

Ottawa, Wednesday, January 12, 2000

**Inquiry No.: NQ-99-002**

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

**CERTAIN CONCRETE REINFORCING BAR ORIGINATING IN  
OR EXPORTED FROM THE REPUBLIC OF CUBA, THE  
REPUBLIC OF KOREA AND THE REPUBLIC OF TURKEY**

**FINDING**

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry following the issuance by the Deputy Minister of National Revenue of a preliminary determination dated September 14, 1999, and the issuance by the Commissioner, Canada Customs and Revenue Agency, of a final determination dated December 13, 1999, respecting the dumping in Canada of hot-rolled deformed carbon or low-alloy steel concrete reinforcing bar in straight lengths or coils, originating in or exported from the Republic of Cuba, the Republic of Korea and the Republic of Turkey.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods originating in or exported from the Republic of Cuba, the Republic of Korea and the Republic of Turkey has caused material injury to the domestic industry.

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

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Richard Lafontaine  
Richard Lafontaine  
Member

Arthur B. Trudeau  
Arthur B. Trudeau  
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: December 13 to 17, 1999  
Date of Finding: January 12, 2000

Tribunal Members: Pierre Gosselin, Presiding Member  
Richard Lafontaine, Member  
Arthur B. Trudeau, Member

Director of Research: Réal Roy

Lead Researcher: John O'Neill

Researcher: Po-Yee Lee

Economist: Perpetua Katepa-Kalala

Statistician: Lise Lacombe

Counsel for the Tribunal: Gerry Stobo  
Marie-France Dagenais

Registration and Distribution Officer: Gillian E. Burnett

**Participants:**

Jon R. Johnson  
Cyndee B. Todgham Cherniak  
for Co-Steel Inc.

Lawrence L. Herman  
Y.K. Anne Kim  
Craig Logie  
for Stelco Inc.  
AltaSteel  
Stelco McMaster Ltée

Ronald C. Cheng  
Benjamin P. Bedard  
Paul D. Conlin  
for Ispat Sidbec Inc.

**(Domestic Producers)**

Denis Gascon  
Richard A. Wagner  
for Ekinciler Dis Ticaret A.S.  
Barzelex Inc.  
Novosteel S.A.

David J. Manoochehri  
Rick Kesler  
Victoria Bazan  
Ted Cook  
for Colakoglu Metalurji A.S.  
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.  
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.

Peter E. Kirby  
Diane Bertrand  
for Dollard Steel Co.  
Cia Siderúrgica Acinox  
Siderúrgica José Marti (Antillana de Acero)

Donald J. Goodwin  
Carol McGlennon  
for Dongkuk Steel Mill Co., Ltd.

**(Importers/Exporters/Others)**



Ottawa, Thursday, January 27, 2000

**Inquiry No.: NQ-99-002**

**CERTAIN CONCRETE REINFORCING BAR ORIGINATING IN  
OR EXPORTED FROM THE REPUBLIC OF CUBA, THE  
REPUBLIC OF KOREA AND THE REPUBLIC OF TURKEY**

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

**DECISION:** The Canadian International Trade Tribunal hereby finds that the dumping in Canada of hot-rolled deformed carbon or low-alloy steel concrete reinforcing bar in straight lengths or coils, originating in or exported from the Republic of Cuba, the Republic of Korea and the Republic of Turkey, has caused material injury to the domestic industry.

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

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Dates of Hearing:	December 13 to 17, 1999
Date of Finding:	January 12, 2000
Date of Reasons:	January 27, 2000
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Director of Research:	Réal Roy
Lead Researcher:	John O'Neill
Researcher:	Po-Yee Lee
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Donald J. Goodwin  
Carol McGlennon  
for Dongkuk Steel Mill Co., Ltd.

**(Importers/Exporters/Others)**

**Witnesses:**

John F. MacLean  
Vice-President, Merchant Sales  
Co-Steel Inc.

Gary J. Vaughan  
Manager, Reinforcing Bar & Administration  
Co-Steel Inc.

Sam A. Costa  
Vice-President  
C&T Reinforcing Steel Co. (1987) Limited

Peter M. Ouellette  
Vice-President, Marketing & Sales  
AltaSteel

Mike E. Burnet  
Sales Manager  
Stelco McMaster Ltée

Donald K. Belch  
Director – Government Relations  
Stelco Inc.

Jasmin Trudel  
Vice-President  
Acier d'Armature Ferneuf Inc.

James R. Yates  
Commercial Director, Bars and Shapes  
Ispat Sidbec Inc.

Paul Rouleau  
Director, Marketing and Administration  
Ispat Sidbec Inc.

John Harris  
President  
Harris Rebar, A Division of Harris Steel  
Limited

Norton Paish  
President  
Dollard Steel Co.

Luis Carlos Fernández Alvarez  
Vice-President  
Cia Siderúrgica Acinox

Carlos Peña  
Sales Manager  
Cia Siderúrgica Acinox

Roberto Vazquez  
General Manager  
Siderúrgica José Martí (Antillana de Acero)

Address all communications to:

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

Ottawa, Thursday, January 27, 2000

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**CERTAIN CONCRETE REINFORCING BAR ORIGINATING IN  
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REPUBLIC OF KOREA AND THE REPUBLIC OF TURKEY**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member  
RICHARD LAFONTAINE, Member  
ARTHUR B. TRUDEAU, Member

**STATEMENT OF REASONS**

**BACKGROUND**

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,<sup>1</sup> has conducted an inquiry following the issuance by the Deputy Minister of National Revenue of a preliminary determination<sup>2</sup> dated September 14, 1999, and the issuance by the Commissioner of Customs and Revenue (the Commissioner)<sup>3</sup> of a final determination<sup>4</sup> dated December 13, 1999, respecting the dumping in Canada of hot-rolled deformed carbon or low-alloy steel concrete reinforcing bar in straight lengths or coils (hereinafter rebar), originating in or exported from the Republic of Cuba (Cuba), the Republic of Korea (Korea) and the Republic of Turkey (Turkey).

On September 14, 1999, the Tribunal issued a notice of commencement of inquiry.<sup>5</sup> The notice invited persons to notify the Tribunal by October 1, 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/exporters of rebar. Respondents provided production, financial, import, export, sales, pricing and market information, as well as other information relating to rebar, for the period from January 1, 1996, to June 30, 1999. From the 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.

1. R.S.C. 1985, c. S-15 [hereinafter *SIMA*].
2. C. Gaz. 1999.I.2787.
3. On November 1, 1999, the Department of National Revenue became known as the Canada Customs and Revenue Agency, and the Deputy Minister of National Revenue became known as the Commissioner.
4. C. Gaz. 2000.I.30.
5. C. Gaz. 1999.I.2796.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to the questionnaires and the requests for information, all public and protected exhibits filed by the parties throughout the inquiry and the transcript of the proceedings. All public exhibits were made available to the parties. Protected exhibits were made available only to 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 December 13 to 17, 1999. Five of the eight domestic producers of rebar were represented by counsel at the hearing. Certain foreign manufacturers, exporters, importers and fabricators of rebar were also represented by counsel at the hearing.<sup>6</sup> The Tribunal heard testimony from witnesses for the domestic industry and from a foreign manufacturer, an exporter, an importer and fabricators of rebar.

### **RESULTS OF THE COMMISSIONER'S INVESTIGATION**

The Commissioner's investigation into this matter covered imports of rebar originating in Cuba, Korea and Turkey during the period from October 1, 1998, to March 31, 1999.

The investigation revealed that close to 100 percent of the subject goods that entered Canada during the period of investigation were dumped by weighted average margins ranging from 5 to 21 percent. The following table shows these weighted average margins of dumping, by country and exporter, expressed as a percentage of the normal value.

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6. On December 2, 1999, counsel for Barzelex Inc., Novosteel S.A. and Ekinciler Dis Ticaret A.S. advised the Tribunal that they would not appear on behalf of their clients at the hearing.



**TABLE 1**  
**WEIGHTED AVERAGE MARGINS OF DUMPING**  
**(October 1, 1998, to March 31, 1999)**

Country/Exporter	Quantity of Goods Dumped (%)	Margin of Dumping <sup>1</sup> (%)	Weighted Average Margin of Dumping <sup>2</sup> (%)
<b><u>Cuba</u></b>			
Acinox	88	5	5
<b><u>Korea</u></b>			
Dongkuk Steel - Pusan	100	3 to 13	11
Dongkuk Steel - Inchon	0	0	0
Hyundai Corporation	100	21	21
Inchon Iron & Steel	100	21	21
Novosteel	100	21	21
<b><u>Turkey</u></b>			
Colakoglu	100	0.5 to 21	11
Habas	100	5 to 13	8
Icdas, Icdas Mill	100	8	8
Icdas, Ikitelli Mill	100	8	8
All Other Exporters of Goods Originating in or Exported from the Named Countries	100	21	21

1. Expressed as a percentage of the normal value for the dumped goods only.  
2. Expressed as a percentage of the total normal value for all imported goods (dumped and non-dumped).

Source: Canada Customs and Revenue Agency, *Final Determination of Dumping and Statement of Reasons*, December 13, 1999, Tribunal Exhibit NQ-99-002-4, Administrative Record, Vol. 1 at 114.

## **PRODUCTS**

### **Product Definition and Description**

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

hot-rolled deformed carbon or low-alloy steel concrete reinforcing bar in straight lengths or coils, including all hot-rolled deformed bar, rolled from billet steel, rail steel, axle steel or low-alloy steel.

Excluded from this inquiry are:

plain round bar, rebar that has been further worked or fabricated (other than cut), and coated rebar.

The Canadian standards for rebar are set out in the National Standard of Canada CAN/CSA-G30.18-M92 for Billet-Steel Bars for Concrete Reinforcement (the National Standard).

