with regard to the effects of the earthquake on the Turkish steel industry that might lead it to alter its views or to reconsider its position in this matter. In this regard, the Tribunal notes that recently passed amendments to SIMA will provide the Tribunal with the specific authority to conduct an interim review on any aspect of its findings should the Tribunal be satisfied that such review is warranted.

97. *Supra* note 47.

98. *Ibid.*

99. Manufacturer's Exhibit A-3 at 8, Administrative Record, Vol. 13A.

100. Manufacturer's Exhibit A-3, Appendix 19 at 3, Administrative Record, Vol. 13A.

101. Manufacturer's Exhibit A-3, Appendix 2 at 4, Administrative Record, Vol. 13A.

102. *Transcript of Public Hearing*, Vol. 3, July 28, 1999, at 492.

As far as Belgium is concerned, the June 1999 issue of the *CRU Monitor* reports that regional cold-rolled steel markets in Western Europe are showing less strength. Given that the vast majority of Belgium's product is geared to Europe,¹⁰³ any weakening in these markets will put pressure on Belgium to export more to other markets. Given that Canada is a known and established market for Belgium, the Tribunal is convinced that Canada will be a target for such increased exports.

Argentina experienced a growth in gross domestic product of 4.2 percent in 1998. However, it recently came through two quarters of economic decline. The recession in Brazil has negatively affected the Argentinian economy, with a slowdown in trade between the two countries.¹⁰⁴ The Tribunal notes that Siderar's planned expansion of its hot rolling facilities has been put on hold and that it has no plans to increase its cold-rolled steel capacity.¹⁰⁵ The Tribunal further notes Siderar's forecasts of an increased volume of exports for 1999, to be followed by a decline in exports for the year 2000 to below 1998 levels.¹⁰⁶

Taking into account all of these considerations, it is, in the Tribunal's view, clearly foreseen that, absent an injury finding, the volume of dumped imports from the cumulated countries will increase substantially and that these imports will be available at the low prices seen in the first quarter of 1999, or even lower. Furthermore, the Tribunal concludes that, faced with this situation, the domestic industry is threatened with quickly losing significant volumes of sales to the lower-priced dumped imports. Moreover, the pressures exerted by the low-priced dumped imports will not only make it difficult for the industry to move prices back up but again bring about a downward spiral on prices.

On the issue of prices, the Tribunal notes that the price erosion on cold-rolled steel sheet products has been felt, up to the present, most strongly on non-prime and secondary products.¹⁰⁷ However, the prices for the prime product were beginning to show signs of reduction in the latter part of 1998 and in the first quarter of 1999.¹⁰⁸ In the Tribunal's view, if there is no injury finding in place, this price erosion on prime products will continue to such a level that it will become materially injurious. As these prices for prime products are drawn down, the Tribunal is convinced that the material injury caused by the dumping will begin to manifest itself at end user accounts, as well as at service centres. As contracts are renegotiated at end user accounts, buyers will look to service centre prices and demand similar price reductions in their contracts.

The Tribunal is, thus, of the view that, in the absence of anti-dumping duties, the domestic industry is threatened by lost sales, price erosion and price suppression, with consequent increasing negative effects on net revenues that threaten to cause material injury. The Tribunal is also persuaded that these injurious pressures are clearly foreseen and imminent.

103. Tribunal Exhibit NQ-99-001-25.1 (protected), Administrative Record, Vol. 6.3 at 156.

104. Manufacturer's Exhibit A-3, Appendices 17 and 18, Administrative Record, Vol. 13A.

105. *Transcript of Public Hearing*, Vol. 4, July 29, 1999, at 603.

106. Tribunal Exhibit NQ-99-001-25.6 (protected), Administrative Record, Vol. 6.3 at 105 and 105.3.

107. *Transcript of Public Hearing*, Vol. 1, July 26, 1999, at 41.

108. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 91; and Manufacturer's Exhibit C-1 (protected) at 13, Administrative Record, Vol. 14.

Factors Other Than Dumping

For a number of reasons, the Tribunal considers that the other factors that caused material injury to the domestic industry in 1998 will not cause material injury in the near future.

Sales from imports from the Republic of Korea in the first quarter of 1999 were only a very small percentage of its sales volume in the fourth quarter of 1998, suggesting that the Republic of Korea is withdrawing from the Canadian market.¹⁰⁹ This is confirmed by the public questionnaire response of Daewoo Canada Ltd. (Daewoo), a major importer of Korean cold-rolled steel sheet products in 1998. Daewoo stated that, as the domestic market recovers in the Republic of Korea, all of the Korean cold-rolled coil will go to the Korean market first. Thus, Daewoo does not anticipate that it will be able to import the same volume of steel from the Republic of Korea in 1999 as it did in 1998. The company anticipates that it will import a maximum of 5,500 to 7,700 net tons of cold-rolled steel sheet from the Republic of Korea in 1999.¹¹⁰ At this volume, the Tribunal does not consider that imports by this company will lead prices down. The Tribunal notes that Korean imports by the other importers were not substantial and were at much higher prices. A number of witnesses testified to the improving economies of countries in the Far East.¹¹¹ According to one witness, prices have increased considerably, and the market is gaining momentum.¹¹²

With respect to imports from other non-subject countries, the Tribunal notes the volume and prices of imports from the Republic of South Africa and the Netherlands, particularly in the first quarter of 1999. The average prices of CQ steel from these countries at service centres were \$35 to \$47 higher than the average price of CQ steel from the Russian Federation, the lowest price in this market segment.¹¹³ The Tribunal does not consider that imports from these countries will lead domestic prices downward.

The Tribunal also considers that the harm to the domestic industry due to cost increases will be remedied in the near future. The cost increases experienced in 1998 were due largely to unusual repair and maintenance expenses, modifications to existing equipment and the installation of new equipment. The unusual repair and maintenance expenses should not recur in 1999. The modifications to existing equipment and the installation of new equipment should have a positive effect on the industry's costs in the near future.

The Tribunal believes that the domestic industry is well able to supply¹¹⁴ its traditional share of the market now that the major technological upgrades of 1998 have been completed. Moreover, the Tribunal expects the market for cold-rolled steel sheet products in Canada to remain brisk, buoyed by automotive demand.¹¹⁵

Accordingly, the Tribunal considers that factors other than dumping will not cause material injury in the near future.

109. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 47.

110. Tribunal Exhibit NQ-99-001-15.44, Administrative Record, Vol. 5B at 15.

111. *Transcript of Public Hearing*, Vol. 2, July 27, 1999, at 252, and Vol. 4, July 29, 1999, at 558.

112. *Transcript of In Camera Hearing*, Vol. 4, July 29, 1999, at 578 and 579.

113. *Supra* note 47.

114. *Protected Pre-hearing Staff Report*, revised July 20, 1999, Tribunal Exhibit NQ-99-001-7.5 (protected), Administrative Record, Vol. 2D at 74.

115. Manufacturer's Exhibit A-3, Appendix 6 at 20, Administrative Record, Vol. 13A.

REQUESTS FOR EXCLUSIONS

Producer and Country Exclusions

As noted earlier, Siderar in Argentina and Borçelik in Turkey have requested that they be excluded from the Tribunal's findings, should the Tribunal determine material injury or threat of material injury against the named countries. Borçelik was one of the two producers in Turkey found to be dumping, while Siderar is the sole Argentinian producer exporting the subject goods.¹¹⁶

It is well established that the Tribunal has discretion to allow exclusions under subsection 43(1) of SIMA.¹¹⁷ Moreover, in *Induction Motors*, the Tribunal concluded that cumulation does not mean that it will always make an injury finding against all named countries and that there could well be specific reasons why imports from specific sources might be excluded.¹¹⁸ The Tribunal also stated that it is only after the cumulative effect of the dumping of the goods from all subject countries has been assessed that exclusions, if any, can be envisaged.¹¹⁹ Both producer and country exclusions, however, are granted in exceptional circumstances.¹²⁰

That being said, the Tribunal is of the view that the simultaneous existence of certain factors can be the source of exceptional circumstances justifying an exclusion for a given country or producer. Such factors include: (1) a low volume of exports in comparison to the total volume of dumped and non-dumped imports; (2) the price of the dumped goods in comparison with the price of other dumped goods; (3) the effect on domestic prices for like goods of the weighted average margin of dumping; (4) the market segment in which most or all of the dumped goods are sold; (5) the conditions of sales regarding the dumped goods; (6) whether the exports remain significantly lower than those of the other cumulated countries or producers; (7) evidence of self-imposed restrictions on the volume of exports; (8) the availability of other export markets; and (9) the existence of other incentives, whether business oriented or economic, that makes the resurgence of the dumped imports at injurious levels much less likely. In the Tribunal's view, none of these factors, by themselves, would normally be sufficient to support the existence of exceptional circumstances. In its view, a combination of some or all of these factors is usually necessary.