In Canada, rebar comes in the following sizes or bar designation numbers, with the corresponding diameter in millimetres in brackets: 10 (11.3), 15 (16.0), 20 (19.5), 25 (25.2), 30 (29.9), 35 (35.7), 45 (43.7) and 55 (56.4). Rebar sizes are commonly referred to by the bar designation number combined with the letter "M". Thus, 10M rebar has a bar designation number of 10 and a diameter of 11.3 millimetres.

The National Standard identifies two grades of rebar, namely, regular (“R”) and weldable (“W”). “R” grades are intended for general applications, while “W” grades are used where welding, bending or ductility is of special concern.

The National Standard also identifies yield strength levels of 300, 400 and 500 megapascals (MPa). The grade and yield strength of rebar are identified by combining the yield strength level with the grade. Thus, “400R” is regular rebar with a yield strength level of 400 MPa, and “500W” is weldable rebar with a yield strength level of 500 MPa.

The standard lengths of rebar are 6 metres (20 feet), 12 metres (40 feet) and 18 metres (60 feet), although it can be cut and sold in other lengths, as specified by customers.

### **Production Process**

For the most part, in Canada, rebar is produced using ferrous scrap metal as the principal raw material. The scrap metal is melted in an electric arc furnace and is further processed in a ladle arc-refining unit. The molten steel is then continuously cast into rectangular billets of steel that are cut to length and put in inventory. When the plant is ready to produce rebar, the billets are reheated and then rolled into various sizes of rebar, which is cut to various lengths depending on the customers’ requirements. Certain sizes are also produced in coil form.

Rebar is rolled with deformations on the bar, which provide gripping power so that concrete adheres to the bar and provides reinforcing value. The deformations must conform to the requirements set out in the National Standard.

### **Product Application**

Rebar is used almost exclusively in the construction industry to provide structural reinforcement to concrete structures. Residential markets primarily use rebar in smaller sizes, while the heavy construction and fabrication markets use most of the larger sizes of rebar.

### **DOMESTIC PRODUCERS**

There are eight Canadian producers of rebar: Co-Steel Inc. (Co-Steel) of Toronto, Ontario; Ispat Sidbec Inc. (Ispat) of Montréal, Quebec; Stelco Inc. (Stelco) of Hamilton, Ontario; AltaSteel of Edmonton, Alberta; Stelco McMaster Ltée (SML) of Contrecoeur, Quebec; Gerdau Courtice Steel Inc. (Gerdau Courtice) of Cambridge, Ontario; Gerdau MRM Steel Inc. (Gerdau MRM) of Selkirk, Manitoba; and Slater Steel Inc. (Slater) of North York, Ontario.

### **Co-Steel**

Co-Steel is one of the world’s largest mini-mill steel producers and scrap steel processors and is a major producer of rebar in Canada. Rebar has been produced at the Co-Steel Lasco facility in Whitby, Ontario, since the incorporation of Lake Ontario Steel Company in 1964. The company manufactures and markets special quality steel bar and rod, reinforcing bar, merchant bar, structural shapes and flat rolled steel products used principally in the construction, automotive, appliance, machinery and equipment industries. The company also sources, trades and processes scrap steel for its own use and for sale to third parties through its division called Co-Steel Recycling.

## **Ispat Sidbec**

Ispat Sidbec is wholly owned by Ispat International N.V., Rotterdam, Netherlands. The company uses internally produced direct reduced iron as its primary metallic input. The company has five strategic business units: Primary Operations, Wire Rod, Bars and Shapes, Flat-rolled Products and Pipes. The billets from Primary Operations are manufactured into straight and round bars. The rod mill produces rebar, as well as wire rod.

## **Stelco**

Stelco is Canada's largest steel producer, with an annual steelmaking capacity of 5 million tonnes. Stelco owns four business units: Hilton Works in Hamilton; Lake Erie Steel Company in Nanticoke, Ontario; SML in Contrecoeur; and AltaSteel in Edmonton. Rebar is produced at Hilton Works, SML and AltaSteel.

Hilton Works is an integrated steelmaking and processing complex. It manufactures an extensive range of products which include plate, hot-rolled, cold-rolled and galvanized sheet, rod and bars. Hilton Works produces a small quantity of 10M and 15M rebar on a rod mill, where small diameter round wire rod is rolled and processed from billets. All rebar produced at Hilton Works is in coil form. The billets are sourced from its own facility, SML and other suppliers.

SML operates a mini-mill, using scrap steel to produce billets. Billets are later reheated and rolled into bar products, including rebar. Other products produced from the mill include merchant flats, special rounds, specialized automotive leaf spring flats and billets. SML currently produces a wide range of rebar sizes; it plans to produce rebar in all dimensions.

AltaSteel produces rebar similarly to SML's process where billets are cast from liquid steel and reheated and rolled into specific rebar sizes from 15M to 55M. AltaSteel produces a variety of products, including flats, rounds, squares and grinding rods.

## **Gerdau Courtice**

Gerdau Courtice is a subsidiary of Gerdau Steel Inc., a Canadian holding company. Gerdau Steel Inc. is related to various corporations making up the Gerdau Group, a Brazilian steel manufacturer. Gerdau Courtice is a sister company of Gerdau MRM.

Gerdau Courtice operates a relatively small mini-mill that supplies many merchant bar products to the Canadian market. The products include flats, rounds, squares, channels, angles and rebar.

## **Gerdau MRM**

Gerdau MRM has been producing steel products, including rebar, since its early years. The company dates back to 1906 when Manitoba Rolling Mills was established in Winnipeg, Manitoba. The company relocated to Selkirk a decade later, where the plant is now operating. Technologies such as electric furnaces and continuous casting were put in place in the 1960s. In 1995, Manitoba Rolling Mills was acquired by the Gerdau Group in Brazil. Gerdau MRM manufactures and sells rebar to local markets and has the capability to produce merchant bars, channels, rounds, squares and angles in a variety of sizes; it also manufactures special shape products such as elevator guardrails and grader blades. Gerdau MRM's subsidiary, Mandak Metal Processors, provides an ongoing supply of scrap steel to the plant.

## Slater

Slater has been a manufacturer of rebar for over 50 years. It currently produces rebar at its Hamilton Specialty Bar Division which focuses primarily on the manufacture of round and flat bar of carbon and alloy quality for the automotive market. In 1992, Slater withdrew from the rebar market in Canada, but re-entered it on a very limited basis in 1996.

## EXPORTERS

Responses to the Tribunal's foreign manufacturer's/exporter's questionnaire were received from: Siderúrgica José Martí (Antillana de Acero) (José Martí) and Cia Siderúrgica Acinox (Acinox) of Cuba; Dongkuk Steel Mill Co., Ltd. (Dongkuk) of Korea; and Ekinciler Dis Ticaret A.S. (Ekinciler), Colakoglu Metalurji A.S. (Colakoglu), Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas) of Turkey. All of the above-named companies were represented by counsel during the Tribunal's inquiry.

José Martí is a state-owned company in Cuba. It produces billets, rebar, angles and flats and plans to produce wire rod in the future. The mill produces primarily for the Cuban market. All exports of José Martí's rebar products are made through Acinox, a Cuban trading company that specializes in import and export sales.

Dongkuk has produced rebar at its Inchon steel mill since 1972. Until recently, rebar was also produced at its Pusan steel mill which has now been closed, leaving the Inchon mill as the only Dongkuk facility capable of producing rebar for the Canadian market. Dongkuk's total shipments to Canada during the Tribunal's period of inquiry were less than 1 percent of total rebar exports from Korea to Canada. Dongkuk was the only Korean manufacturer that responded to the Tribunal's foreign manufacturer's/exporter's questionnaire.

Ekinciler, which is wholly owned by Ekinciler Holding A.S., was established in 1983 during the restructuring of the Turkish economy. Ekinciler produces rebar in its plant near Iskerderum, Turkey, and sells this product in the domestic market and various export markets. Rebar is produced through the reheating and rolling of billets made from scrap steel. Other products produced by Ekinciler include round bar and billets.

Colakoglu was established in 1968. The company has one plant located in Gebze, Turkey. The company produces steel billets in an electrical arc furnace and converts the billets into wire rod and rebar.

Habas is a producer of wire rod, rebar and billets. The company has one steel plant located in Izmir, Turkey, which consists of a melt shop and two rolling mills. Habas has been operating since 1987.

Icdas is a manufacturer and seller of rebar and billets. Icdas was founded in 1972 as a rolling mill and currently operates with two electrical arc furnaces, two continuous casting machines and two rolling mills. The Icdas mill produces billets and rebar, and the Demir Sanayi mill produces rebar only. Both mills are located in Istanbul, Turkey. Colakoglu, Habas and Icdas market their rebar exports through international trading companies.

The four Turkish producers of rebar that responded to the Tribunal's foreign manufacturer's/exporter's questionnaire represented the majority of the subject rebar exports to Canada

during the Tribunal's period of inquiry. Together, their rebar exports to Canada in 1998 were estimated to account for over 90 percent of total rebar exports from Turkey to Canada.

## **IMPORTERS**

The larger importers of rebar in Canada during the Tribunal's period of inquiry included: Barzelex Inc. (Barzelex), Novosteel S.A. (Novosteel), Ferrostaal Metals Ltd., Dollard Steel Co. (Dollard), Thyssen Canada Limited, Salzgitter Trade, Inc. and TradeARBED Canada Inc. Importers of rebar are, for the most part, sellers of steel products, such as trading companies and brokers. These importers generally sell to the same type of customers as do the domestic mills, that is, fabricators and steel service centres. Very little rebar is imported directly by fabricators or steel service centres in Canada. Dollard was the only importer represented by counsel at the Tribunal's hearing.

## **MARKETING AND DISTRIBUTION**

### **Domestic Product**

The Canadian producers sell rebar directly either to fabricators or to steel service centres. The vast majority of sales are made to fabricators. The fabricators cut, bend and install the rebar in structures at the construction sites. Steel service centres distribute rebar to construction companies and building supply dealers. The Canadian mills sell to their customers either on a freight prepaid (delivered) basis or FOB the Canadian mill, whichever the customer prefers. The Canadian mills market their products, including rebar, through sales forces that contact their respective customers on a regular basis.

### **Imported Product**

Importers of rebar sell their products in a variety of ways. Some importers utilize sales agents or a dedicated sales force to contact customers. Others respond to customer enquiries and source product when they receive a request or learn of a quantity of rebar available and seek orders from customers for that quantity of rebar. Some importers stated that they ship directly to their customers from the source mill, while others sell FOB the unloading dock in Canada.

## **POSITION OF PARTIES**

### **Domestic Producers**

The domestic producers submitted that the cumulative effects of the dumping of rebar in Canada have caused and threaten to cause material injury to the domestic industry in the form of lost sales, loss of market share, decline in utilization of industrial capacity, price erosion, price suppression, declines in net sales and reduced gross margins, operating profit and net income.

In addressing the issue of injury, the domestic producers submitted that their loss of sales volume and market share to the dumped imports, which started in the first quarter of 1997, became evident by the latter half of 1997. The dramatic increase in dumped imports continued in the first half of 1998 with a corresponding increase in their share of the existing market. In order to contain the loss of market share, the domestic producers argued that they were forced to discount prices significantly, resulting in substantial price erosion in the fourth quarter of 1998 and the first half of 1999.

As a result of the price erosion and price suppression that began in the latter part of 1998 and that are still continuing, the domestic producers stated that they all suffered declines in gross margins and

financial losses on rebar production. In the first half of 1998, several domestic producers were able to make up for the rebar sales lost to import competition by switching to other products. However, by the second half of 1998, when rebar sales dropped even further, the domestic producers were no longer able to maintain a satisfactory level of plant utilization and could not compensate by producing other products.

As a result of the decline in selling prices, the loss of sales and the reduction in capacity utilization, the domestic producers stated that they all suffered a reduction in profitability. The domestic producers noted that, while the cost of goods manufactured was lower in the first half of 1999 than in the latter part of 1998, the net profit per tonne had dropped dramatically. According to some domestic producers, the reduction in profitability precludes them from making the necessary capital investment that will enable them to be competitive in the future.

With respect to the issue of causation, the domestic producers attributed the material injury suffered to the severe competition that they faced in 1998 and the first half of 1999 from the low-priced dumped subject goods. To confirm this conclusion, the domestic producers compared, on an account-by-account basis, the prices of the rebar sold by them and by the importers. 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. They argued that the injury was not caused by factors unrelated to the dumping.

The domestic producers noted the continuing effects of the global steel crisis, particularly the large volumes of the subject goods, resulting from the financial crisis in Asia, excess global capacity and the drop in demand for carbon steel products. This caused offshore producers to search the globe for new markets, such as Canada, and to dump their products in those markets. The domestic producers further argued that the situation was made more difficult by the importers and brokers that became increasingly active in the Canadian rebar market in this period. According to the domestic producers, these entities facilitate the sourcing and importation of dumped goods, since their sole objective is to make opportunistic sales at whatever price is necessary to move the product.

The domestic producers argued that, during the Commissioner's investigation period, each of the named countries had extensive rebar production capacity. They claimed that the subject goods were imported and offered for sale and/or sold at prices that were consistently and substantially lower than their own prices. This resulted in price erosion, price suppression and a decline in overall financial performance. While the Canadian demand for rebar expanded during the Tribunal's inquiry period, the domestic producers submitted that they did not share in this market growth and lost market share to the subject goods from 1997 onward.

On the issue of whether the domestic industry could provide adequate volumes of the various rebar products required in the Canadian market, the domestic producers argued that there has been extensive available capacity and that they produce and ship the product consistently. They argued that they were able to supply the market in 1996 when low-priced imports from the named countries were virtually non-existent. They submitted that "availability" became a perceived issue only when low-priced imports from the named countries penetrated the Canadian market in large quantities and disrupted existing pricing structures.

Regarding the effect of scrap steel prices, the domestic producers argued that, while there is a relationship between the cost of scrap steel and Canadian market prices for rebar, there is no direct correlation between the two and that they do not negotiate prices on the basis of scrap steel costs. The domestic producers submitted that this was not, therefore, a cause of price erosion or price suppression.

Turning to the threat of injury, the domestic producers concluded that there is a strong likelihood that mills in the subject countries will continue to dump in Canada if an injury finding is not in place. The domestic producers pointed to the continued oversupply in the world steel market, which is linked to the continuing crisis in Asia, as well as to the weak economies of the named countries. These factors have caused a severe drop in the domestic selling prices and export prices of rebar in the named countries. Against this backdrop, the domestic producers argued that trade actions in other countries, such as the U.S. embargo against Cuba and the current anti-dumping actions against Turkey in the United States and in the European Union, made diversion of the subject goods to Canada a high probability. The domestic producers also cited other factors that increase the threat of increased volumes of dumped goods and continued price deterioration to the domestic industry. These include the huge volume of imports from Korea and Turkey that are already in the Canadian market, the foreign producers' dependence on exports, their excess capacity and the activities of international traders which facilitate exports of dumped products.

On the issue of massive importation and the potential application of retroactive anti-dumping duties, the domestic producers submitted that there was clear evidence that the volume of importation was massive in several months in 1998 and 1999. As well, given the pattern of imports and the experience of the brokers involved, the domestic producers submitted that the importers were aware, or should have been aware, that the exporters were dumping and causing injury.

Regarding the requested exclusions, the domestic producers opposed the importers' request that 10M rebar 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 will continue to cause material injury in the marketplace. Co-Steel argued that, by the latter part of 1997, it suspended the production of 10M rebar because it could not charge the premium necessary to recover the increased costs of producing this size and still compete with the low-priced imports. The domestic producers also opposed requests for producer exclusions made by Dongkuk and Habas, Icdas and Colakoglu.

## **Exporters**

The exporters argued that the domestic industry has not been materially injured by dumped imports of rebar and that there is no threat of material injury from the dumping.

### Turkey (Habas, Icdas and Colakoglu)<sup>7</sup>

Habas, Icdas and Colakoglu dismissed claims of injury by Turkish imports with respect to lost sales and loss of market share, declines in the utilization of industrial capacity, price erosion and price suppression, as well as declines in net sales and reduced gross margins. They argued that the domestic producers' overall financial performance from production operations has not suffered material injury and even improved during the period of inquiry.

Even if the domestic industry suffered material injury, Habas, Icdas and Colakoglu attributed the injury to factors other than dumping. On a global basis, they noted the collapse of global ferrous scrap prices and the overall decline in world prices for rebar which, they noted, should have fallen in tandem. Turning to the domestic situation, they argued that any injury suffered is a result of aggressive price undercutting among the domestic producers due to the purchasers' sensitivity to price. Further, they argued that the domestic producers made a decision to utilize production capacities to produce higher-margin products and,

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7. Habas, Icdas and Colakoglu were represented by counsel at the Tribunal's hearing, but did not present any witnesses.

as a result, did not have adequate capacity to serve their customers during the buoyant time in the market. Finally, Habas, Icdas and Colakoglu argued that Co-Steel's financial difficulties were, to a great extent, due to unusual non-recurring costs during the Tribunal's period of inquiry, including Co-Steel's aggressive business strategy of expanding its recycling operations and its setback resulting from substantial losses at its Gallatin Steel Facility and at Co-Steel Sheariness in the United Kingdom.

In the event that the Tribunal found that the domestic producers had suffered material injury, Habas, Icdas and Colakoglu requested that they be excluded from an injury finding because their imports constituted a small percentage of imports in comparison to the total volume of dumped and non-dumped imports. Furthermore, the weighted average margin of dumping had no effect on domestic prices for rebar. They also requested an exclusion for 10M rebar on the basis that domestic producers could not meet the demand for this product.

On the issue of future injury, Habas, Icdas and Colakoglu stated that the recent earthquakes in Turkey have created an unprecedented demand for rebar, resulting in the likelihood of a significant and sharp decline in the volume of rebar exports from Turkey. They also made reference to the volume of imports from the subject countries that declined significantly in the period preceding the initiation of the dumping investigation. This, they claimed, was evidence of their restraint and of the fact that demand in Turkey was absorbing their output and was likely to continue to do so. Habas, Icdas and Colakoglu further argued that their products do not threaten the domestic producers with material injury caused by dumping insofar as there is no excess capacity of rebar in Turkey and no plans to increase rebar production capacity and that Canada is not likely to become an important market for exports since its standards for rebar are unique.

On the issue of massive importation, Habas, Icdas and Colakoglu submitted that there is no basis for such a finding. During the period from 1996 to 1998, a considerable proportion of imports was attributable to non-subject countries. Moreover, comparing imports in the first half of 1998 with those in the first half of 1999, it was apparent that imports decreased significantly in the latter period.

#### Cuba (Acinox)

Acinox requested a finding of no injury in respect of imports from Cuba or an exclusion, should the Tribunal include Cuba along with the other named countries in making a cumulative assessment of the effects of the dumped imports. Acinox submitted that Cuba is a developing country Member of the World Trade Organization (WTO) and that its capacity is small, relative to the other named exporters.

On the issue of cumulation, Acinox submitted that the Tribunal has discretion, pursuant to subsection 42(3) of *SIMA*, not to cumulate the imports of all countries and that, in the present circumstances, it is not appropriate to do so. In support of its argument, Acinox emphasized Cuba's nearly negligible level of dumped imports, the barter transaction that was a unique event, the limited capacity of the Cuban industry to produce rebar and its small proportion of the market.

Turning to the question of material injury, Acinox dismissed claims that Cuban imports caused material injury in the nature of lost volumes, reduced capacity utilization, price erosion and decreased financial performance. However, should the Tribunal conclude that there was material injury, it argued that it was caused by factors other than dumping.