Taking the above factors into consideration, the Tribunal notes, with respect to imports from Argentina, that Siderar first entered the Canadian market in 1997, with volumes of dumped goods significantly lower than those of all the other named countries. While, in 1998, imports from Argentina almost doubled in volume, they still constituted a small percentage of imports, especially in comparison with those of the other cumulated countries. In the first quarter of 1999, there were no imports of the subject goods from Argentina.

With regard to self-imposed restrictions, the witness for Siderar stated that the company has a policy of limiting the volume of its exports to Canada. He noted, to that effect, that, even though Siderar was

116. *Supra* note 6 at 104.27.

117. *Certain Cold-rolled Steel Sheet Originating in or Exported from the United States of America (Injury)* (*United States v. Canada*) (1994), CDA-93-1904-09 (Ch. 19 Panel) at 54. See, also *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (F.C.A.).

118. *Certain Dumped Integral Horsepower Induction Motors and Dumped Polyphase Induction Motors, Order and Statement of Reasons* (October 10, 1990) (C.I.T.T.) at 15.

119. *Ibid.*

120. *Stainless Steel Round Bar*, *supra* note 19 at 28 and 29.

approached by a Canadian customer at the end of 1997 to increase its sales volumes to it, Siderar declined to do so.¹²¹ In that connection, the witness added that, when Siderar became aware that a dumping case was evolving in Canada, which included Argentina as a subject country, it approached the domestic industry with an offer to limit its exports of the subject goods to Canada, but did not receive any response to that offer.¹²²

With regard to Siderar's export markets, the witness for Siderar said that Asian markets were regaining some of their former strength. Having withdrawn from the Asian market in the third quarter of 1997, the company has already committed to a number of shipments to that market in 1999 and was finalizing negotiations for another shipment. Despite an increase in the volume of exports, the witness added that the whole year was almost already sold.¹²³

With respect to production incentives, the evidence shows that Siderar has a number of galvanizing lines in its plant, as well as a tin mill, in which it produces higher value-added steel from its cold-rolled production.¹²⁴ The witness for Siderar testified that the company would always direct as much product to these higher value-added lines as possible, in order to achieve higher returns.¹²⁵ The witness added that Siderar recently revamped a galvanizing line and was increasing the capacity of its tin mill.¹²⁶ That being the case, the volume of cold-rolled steel sheet production available for export would be substantially reduced by increased demands for product for internal processing.¹²⁷

Finally, with respect to conditions of sale, the witness for Siderar testified that the dumped goods were pre-sold to Canadian customers and that Siderar knew, in advance, the identity of the end users. The Tribunal notes the small tonnage involved for each of the several end users to which Siderar's goods were sold.¹²⁸ In the Tribunal's view, this had little impact on prices. Given the expectation of a continuing low volume of imports into Canada from Argentina and the little impact that dumped goods from that country had in the past, the Tribunal considers that imports from Argentina will pose no threat to domestic prices in the near future.

Based on the above evidence, the Tribunal is of the opinion that there are sufficient reasons in this case to support the exclusion of Argentina from its finding of threat of material injury.

With respect to the request for exclusion made by Borçelik at the hearing, the Tribunal is of the view that, in light of the factors listed above, there was no evidence at the time of its findings to support a conclusion that there were exceptional circumstances to justify the exclusion of Borçelik from its finding of threat of material injury. On the contrary, the trend in the volume of dumped goods involved during the period of inquiry for that producer and the fact that there is no known incentive for it to reduce its shipments constitute, along with the rest of the evidence, the promise of a threat of material injury.

Consequently, the Tribunal excludes Argentina, but not Borçelik, from its finding of threat of material injury. This exclusion, however, has no impact on its finding of threat of material injury regarding the other cumulated countries.

121. *Transcript of In Camera Hearing*, Vol. 4, July 29, 1999, at 561.

122. *Ibid.* at 594.

123. *Ibid.* at 578 and 579.

124. Tribunal Exhibit NQ-99-001-24.6, Administrative Record, Vol. 5.3A at 59; *Transcript of Public Hearing*, Vol. 4, July 29, 1999, at 587; and *ibid.* at 563-564.

125. *Transcript of In Camera Hearing*, Vol. 4, July 29, 1999, at 564.

126. *Ibid.* at 589-90; and Exporter's Exhibit G-2 at 8, Administrative Record, Vol. 15.3.

127. *Transcript of In Camera Hearing*, Vol. 4, July 29, 1999, at 589, 590 and 592.