With respect to declining volumes of rebar production and reduced capacity utilization, Acinox stated that the domestic producers decided to produce higher-margin products to increase their net income



and, as a result, could not provide adequate volumes of the various rebar products required in the Canadian market. Turning to price erosion, Acinox argued that pricing was, in fact, moving naturally in the market driven by cost considerations, particularly plummeting scrap steel prices.

On the question of threat of injury, Acinox submitted that it is not likely that Cuban exports to Canada will increase. Acinox referred to the small tonnage of rebar available for export to Canada, the absence of funding to increase capacity, Cuba's desire to keep its traditional markets and the forthcoming production of wire rod that will limit the production of rebar available for export to countries, including Canada. They reminded the Tribunal of the unusual circumstances of the large importation in 1999, which they do not foresee happening again.

In the event of an injury finding, Acinox requested that Cuba be excluded on the basis of low volumes, a limited number of customers, low margins of dumping compared to the other subject countries and no foreseeable excess capacity available for Canada. Acinox argued that, if the Tribunal decides to cumulate in the present case, it can grant exclusions and, thus, should exclude Cuba on the basis of the facts and its own performance. Acinox also requested an exclusion for 10M rebar on the basis that the domestic producers could not meet the market demand.

Acinox submitted that Cuba did not engage in massive importation and, thus, should not be included in any measure to address massive importation.

#### Korea (Dongkuk)

In the event of an injury finding, Dongkuk requested a producer exclusion on the basis that its Incheon mill, the only remaining production mill for Dongkuk, has not dumped goods in Canada. Dongkuk submitted that exceptional circumstances are present in this inquiry. Its exports to Canada from Incheon are not dumped, and the domestic producers have indicated that both past and future imports of these non-dumped goods have not caused and will not cause material injury to the domestic industry. Finally, Dongkuk argued that it conducted itself in a responsible manner, cooperated extensively in the dumping investigation to determine normal values and should not be treated like other Korean rebar exporters.

### **Importers**

#### Turkey (Barzelex)<sup>8</sup>

Barzelex submitted, in its written brief and the sworn affidavit of Mr. Myer Dietcher, that the dumping of the subject goods from Turkey had not caused and was not threatening to cause material injury to domestic producers. In the event of an injury finding, Barzelex requested an exclusion for 10M rebar on the basis that this size of rebar had not been and is not readily produced by several Canadian producers and because Ekinçiler, as a low-cost Turkish producer, has been able to respond to the needs of the Canadian customers at competitive prices.

Turning to the question of injury, Barzelex argued that the drop in prices in the Canadian market cannot be attributed to imports from Turkey, but rather to the general market conditions for rebar throughout the world. It further argued that the major reason for the price drop has been the significant drop in the price of scrap steel. Barzelex further submitted that difficulties experienced by the Canadian rebar producers are

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8. Barzelex made written submissions to the Tribunal, but did not appear and was not represented by counsel at the Tribunal's hearing.

attributed to the decision of the domestic industry to concentrate its production on more profitable and value-added products.

As far as future injury is concerned, Barzelex submitted that the recent earthquakes in Turkey have created an enormous need for rebar that will strongly limit its ability to export.

On the issue of massive importation, Barzelex submitted that there is no basis for such a finding. Barzelex argued that imports from Turkey actually declined in the first half of 1999 in comparison with the first half of 1998. It further noted that Barzelex was not aware that the imports could be dumped, or that they could injure the Canadian industry, since the orders for rebar were placed before the dumping investigation became known and when the Canadian mills could not supply all their purchasers' needs.

#### Cuba (Dollard)

Dollard submitted that Cuba should not have been included in this inquiry because of its marginal volume of imports into Canada. Dollard emphasized Cuba's small tonnage of rebar available for export and Cuba's interest in only maintaining a small stable presence in the Canadian market.

With respect to price erosion, Dollard submitted that, in the last two years, the prices of scrap steel and of billets have been declining. As a result, there has been downward pressure on the prices for rebar as the cost of producing rebar has declined. Dollard also submitted that domestic producers were unable or unwilling to supply the needs of customers, as they concentrated their efforts on more profitable and value-added products.

### ANALYSIS

Pursuant to section 42 of *SIMA*, the Tribunal is required to "make inquiry . . . as to whether the dumping or subsidizing of the goods [to which the preliminary determination applies] . . . has caused injury or retardation or is threatening to cause injury". "Injury" is defined in subsection 2(1) of *SIMA* as "material injury to a domestic industry". Since its decision in Inquiry No. NQ-95-001,<sup>9</sup> the Tribunal has taken the position that injury and threat of injury are distinct findings and that it does not need to make a finding relating to both under subsection 43(1) unless it first makes a finding of no injury. In this inquiry, the Tribunal adopts the same position.

#### **Like Goods**

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

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

The evidence in this case indicates that domestically produced rebar, defined in the same manner as the subject goods, is similar in terms of physical characteristics, has the same end uses and is substitutable.

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9. *Caps, Lids and Jars Suitable for Home Canning, Whether Imported Separately or Packaged Together, Finding* (20 October 1995), *Statement of Reasons* (6 November 1995) (CITT).

The Tribunal received ample evidence and heard testimony that rebar is a commodity-type product<sup>10</sup> and that, as such, imported rebar is interchangeable<sup>11</sup> with domestically produced rebar.

The evidence indicates that rebar is available in various sizes, generally ranging from 10M to 55M. The Tribunal heard that, on many projects, a variety of sizes of rebar are specified for different uses within the broader category of use, that is, “reinforcement of concrete structures”. While there was evidence and argument about the availability of 10M rebar from domestic production, the Tribunal was not convinced that this particular size of rebar constituted anything other than one size of rebar within a range of sizes that, collectively, make up the total demand for rebar. In the Tribunal’s opinion, rebar of all sizes forms one class of goods.

Consequently, for the purposes of this inquiry, the Tribunal finds that rebar produced by the domestic industry, defined in the same manner as the subject goods, constitutes like goods to the rebar imported from Cuba, Korea and Turkey.

### **Domestic Industry**

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

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

In assessing injury, the Tribunal must be satisfied that the domestic industry constitutes a major proportion of the total domestic production of like goods. Co-Steel, Ispat, Stelco, SML and AltaSteel all made submissions to the Tribunal alleging injury due to dumping and participated in the Tribunal’s hearing. Gerdau Courtice expressed its support for the industry’s position to the Tribunal. Gerdau MRM and Slater expressed their support for Co-Steel’s complaint to the Department of National Revenue.<sup>12</sup> Consequently, the Tribunal finds that these companies, which represent 100 percent of the total domestic production of like goods, constitute the domestic industry for the purposes of this inquiry.

### **Cumulation and Negligibility**

Subsection 42(3) of *SIMA* gives the Tribunal the discretion to make an assessment of the cumulative effect of the dumping of goods to which a preliminary determination applies. An assessment of the cumulative effect of the dumping may be made if the goods are imported into Canada from more than one source and if, among other conditions, the margin of dumping of the goods from each country is not insignificant and the volume of the goods from each country is not negligible. The terms “insignificant” and “negligible” are defined in subsection 2(1) of *SIMA*. In addition, an assessment of the cumulative effect of the dumping is appropriate taking into account the conditions of competition between the dumped goods themselves from the various countries or between the dumped goods and the like goods of the domestic producers.

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10. *Transcript of Public Hearing*, Vol. 2, 14 December 1999, at 278, and Vol. 3, 15 December 1999, at 420.

11. *Transcript of In Camera Hearing*, Vol. 2, 14 December 1999, at 320.

12. Canada Customs and Revenue Agency, *Final Determination of Dumping and Statement of Reasons*, 13 December 1999, Tribunal Exhibit NQ-99-002-4, Administrative Record, Vol. 1 at 96.

In submissions and in argument, there was some discussion as to whether the Tribunal should make an assessment of the cumulative effect of the dumping of the subject goods from all three named countries or whether Cuba should be “excluded” from such an assessment.<sup>13</sup> Subsection 42(3) of *SIMA*, as it is currently worded, states that “the Tribunal may make an assessment of the cumulative effect of the dumping or subsidizing of goods”. While the Tribunal is of the view that the term “may” gives it the discretion to make or not to make an assessment of the cumulative effect of the dumping or subsidizing of goods, it has been its practice, in inquiries which included goods from more than one source country, to make an assessment of the cumulative effect of imports of all the subject goods on the domestic industry.<sup>14</sup> Only by considering the overall effect of all the dumping on the domestic producers can its impact be properly assessed.

In this inquiry, the evidence shows that the weighted average margin of dumping of rebar for each of the three named countries is more than 2 percent of the export price of the goods and that, therefore, it is not insignificant.

Dollard, Acinox and José Marti submitted that imports of rebar from Cuba were negligible in each year of the Tribunal’s period of inquiry, except for one special sale that formed part of a barter transaction in early 1999. Most of the goods covered by this special sale entered Canada during the Commissioner’s period of investigation. They argued that the Tribunal is not directed to take the Commissioner’s period of investigation as the time period in which the Tribunal is to determine negligibility, but could choose a more appropriate period for this purpose.

The Tribunal may use the Commissioner’s analysis if it so chooses, but it is not required to do so. It has the discretion to use whatever information it determines to be the most reliable in the circumstances of the particular case. In the Tribunal’s opinion, when it has total import volume information corresponding exactly to the period of the Commissioner’s investigation, it should use that information in making its determination on the issue of negligibility. The rationale behind this is that the Commissioner’s period of investigation is the only period for which the Tribunal has reliable information on the volume of dumped imports from the named countries. For any other period, the Tribunal would need to extrapolate or make assumptions about dumped volumes based on the Commissioner’s findings.

In this case, for the foregoing reasons and because the Tribunal collected reliable import data during the same period as the Commissioner’s period of investigation,<sup>15</sup> which the parties had an opportunity to test at the hearing, the Tribunal decided: (1) to adopt the Commissioner’s full period of investigation; (2) to use the volume of imports (dumped and non-dumped) as determined by the Commissioner for the subject

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13. *Transcript of Public Argument*, Vol. 1, 17 December 1999, at 119.

14. See, for example, *Polyphase Induction Motors, Findings* (28 April 1989), *Statement of Reasons* (12 May 1989), CIT-5-88 (CITT); *Refill Paper, also Known as Filler Paper or Looseleaf Paper, and Notebooks with a Coiled or Spiral Binding, Findings* (27 September 1996), *Statement of Reasons* (15 October 1996), NQ-96-001 (CITT); and *Stainless Steel Round Bar of Sizes 25 mm Diameter up to 570 mm Diameter Inclusive, Finding* (4 September 1998), *Statement of Reasons* (21 September 1998), NQ-98-001 (CITT).

15. The Tribunal’s data are based on import statistics received from importers representing a high percentage of the imports of rebar. The Canada Customs and Revenue Agency’s data are derived from information provided by the complainant and the other domestic producers, Statistics Canada import data, data obtained from the Canada Customs and Revenue Agency’s internal information system, Facility for Information Retrieval Management, actual entry documentation and information obtained from importers and exporters.

countries; and (3) to use the data that the Tribunal compiled for the same period for non-subject countries.<sup>16</sup> 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. On this basis, the Tribunal determined that the imports from each of the three named countries were not negligible for the purposes of its consideration of the question of injury to the domestic industry.

The Tribunal also considered the conditions of competition between the subject goods with each other and with the like goods. The evidence in this case clearly indicates that the dumped goods from the named countries not only compete against each other but also compete with the like goods. In light of the foregoing, the Tribunal considers it appropriate to make an assessment of the cumulative effect on the domestic industry of the dumped imports of rebar from the three named countries.

### Developing Country Considerations

José Marti and Acinox briefly argued that Cuba was a developing country Member of the WTO and that the Tribunal may take note of Article 15 of the *WTO Agreement on Implementation of Article VI of GATT 1994*<sup>17</sup> and apply the provisions of that article to the extent that it is not contrary to anything in *SIMA*. Article 15 states:

It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.

Without pronouncing on whether this Article is applicable to the Tribunal, given its mandate pursuant to *SIMA*, the Tribunal notes, in any event, that no evidence was presented that would permit it to draw a conclusion that anti-dumping duties on Cuban rebar exports to Canada would affect the essential interests of Cuba. In 1998, these exports represented one third of total Cuban rebar exports; however, in each of the previous two years, they represented only about 3 percent of Cuba's total rebar exports. Therefore, Canada has not been, historically, a significant market for Cuban rebar. Further, the Tribunal notes that the margins of dumping found by the Commissioner for imports from Cuba are not insignificant and that the volume of dumped imports is not negligible. Finally, Cuban rebar can be exported to Canada at normal values.

### Injury

In an inquiry conducted pursuant to section 42 of *SIMA*, the Tribunal must determine whether the domestic industry has suffered injury and, if so, whether a causal relationship exists between that injury and the dumped goods. Subsection 37.1(1) of the *Special Import Measures Regulations*<sup>18</sup> prescribes certain factors that the Tribunal may consider in determining whether a domestic industry has been materially injured by dumped imports. These factors include the volume of dumped goods and their effect on prices in the domestic market for like goods and the consequent impact of these imports on a number of economic factors, such as actual or potential declines in output, sales, market share and profits.

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16. This approach is in keeping with the Tribunal's decision in *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products, Finding* (2 July 1999), *Statement of Reasons* (19 July 1999), NQ-98-004 at 21. See, also, *The Dumping in Canada of Refined Sugar and the Subsidizing of Refined Sugar, Findings* (6 November 1995), *Statement of Reasons* (21 November 1995), NQ-95-002 (CITT) at 20; and *Stainless Steel Round Bar, supra* note 14 at 12 and 13.

17. Signed at Marrakesh on April 15, 1994.

18. C. Gaz. 1994.II.80.

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

	Annual Data			Semi-annual Data		
	1996	1997	1998	Jan.-June 1998	July-Dec. 1998	Jan.-June 1999
<b>Apparent Imports (tonnes)</b>						
Subject Countries	4,806	44,905	159,584	123,413	36,171	74,935
Non-subject Countries	89,150	160,991	122,872	75,186	47,686	56,502
<b>Production (tonnes)</b>	417,043	379,016	326,034	148,341	177,693	201,645
<b>Apparent Market</b>						
Volume (tonnes)	519,926	606,203	600,539	355,324	245,215	340,919
Value (\$000)	242,385	290,079	285,855	168,282	117,574	141,597
<b>Market Share (%)</b>						
<b>Sales from Domestic Production</b>	82	66	53	43	68	61
<b>Sales from Imports</b>						
Subject Countries	1	7	27	35	15	22
Non-subject Countries	17	27	20	22	17	17
<b>Average Price for: (\$/tonne)</b>						
<b>Sales from Domestic Production</b>	492	493	499	511	488	423
<b>Sales from Imports</b>						
Subject Countries	465	500	475	477	465	412
Non-subject Countries	-	513	503	490	526	433
<b>Practical Plant Capacity (tonnes)</b>	2,633,933	2,639,252	2,689,177	1,350,714	1,338,463	1,380,444
<b>Utilization Rate - Rebar (%)</b>	16	14	12	11	13	15
<b>Utilization Rate - Other Products (%)</b>	72	76	76	82	71	74
<b>Total Utilization Rate (%)</b>	88	90	89	93	84	89
<b>Total Industry Financial Results</b>						
Gross Margin (\$000)	21,303	20,735	20,059	10,487	9,573	4,210
Gross Margin (% of sales)	11	11	13	14	12	5
Net Income (\$000)	5,283	6,042	7,386	4,122	3,264	(4,248)
Net Income (% of sales)	3	3	5	5	4	(5)
Net Income per Tonne	12	15	23	27	20	(20)

Source: *Public Pre-hearing Staff Report*, 8 November 1999, and revised 3 and 15 December 1999, Tribunal Exhibits NQ-99-002-6, 6A and 6E, Administrative Record, Vol. 1A.

The Tribunal examined the developments of the market for rebar in Canada. It observed that the macro indicators show that the Canadian market increased by over 15 percent between 1996 and 1998, from some 520 thousand tonnes to some 601 thousand tonnes. While the overall market grew in this period, the share of the market accounted for by sales from domestic production declined significantly from 82 percent in 1996 to 66 percent in 1997 and 53 percent in 1998. The data for the first and second halves of 1998 and the first half of 1999 indicate that the market share accounted for by sales from domestic production declined through the first six months of 1998 to only 43 percent, then recovered in the second half of that year to 68 percent, before declining again in the first half of 1999 to 61 percent, a full 21 percentage points below the market share attained in 1996.

During the 1996-98 period, imports from the three named countries increased their share of the market from 1 to 27 percent and accounted for approximately 56 percent of total imports in 1998. Imports from non-subject countries also increased their market share, but to a much lesser degree, moving from 17 percent in 1996 to 27 percent in 1997 and falling back to 20 percent in 1998. During the first half of 1999, imports from the three subject countries represented 22 percent of the apparent market, while the market share of imports from non-subject countries fell back to its 1996 level of 17 percent of the market.

The domestic producers' average price for sales from domestic production remained steady in 1997 at \$493 per tonne compared to \$492 per tonne in 1996. During the first half of 1998, the domestic industry's average price increased to \$511 per tonne, then declined to \$488 per tonne during the last six months of 1998 and declined further to \$423 per tonne in the first six months of 1999, a 17 percent decrease from the comparable period in 1998. The average price of imports from the subject countries<sup>19</sup> increased from \$465 per tonne in 1996 to \$500 in 1997, before declining to \$477, \$465 and \$412 per tonne in the first and second halves of 1998 and the first half of 1999 respectively.

The domestic industry's case was that, faced with increased volumes of imports during 1997 and early 1998, overall, the producers held their prices and, consequently, lost sales volume and market share. In the latter part of 1998, the producers changed their strategy, as it became apparent that these increased volumes of imports were going to continue. At that point, they began to discount their rebar prices in an attempt to regain market share. While it is apparent that not all domestic producers followed the same strategy at the same time or to the same extent, the macro indicators of apparent market shares and average prices for both domestically produced rebar and rebar imported from the subject countries support the overall assertions of the domestic industry.

Looking in more detail at rebar price movements in Canada over the period of inquiry, the evidence shows that the average selling prices of imports from the subject countries were, in most cases, below those of the domestic producers<sup>20</sup> and were leading the domestic industry's prices down. A review of average prices reveals that prices of imported rebar from the subject countries started to decline in the first half of 1998, while average prices for domestically produced rebar began to decline in the second half of 1998 and continued to decline in the first half of 1999.

Turning to the domestic industry's financial performance, it was apparent to the Tribunal that the industry's strategy of maintaining price levels enabled it to collectively earn relatively constant returns on its sales of rebar during 1996, 1997 and 1998, with both gross margin and net income, expressed as a percentage of net sales, actually increasing during the three-year period. However, by the first half of 1999, following the industry's decision to lower prices in the latter part of 1998 in an attempt to regain market share, these percentages declined drastically. The gross margin percentage fell from 14 percent of sales value in the first half of 1998 to 12 percent in the latter half of 1998 and to 5 percent of sales value in the first half of 1999. The net income percentage earned on sales of rebar decreased from 5 percent in the first half of 1998 to 4 percent in the last half of 1998 and to minus 5 percent in the first half of 1999. The Tribunal is convinced that the decrease in both gross margin and net income is directly related to the significant price discounting by the domestic producers during the latter part of 1998 and early 1999.