128. Exporter's Exhibit G-2 at 3, Administrative Record, Vol. 15.3; and *ibid.* at 561.

Product Exclusion

Automotive

The automotive stampers requested an exclusion for cold-rolled steel sheet other than CQ steel, i.e. ASTM A366, imported under tariff item No. 9959.00.00 for use exclusively in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses, or chassis therefor, or parts, accessories or parts thereof,¹²⁹ originating in or exported from all the named countries. This request for exclusion was made on the basis that the product is, at times, in short supply from the domestic producers because of shortfalls, deficiencies or an inability to manufacture the product and that the automotive industry, being a global industry, needs to source parts and steel from around the world.

As noted, to support their exclusion request, the automotive stampers referred to certain parts of the recent statement of reasons in *Certain Corrosion-resistant Steel Sheet Products* which deal with the exclusion of automobile end use products from the orders. According to the stampers, all of the factors which led the Tribunal to exclude automotive end use steel in *Certain Corrosion-resistant Steel Sheet Products* apply in this case. The players and the evidence being the same in both instances, they submitted that the outcome should be the same.

The domestic producers objected to the exclusion, on the grounds that they manufacture like goods to the subject goods and that these goods are available from them. They submitted that the subject goods compete directly with the domestically produced goods. Furthermore, they argued that the price erosion in CQ steel could be transmitted to the higher-quality grades and that the exclusion is not warranted, since the stampers failed to demonstrate that their specialized needs for automotive steel can be satisfied by the offshore named countries.

In the past, the Tribunal has granted product exclusions in exceptional circumstances when, for instance, the domestic industry does not produce the particular product.¹³⁰ The Tribunal also considers such factors as whether there is any domestic production of substitutable or competing goods,¹³¹ whether the domestic industry is an “active supplier” of the product or whether it normally produces the product¹³² and whether the domestic industry agrees with the request for exclusion.¹³³

The Tribunal is of the opinion that the request for exclusion should not be granted. Based on the evidence and testimony, the Tribunal notes that the cold-rolled steel sheet products, for which an exclusion is requested, are produced by the domestic industry which, as mentioned, objects to the exclusion. Moreover, the evidence clearly shows that the domestic goods are substitutable for the subject goods and that they compete directly with the subject goods. While the stampers, on the one hand, acknowledged the link between the co-location of automotive parts production and steel companies sophisticated enough to produce the high specifications required to produce today’s automotive parts, they testified that they do not have any knowledge as to the production of automotive parts nor the capabilities of the named country suppliers to meet their very specialized requirements. Furthermore, the evidence shows that the primary source of

129. *Transcript of Public Argument*, July 30, 1999, at 279-80, where the exclusion was specified by counsel for the automotive stampers.

130. See, for example, *Certain Corrosion-resistant Steel Sheet Products*, *supra* note 12. See, also, *Stainless Steel Round Bar*, *supra* note 19.

131. See, for example, *Machine Tufted Carpeting, 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 19.

132. See, for example, *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products*, *supra* note 9.

133. *Ibid.* at 35.

automotive steel, in case of shortage from the Canadian industry, is likely to be the United States and not any of the named countries. The Tribunal notes, in this regard, that there is no longer a finding in place with respect to the subject goods from the United States.¹³⁴ Based on the foregoing, the Tribunal does not grant this request for exclusion for automotive end use.

“Full Hard” Cold-rolled Steel Sheet

Spain requested a product exclusion for “full hard” cold-rolled steel sheet exported to Canada. However, in light of the Tribunal’s conclusions with respect to Spain, the Tribunal does not need to address this request.

CONCLUSION

Pursuant to subsection 43(1) of SIMA, the Tribunal finds:

- (a) that the dumping in Canada of the aforementioned goods originating in or exported from New Zealand and Spain has not caused and is not threatening to cause material injury to the domestic industry;
- (b) that the dumping in Canada of the aforementioned goods originating in or exported from Argentina, Belgium, the Russian Federation, the Slovak Republic and Turkey has not caused material injury to the domestic industry; and
- (c) that, with respect to the dumping in Canada of the aforementioned goods originating in or exported from Argentina, Belgium, the Russian Federation, the Slovak Republic and Turkey, the dumping of the goods from these countries is threatening to cause material injury to the domestic industry, with the exclusion of the dumping of the goods from Argentina.

Patricia M. Close
Patricia M. Close
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Richard Lafontaine
Richard Lafontaine
Member

134. *Certain Cold-reduced Flat-rolled Sheet Products of Carbon Steel (Including High-strength Low-alloy Steel), Finding and Statement of Reasons* (July 28, 1998), RR-97-007 (C.I.T.T.).