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19. The Tribunal did not receive adequate information from the importers of Cuban rebar to calculate average sales values during its period of inquiry. Consequently, the average values for the subject countries are calculated from the data for imports from Korea and Turkey only.

20. *Protected Pre-hearing Staff Report*, 8 November 1999, Tribunal Exhibit NQ-99-002-7 (protected), Administrative Record, Vol. 2 at 63.

Following 1996, the domestic producers experienced declining sales volumes, net revenues and market share. In the latter part of 1998 and the first six months of 1999, their rebar prices and profitability began to erode. Between 1996 and 1998, the domestic industry's sales volume declined by over 107 thousand tonnes, and net sales value declined by almost \$46 million. In the first six months of 1999, the domestic industry's market share recovered somewhat from the 1998 level, but was still 21 percentage points below the market share held by the industry in 1996. The reduction in net income earned on sales of rebar in the first half of 1999, compared to the same period in 1998, was over \$8 million.<sup>21</sup>

In conclusion, the Tribunal finds that the domestic producers of rebar experienced a significant loss of market share. In addition, to combat the market share losses, they were forced to reduce selling prices, leading to reductions in the revenue and profitability of the domestic producers of rebar, especially in the latter part of 1998 and in the first half of 1999. The Tribunal finds that the magnitude of the market share losses, the price declines and the resulting financial losses are such as to conclude that the domestic producers have been materially injured.

### **Causation**

Having found that the domestic industry had suffered material injury, the Tribunal considered whether there was a causal link between that material injury and the dumped imports. The Tribunal also examined other factors to ensure that any injury caused by such factors was not attributed to the dumped imports.

In considering the issue of causation in this inquiry, the Tribunal has taken note of the evidence submitted by parties and, in particular, the testimony of witnesses who appeared at the hearing. The Tribunal notes that these witnesses represent a cross section of industry players, from the domestic producers to an importer and an exporter of Cuban rebar, to large- and medium-sized rebar fabricators; however, it notes an absence of witnesses for importers and exporters of rebar from Korea and Turkey.

During the Tribunal's period of inquiry, the Canadian rebar market was generally characterized as buoyant. The total apparent market for rebar grew from just under 520 thousand tonnes in 1996 to just over 600 thousand tonnes in 1998, a 15 percent increase. The evidence and testimony presented in this case indicate that imported rebar from Korea and Turkey began to appear in significant quantities during 1997 and 1998, followed by Cuban rebar later in 1998 and the first part of 1999.

While the market had previously been served, to some extent, by imported rebar, these imports had been primarily from the United States and had been concentrated in the western regions of Canada. After the U.S. market was effectively closed to Turkish rebar following an injury determination by the United States International Trade Commission and the consequent imposition of anti-dumping duties in 1997, the Turkish exporters began seeking alternative export markets and turned their attention to the Canadian market. Imports of rebar into Canada from the subject countries increased by over 800 percent in 1997 compared to 1996, then increased by a factor of 3.5 in 1998 to reach almost 160 thousand tonnes, compared to a total of less than 5 thousand tonnes in 1996. According to the Commissioner, the vast majority of the subject goods imported during the Canada Customs and Revenue Agency's period of investigation were dumped.<sup>22</sup>

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21. *Protected Pre-hearing Staff Report*, revised 15 December 1999, Tribunal Exhibit NQ-99-002-7D (protected), Administrative Record, Vol. 2 at 199.8.

22. Canada Customs and Revenue Agency, *Final Determination of Dumping and Statement of Reasons*, 13 December 1999, Tribunal Exhibit NQ-99-002-4, Administrative Record, Vol. 1 at 114.



The industry witnesses testified that, faced with these large volumes of imports, they initially chose to adopt a strategy of maintaining price levels rather than engage in price-cutting activities. During this time, however, the industry found it more and more difficult to obtain a premium price for smaller diameter rebar, such as 10M and 15M, and for weldable grades of rebar. These products historically commanded a premium in the market because they are more difficult and costly to produce.<sup>23</sup> Moreover, the domestic producers began to lose sales of rebar and, consequently, the industry's market share began to erode. The industry was able to keep total mill utilization rates at acceptable levels by increasing the production of other products produced on the same equipment as rebar.

Imported rebar from the subject countries entered the market in 1997, with increasing volumes in 1998. This rebar was made available to fabricators and service centres in Canada through numerous steel trading companies. The Tribunal heard that rebar fabricators purchase and use over 95 percent of the rebar sold in the Canadian market. These fabricators bid on construction projects and, when successful, supply, cut, bend and install the rebar within the concrete forms at construction sites.

The Tribunal heard testimony from several rebar fabricators about the events in the Canadian rebar market during its period of inquiry. These fabricators testified that theirs is a very competitive market and that the cost of rebar is by far the largest cost component that they must consider when bidding for contracts. Further, they testified that a small difference in rebar costs can make or break a bid, as contracts are often won or lost due to small differences in price.<sup>24</sup> As Mr. John Harris stated, "the economics of the fabrication business are that by a huge measure our largest value [added] is the reinforcing steel that we buy from a third party supplier. If that cost is out of line it's almost impossible to have a competitive price in the marketplace".<sup>25</sup> Mr. Harris went on to state that "it is not really possible to sell a significant amount of rebar by being 5 per cent higher than your competition. Maybe .5 per cent sometimes".<sup>26</sup> Therefore, if a fabricator gains an advantage over the others through lower-priced rebar, regardless of the source, the others would be forced to follow suit. The fabricators indicated that, once low-priced imported rebar became available in the market, they purchased it to remain competitive with other fabricators.<sup>27</sup>

Thus, while the overall Canadian market for rebar was growing, the domestic producers' share of that market was shrinking, as dumped rebar from the subject countries became more and more available to the very competitive rebar fabrication industry. The evidence and testimony put forward in this case left the Tribunal with no doubt that the decline in market share suffered by the domestic producers was caused primarily by the availability of the dumped rebar from the subject countries.

While the injury suffered by the domestic industry manifested itself primarily as a loss of sales volume and reduced market share in the early part of the Tribunal's inquiry period, the domestic producers testified that, during the latter part of 1998, they altered their strategies and began discounting their prices as they attempted to regain market share.<sup>28</sup> This change was necessary to return plant utilization rates to acceptable levels in the face of reduced rebar sales, declining demand and price levels for other products produced in the domestic mills, and increasing inventory levels of these other products.<sup>29</sup> The domestic producers explained that it was very important for them to keep their bar and rod mills operating at or near

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23. *Transcript of Public Hearing*, Vol. 3, 15 December 1999, at 397.

24. *Transcript of Public Hearing*, Vol. 3, 15 December 1999, at 424-25; and *Transcript of In Camera Hearing*, Vol. 1, 13 December 1999, at 3-4.

25. *Transcript of Public Hearing*, Vol. 3, 15 December 1999, at 423-24.

26. *Transcript of Public Hearing*, Vol. 3, 15 December 1999, at 424-25.

27. *Transcript of In Camera Hearing*, Vol. 1, 13 December 1999, at 3-5, and Vol. 3, 15 December 1999, at 443.

28. *Transcript of Public Hearing*, Vol. 1, 13 December 1999, at 122 and Vol. 3, 15 December 1999, at 370.

29. *Transcript of Public Hearing*, Vol. 1, 13 December 1999, at 106, and Vol. 2, 14 December 1999, at 243.

full utilization to derive the maximum economic benefit.<sup>30</sup> In the short term, it was possible to divert production capacity to other products; however, given the limited scope for the domestic producers to expand sales volumes in these market sectors, this eventually led to increased inventory levels.

The pricing data gathered through Tribunal questionnaires support the domestic industry's contentions as to the timing of price reductions in the market. An analysis of this data indicates that, in 1997, the average price of imports from the subject countries was slightly higher than the average price of domestically produced rebar. Concurrent with the rapid increase in the volume of imports from the subject countries in 1998, the average price of the subject imports began to undercut the domestic prices. The lower import prices remained for the balance of the Tribunal's period of inquiry. As one witness testified, "[h]ad offshore material not been available in 1998 we would have paid more for reinforcing bar".<sup>31</sup> Thus, this evidence clearly indicates that import prices led domestic rebar prices down starting in mid-1998.

The rebar fabricators testified that prices offered in the market for imported rebar quickly became widely known among market participants. They also indicated that they approached the domestic producers with the low import prices that were available in the Canadian market, looking for price concessions so that they could compete with fabricators that were using the lower-priced imported product.<sup>32</sup> The testimony of fabricators indicates that low-priced rebar imported from the subject countries was available before the domestic producers began to reduce prices.<sup>33</sup> The domestic producers testified that they were compelled to meet these lower prices, both to regain market share and to ensure that their customers remained competitive with other fabricators.<sup>34</sup> The domestic industry submitted documentary evidence which corroborates its version of the events in the Canadian rebar market during 1998 and the first half of 1999. These documents substantiate the allegations of low-priced imported rebar from the subject countries being offered to Canadian rebar customers.<sup>35</sup>

Based on the foregoing evidence and testimony, the Tribunal concludes that the material injury suffered by the domestic industry in the form of lost sales, declining market share and price erosion was caused by the low prices at which large volumes of dumped imported rebar were being sold in the Canadian market. Furthermore, these lost sales and the price erosion account for a significant proportion of the decline in financial performance experienced by the domestic industry in the latter part of 1998 and the first half of 1999.

### Other Factors

The Tribunal notes that certain importers and exporters of rebar argued that there were factors other than dumping that caused the injury suffered by the domestic producers. The Tribunal notes that, in any inquiry, there are almost always other factors present. The Tribunal must not attribute to the dumping any injury caused by these other factors.

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30. *Transcript of Public Hearing*, Vol. 2, 14 December 1999, at 200; and *Transcript of In Camera Hearing*, Vol. 2, 14 December 1999, at 220.

31. *Transcript of Public Hearing*, Vol. 3, 15 December 1999, at 459.

32. *Transcript of Public Hearing*, Vol. 1, 13 December 1999, at 155, and Vol. 2, 14 December 1999, at 319; and *Transcript of In Camera Hearing*, Vol. 1, 13 December 1999, at 6, and Vol. 3, 15 December 1999, at 429.

33. *Transcript of Public Hearing*, Vol. 3, 15 December 1999, at 474-75; and *Transcript of In Camera Hearing*, Vol. 1, 13 December 1999, at 9, and Vol. 3, 15 December 1999, at 429.

34. *Transcript of In Camera Hearing*, Vol. 1, 13 December 1999, at 7, and Vol. 3, 15 December 1999, at 382; and *Transcript of Public Hearing*, Vol. 2, 14 December 1999, at 314-15, and Vol. 3, 15 December 1999, at 370.

35. Manufacturer's Exhibit A-4 (protected), Tab 2 at 4-6 and Tab 3 at 3-6, Administrative Record, Vol. 14; and Manufacturer's Exhibit D-5 (protected), Tab 1 at 20 and 22, Administrative Record, Vol. 14.3.

### Scrap Steel Prices

Certain importers and exporters submitted that rebar prices declined in the latter part of 1998 and the first half of 1999 as a result of decreasing scrap steel prices. They reasoned that, as the cost of scrap steel is the major input cost in the manufacture of rebar, the reduced costs should have been, and were, reflected in lower rebar prices. The domestic producers stated that, while scrap steel costs and other input costs certainly influence rebar prices over the long term, rebar prices are determined primarily by market conditions.

While some rebar fabricators stated that they are aware of scrap steel prices and, indeed, track scrap steel prices, they were unanimous in stating that they did not use changes in scrap steel prices as a negotiating tool with either sellers of imported rebar or the Canadian producers of rebar.<sup>36</sup> Furthermore, the fabricators agreed that rebar prices were dictated by market conditions.<sup>37</sup> At best, one fabricator described scrap steel prices as a “bellwether” of the direction rebar prices were likely to move in the future.

The evidence indicates that the domestic producers’ scrap steel costs decreased in the latter part of 1998 and the first six months of 1999. These reduced scrap steel prices were reflected in the section relating to the cost of direct materials in the cost of goods manufactured statements submitted by the domestic producers. However, the decline in average manufacturing costs does not fully explain the decline in average rebar prices. If lower costs were the sole reason for the decline in prices, then there would be no impact on gross margins and net income earned on the sales of rebar, as the declining costs would offset the declining prices. The Tribunal notes that the cost of scrap steel constitutes a large percentage of the cost of direct materials used in the production of rebar. The evidence indicates that the average cost of direct materials reported by the domestic producers during the first six months of 1999 was \$235 per tonne, a decrease of \$47 per tonne from the comparable period in 1998. During the same time period, the average selling price declined from \$494 per tonne to \$404 per tonne, a decrease of \$90 per tonne. Therefore, average prices declined by \$43 per tonne more than the decline in direct material costs. This difference explains the majority of the decline in gross margins earned on sales of rebar, which declined by \$49 per tonne, and in net income of sales of rebar, which changed from a profit of \$27 per tonne in the first six months of 1998 to a net loss of \$20 per tonne in the first six months of 1999.

Furthermore, the Tribunal notes that gross margin and net income, on a percentage basis, reported for sales of other products manufactured by the domestic industry remained relatively constant over the entire period of inquiry, even increasing slightly in the first six months of 1999. The cost of scrap steel would, for the most part, have as great an effect on the financial returns on the sales of these products as it would on the returns on sales of rebar.

On the basis of the foregoing, the Tribunal is not convinced that there is an immediate direct relationship between scrap steel prices and rebar prices. While there is no doubt that reduced costs insulated the domestic producers from the full brunt of the price declines, the Tribunal concludes that the price erosion suffered by the domestic producers on their sales of rebar cannot be satisfactorily explained by reduced manufacturing costs in the form of decreased scrap steel prices.

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36. *Transcript of Public Hearing*, Vol. 1, 13 December 1999, at 151, and Vol. 3, 15 December 1999, at 474.

37. *Transcript of In Camera Hearing*, Vol. 1, 13 December 1999, at 41, Vol. 2, 14 December 1999, at 218 and 300-301, and Vol. 3, 15 December 1999, at 355-56.

### 10M Rebar

The importers and exporters also submitted that the increased presence of imported rebar in the Canadian market was due to the inability of the domestic industry to supply market needs, particularly with regard to 10M rebar. These parties argued that imports were a necessary component in the supply of rebar in Canada because the domestic producers either could not produce or were not willing to produce adequate volumes of 10M rebar and that fabricators were forced to find alternative sources for this product.

The domestic producers argued that 10M rebar has been and continues to be available from domestic production. Stelco produces 10M rebar in coil form at its Hilton Works facility. Ispat regularly rolls 10M rebar as part of its production mix, and the evidence indicates that both Gerdau Courtice and Gerdau MRM were producing 10M rebar during the Tribunal's period of inquiry. Co-Steel indicated that it ceased production of 10M rebar in Canada at the end of 1997, in response to low price levels in the market for 10M rebar that did not allow it to sell the product profitably. However, it continued to make 10M rebar available to its customers from its facility in Sayreville, New Jersey. Both AltaSteel and SML indicated that their mills were capable of producing 10M rebar, although they currently were not doing so because of the lack of a premium for 10M rebar to cover the higher cost of producing it. Furthermore, SML has undergone a recent expansion program to modernize its bar mill, which, it claims, will greatly improve its 10M rebar production efficiency.

The Tribunal is not convinced that a shortage of domestically produced 10M rebar was the cause of the increased imports of rebar from the subject countries. There is no doubt that, currently, the domestic producers, collectively, do not produce a sufficient quantity of 10M rebar to satisfy demand in the market. 10M rebar is more costly to produce and has historically commanded a premium price in the Canadian market. With the onslaught of large volumes of dumped subject rebar in 1997 and 1998, it became unprofitable for the domestic industry to produce this size of rebar. In the Tribunal's opinion, this production shortfall was driven by the low prices offered for imported rebar, which, the evidence indicates, often do not distinguish between the various sizes of rebar.<sup>38</sup> Rather than being "a factor other than dumping" that is causing injury, the Tribunal finds that the reduced production of 10M rebar by the domestic industry in general, and by Co-Steel in particular, was the first manifestation of injury caused by the dumped rebar.

### Change in Product Mix to Higher-margin Products

It was suggested that the domestic producers had purposely reduced their production of rebar in favour of a switch to higher-margin products.

The evidence indicates that, for the most part, rebar earns a lower rate of return at both the gross margin and net income levels than other products produced in the industry's mills. However, industry witnesses testified as to the importance of rebar in the production mix of the mills. Some producers also stated that rebar was a necessary component of their overall product mix. One witness indicated that, if the company did not produce rebar, it would have to use higher-cost scrap steel to produce the remaining products.<sup>39</sup> Another witness testified that his company had made a concerted effort to streamline its product range so that it would be making only round bar products. He went on to say that "[r]ebar is a round bar. It

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38. The evidence indicates that imported 10M rebar did not command a premium over other sizes, nor did weldable grade products. As a general rule, however, traders/importers offered a single unit price per tonne of rebar for specific orders, but such a price would reflect the mix of sizes within the bundle of products.

39. *Transcript of Public Hearing*, Vol. 2, 14 December 1999, at 177.

runs with synergy with all of our other products. We have actually increased rebar production over the last five years on a year-in/year-out basis and the intent is to continue to do that".<sup>40</sup> The producers also testified that they consider it very important to maintain high levels of capacity utilization.<sup>41</sup> Furthermore, while the evidence indicates that the domestic industry was able to offset the reduced production levels of rebar during the early part of 1998 by switching to other products, it could not do so for an extended period of time. Indeed, by the third quarter of 1998, the domestic industry reported that its inventories of these other products were rising to unacceptable levels. Co-Steel submitted that it was forced to reduce its production schedule by one shift for several months starting in November 1998.

The Tribunal is not convinced that the domestic producers made a strategic planning decision to reduce their production of rebar in favour of other products. The evidence and testimony indicate that the entire mix of production, including rebar production, is important for the domestic producers and that, over the longer term, they cannot significantly alter their production mix and achieve the high utilization rates that they require.<sup>42</sup>

#### Global Economic Factors

It was submitted that the real causes of the price pressures felt by the domestic producers were the recent developments in the world market for rebar, which has been influenced by factors such as the Asian economic crisis and the economic crisis in the Commonwealth of Independent States.

While these factors may well explain why certain exporting countries had a greater interest in the Canadian rebar market in recent years, they do not explain why these products were dumped in Canada.

The evidence shows that published spot prices for rebar in Canada declined in early 1999, as did the published spot prices for rebar in many other countries.<sup>43</sup> The Tribunal notes that price trends in one part of the world generally influence prices in other parts of the world, especially for a commodity-type product such as rebar, and that the Canadian market is not and cannot be insulated from world price pressures. However, the Tribunal is of the view that, to the extent that foreign producers sell rebar in the Canadian market at dumped prices and to the extent that it is determined that the exports are causing injury to the domestic industry, using "low world prices" to justify such dumping is not acceptable.

#### Imports from the Other Countries

Parties argued that imports of rebar from non-subject countries, principally the United States, had a greater influence on rebar prices in Canada than the goods from the subject countries. The Tribunal notes that the volume of imports from other countries increased substantially during 1997, then declined in 1998 and again in the first half of 1999. In the first half of 1999, the market share accounted for by imports of rebar from other countries returned to the 1996 level of 17 percent. Furthermore, average prices for rebar imported from other countries, while exhibiting the same general trends as other prices in the Canadian market, were consistently higher than the average prices of rebar imported from the subject countries and, in most cases, were higher than the average prices of domestically produced rebar. Consequently, the Tribunal is not persuaded that these imports, which have historically served parts of the Canadian market, have had a negative impact on the domestic industry.

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40. *Transcript of Public Hearing*, Vol. 2, 14 December 1999, at 200.

41. *Transcript of Public Hearing*, Vol. 3, 15 December 1999, at 406.

42. *Transcript of Public Hearing*, Vol. 3, 15 December 1999, at 407; and Manufacturer's Exhibit A-6 (protected), para. 19, Administrative Record, Vol. 14.

43. Tribunal Exhibit NQ-99-002-27.1, Administrative Record, Vol. 1A at 224-30.

### Lack of Competitiveness

It was submitted that the Canadian producers' lack of export sales of rebar demonstrated that they were not competitive with international rebar producers and that any injury that they may have suffered was self-inflicted.

The evidence clearly shows that the domestic producers export very little rebar to other countries. One reason given was the "Buy America" program in the United States, whereby most government-funded construction projects require that only goods made in the United States be used. These projects account for a large proportion of construction projects that use rebar in that country. Furthermore, fabricators in the United States are reluctant to carry two rebar inventories, one that contains only U.S. rebar to be used in projects that are subject to the "Buy America" program and one that contains imported rebar for other projects. Finally, because the US market for rebar operates on the imperial system as opposed to the metric system in Canada, to get access to this market, the Canadian producers would need to invest in new rolls to make the imperial sizes.<sup>44</sup>

While it was alleged that one mill in Turkey may have achieved higher output rates than Canadian mills, these rates were so superior to the output rates of the Canadian mills and one Cuban mill that they cast serious doubt on the accuracy or comparability of the information. Furthermore, no witnesses from the Turkish mills were present to explain how these rates had been determined and under what conditions.

Several Canadian producers testified that they have invested large sums of money to modernize and upgrade their mills during the last several years and that more investments are planned by the industry.

In light of the foregoing, the Tribunal does not believe that a lack of competitiveness on the part of the Canadian producers was a significant factor in their performance during the last few years.

### **MASSIVE IMPORTATION**

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

The domestic industry pointed out that, between 1996 and 1998, imports of the subject goods from the subject countries grew from 1 percent of the market in 1996, to 7 percent of the market in 1997 and to 27 percent of the market in 1998. Furthermore, the domestic producers indicated that imports of the subject goods in the first half of 1998 accounted for 35 percent of the total domestic market. They noted the huge volume of Turkish and Korean subject goods which entered Canada in three consecutive six-month periods from January 1, 1997, to June 30, 1998. They also noted the continuing high volume of imports from Turkey and Korea in August 1999. In their estimation, the fact that imports of the subject goods from

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44. *Transcript of In Camera Hearing*, Vol. 3, 15 December 1999, at 374.

Turkey and Korea, in August 1999<sup>45</sup> alone, which approximated or exceeded the total volume of imports from these countries in 1997, should be considered massive importation.

Habas, Icdas and Colakoglu pointed out that they were unaware that the goods were dumped. They further noted that, for the period between 1996 and 1999, a considerable proportion of total imports is attributable to non-subject countries. Moreover, they indicated that, comparing the first half of 1998 to the first half of 1999, the imports from the subject countries decreased by 39 percent. Habas, Icdas and Colakoglu also noted that there is no evidence as to whether the shipments of the subject goods in August 1999 were ordered before or after the initiation of the dumping investigation and that imports entered in a given month is no indication of the overall trend of those imports. The exporters and importers concluded that there was no evidence pointing to the massive importation of the subject goods.

Based on the evidence, the Tribunal notes that the imports of the subject goods did not occur within a relatively short period of time. The Tribunal also notes that, while the volume of imports was relatively high in the first half of 1999, it was considerably less than the volume of imports in the comparable period in 1998. Thus, the Tribunal is not persuaded that importers and others were importing the subject goods prior to the preliminary determination of dumping in order to avoid paying provisional duties.

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

## **REQUESTS FOR EXCLUSIONS**

As noted earlier, the exporters and importers requested product, producer and country exclusions. The Tribunal notes that it is within its discretion to grant exclusions<sup>46</sup> and that it has, in the past, granted product, producer and country exclusions.

### **Product Exclusions**

#### **10M Rebar**

The exporters and importers requested a product exclusion for 10M rebar on the basis that the product is in short supply from domestic producers. They submitted that some of the domestic producers do not produce 10M rebar and that production of 10M rebar was discontinued even before imports from the subject countries entered the Canadian market. Finally, they indicated that the domestic producers that currently produce 10M rebar do not produce the volume necessary to meet demand in the Canadian market.

The domestic producers objected to the exclusion on the grounds that they manufacture 10M rebar, that these goods are like goods to the subject goods and that these goods are available from them. Furthermore, they submitted that the subject goods compete directly with the domestically produced goods.

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45. Imports of rebar from Korea and Turkey totalled 42,131 tonnes during August 1999 (Tribunal Exhibit NQ-99-002-6C, Administrative Record, Vol. 1A at 167.9). For all of 1997, imports from the subject countries equalled 44,905 tonnes.

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

In the past, the Tribunal has granted product exclusions in exceptional circumstances when, for instance, the domestic industry does not produce the particular product.<sup>47</sup> The Tribunal also considers other factors such as whether there is any domestic production of substitutable or competing goods,<sup>48</sup> whether the domestic industry is an “active supplier” of the product or whether it normally produces the product.<sup>49</sup>

Based on the evidence and testimony, the Tribunal notes that the rebar products produced by the domestic industry are “like goods” to the subject goods. Moreover, the evidence clearly shows that the domestic goods are substitutable for the subject goods and that they compete directly with the subject goods. The exporters and importers submit that the reason for requesting an exclusion is to ensure an adequate supply of 10M rebar when there is a short supply of domestically produced goods. The Tribunal does not find this argument to be persuasive, since the evidence indicated that 10M rebar is produced domestically and, furthermore, there is no requirement in *SIMA* for the industry to supply the totality of the market’s needs.

Therefore, the Tribunal is of the opinion that the request for exclusion should not be granted, on the basis that the evidence shows that the domestic industry can and does produce the product in substantial volumes and is an active supplier to the market.

### Country Exclusions

The Tribunal received a request for exclusion for Cuba on the basis that there was no evidence that its imports had caused or were threatening to cause material injury to the domestic industry. The Tribunal notes that its injury finding in the present case was made on the basis of total imports from the named countries. The evidence shows that 88 percent of rebar products originating in or exported from Cuba were found to be dumped. These exports had a significant impact on the prices of like goods in Canada. Moreover, Cuban imports, which are concentrated in Quebec, have caused injury. Witnesses representing the Cuban exporter also testified that it planned to maintain a significant presence in Canada in the year 2000.

For these reasons, the Tribunal will not grant this request for a country exclusion.

### Producer Exclusions

Three Turkish exporters, Habas, Icdas and Colakoglu, requested producer exclusions on the basis that their exports to Canada constitute a small percentage of total imports of rebar into Canada and that their behaviour in the market was non-injurious. The evidence shows that 100 percent of the rebar products originating in or exported from Turkey were found to be dumped. These exports had a significant impact on the prices of like goods in Canada. There was no evidence to contradict the domestic industry’s allegation that these three Turkish exporters had contributed to the material injury suffered by the domestic producers. In light of the foregoing, the Tribunal will not grant producer exclusions for the three Turkish exporters, Habas, Icdas and Colakoglu.

Dongkuk requested a producer exclusion for its Inchon mill on the basis that it has not dumped product in Canada. The Canada Customs and Revenue Agency found that none of the exports to Canada

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47. See, for example, *Certain Corrosion-resistant Steel Sheet Products, Finding* (July 29, 1994), *Statement of Reasons* (15 August 1994), NQ-93-007 (CITT). See, also, *Stainless Steel Round Bar, supra* note 14.

48. See, for example, *Machine Tufted Carpeting, Finding* (21 April 1992), *Statement of Reasons* (6 May 1992), NQ-91-006 (CITT). See, also, *Stainless Steel Round Bar, ibid.*

49. *Stainless Steel Round Bar, ibid.*



from Dongkuk's Inchon mill were dumped during its period of investigation.<sup>50</sup> Accordingly, Dongkuk submitted that domestic rebar prices were not affected by the presence of those imports in Canada.

The domestic producers objected to the exclusion on the grounds that Dongkuk was found to be dumping rebar from its Pusan mill and that there is no evidence to support Dongkuk's allegation that the Inchon mill is its only remaining mill capable of producing rebar for the Canadian market.

The Tribunal notes that exports from Dongkuk's Inchon mill were not dumped. However, it is of the view that the volume of exports on which this determination was made was very small and not sufficient to establish a clear pattern of market behaviour. A Binational Panel in *Certain Corrosion Resistant Steel Sheet Products*<sup>51</sup> recognized the Tribunal's approach and found that the Tribunal had not erred in not granting an exclusion request where there was a zero margin of dumping. Similarly, the circumstances of this case do not support the granting of a producer exclusion for Dongkuk.

In accordance with its practice of granting producer exclusions only in exceptional circumstances, the Tribunal denies the request made by Dongkuk.

## **CONCLUSION**

For the reasons stated above, the Tribunal concludes that the dumping in Canada of certain concrete reinforcing bar originating in or exported from Cuba, Korea and Turkey has caused material injury to the domestic industry.

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

Pierre Gosselin

Pierre Gosselin  
Presiding Member

Richard Lafontaine

Richard Lafontaine  
Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member

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50. Canada Customs and Revenue Agency, *Final Determination of Dumping and Statement of Reasons*, 13 December 1999, Tribunal Exhibit NQ-99-002-4, Administrative Record, Vol. 1 at 91.

51. (10 July 1995), CDA-94-1904-04.