

Ottawa, Thursday, May 10, 1990

Review No.: RR-89-005

IN THE MATTER OF a review, under section 76 of the *Special Import Measures Act*, of the finding of material injury of the Anti-dumping Tribunal dated April 8, 1983, as amended, respecting:

**CERTAIN ALLOY TOOL STEEL BARS, PLATES AND FORGINGS
ORIGINATING IN OR EXPORTED FROM BRAZIL, THE FEDERAL REPUBLIC OF
GERMANY AND JAPAN**

AND

IN THE MATTER OF a review, under section 76 of the said Act, of the finding of material injury of the Canadian Import Tribunal dated June 27, 1985, as amended, respecting:

**CERTAIN ALLOY TOOL STEEL BARS, PLATES AND FORGINGS
ORIGINATING IN OR EXPORTED FROM AUSTRIA, THE REPUBLIC OF
KOREA, SWEDEN AND THE UNITED KINGDOM**

ORDER

The Canadian International Trade Tribunal, under the provisions of section 76 of the *Special Import Measures Act*, has conducted a review of the finding of material injury dated April 8, 1983, made by the Anti-dumping Tribunal, respecting certain alloy tool steel bars, plates and forgings originating in or exported from Brazil, the Federal Republic of Germany and Japan in Inquiry No. ADT-2-83, as amended, and the finding of the Canadian Import Tribunal dated June 27, 1985, respecting the same goods as set out above originating in or exported from Austria, the Republic of Korea, Sweden and the United Kingdom in Inquiry No. CIT-3-85, as amended.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds the above-mentioned findings of April 8, 1983, and June 27, 1985 (Member Trudeau dissenting).

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

W. Roy Hines

W. Roy Hines
Member

Robert J. Martin

Robert J. Martin
Secretary

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**CERTAIN ALLOY TOOL STEEL BARS, PLATES AND FORGINGS
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REPUBLIC OF GERMANY, JAPAN, AUSTRIA, THE REPUBLIC OF KOREA,
SWEDEN AND THE UNITED KINGDOM**

Special Import Measures Act - Whether to rescind or continue, with or without amendment, the Anti-dumping Tribunal's finding of April 8, 1983, as amended, and the Canadian Import Tribunal's finding of June 27, 1985, as amended, relating to the above-mentioned goods.

DECISION: (Member Trudeau dissenting). The Canadian International Trade Tribunal rescinds the above-mentioned findings. Evidence provided to the Tribunal indicates that the Canadian industry is competitive and that it is not vulnerable to material injury from the subject countries since such dumping is unlikely to resume.

DISSENT: (Member Trudeau). There exists a reasonably high propensity to dump on the part of all the named countries, and the industry producing like goods is vulnerable to material injury from unchecked dumping. It is, therefore, not appropriate at this time to rescind the findings.

Place of Hearing:

Ottawa, Ontario

Dates of Hearing:

January 29, 30, 31, 1990, and
February 1, 1990

Date of Order & Reasons:

May 10, 1990

Tribunal Members:

Sidney A. Fraleigh, Presiding Member
Arthur B. Trudeau, Member
W. Roy Hines, Member

Director of Research:

Réal Roy

Research Officer:

Anis Mahli

Statistical Officer:

Randy Kroeker

Registration and Distribution Clerk:

Molly C. Hay

Participants:

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and Ronald Cheng
for Atlas Specialty Steels

(Manufacturer)

Darrell H. Pearson
for Thyssen Marathon Canada Ltd.
and Thyssen Edelstahlwerke AG

Peter Clark
and Mary Ellen Murdock
for Acos Villares S.A.

(Importer/Exporters)

Witnesses:

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Director of Technology
Atlas Specialty Steels

Donald J. Knight
Consultant
Atlas Specialty Steels

Donald A. Cody
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Marketing Manager
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Rowland Maddison
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Sammi Atlas Inc.

C. Richard Key
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J.M.A. Regan
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AND

IN THE MATTER OF a review, under section 76 of the said Act, of the finding of material injury of the Canadian Import Tribunal dated June 27, 1985, as amended, respecting:

**CERTAIN ALLOY TOOL STEEL BARS, PLATES AND FORGINGS
ORIGINATING IN OR EXPORTED FROM AUSTRIA, THE REPUBLIC OF KOREA,
SWEDEN AND THE UNITED KINGDOM**

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
ARTHUR B. TRUDEAU, Member
W. ROY HINES, Member

SUMMARY

This is a review under section 76 of the *Special Import Measures Act* (SIMA) by the Canadian International Trade Tribunal (the Tribunal) of the Anti-dumping Tribunal's finding of past, present and future material injury dated April 8, 1983, as amended, and the Canadian Import Tribunal's finding of likelihood of material injury dated June 27, 1985, as amended, relating to the subject alloy tool steel products. In the first finding, the Anti-dumping Tribunal found that dumped imports from Brazil, the Federal Republic of Germany and Japan prevented Atlas Specialty Steels (Atlas) from increasing its market share due to severe price competition. The Anti-dumping Tribunal concluded that the dumping had depressed Atlas' prices and had a deleterious effect on its financial performance. In the second finding, the Canadian Import Tribunal noted that Atlas was unable to realize the objectives of its marketing plan because dumped imports from Austria, the Republic of Korea, Sweden and the United Kingdom replaced those from the three countries whose sales of dumped alloy tool steel products to Canada were restrained by the 1983 finding. The Canadian Import Tribunal found that, although the dumping by the four countries had caused some injury to Atlas, such injury was not material in nature. However, the Canadian Import Tribunal noted that the market presence of the new dumping countries was large and expanding, and it concluded that, should the dumping from the four mentioned countries be allowed to continue unimpeded, it was likely to cause material injury to Canadian production.

DECISION (Member Trudeau dissenting)

The majority of the Tribunal has come to the conclusion that the said findings of April 8, 1983, and June 27, 1985, as amended, should be rescinded.

With respect to the present review, the evidence shows that, since 1983, Atlas has made considerable gains in production, exports, sales and market share. The majority of the Tribunal is convinced that Atlas is now a viable producer able to compete effectively in the marketplace. Import competition from non-subject countries, namely, Italy, Poland and particularly the United States, has gradually displaced that from the subject countries. In recent years, those non-subject countries have become an important source of imported alloy tool steel products. Additionally, by 1989, the market share of imports from the subject countries had dropped to about one-half the level shown for the pre-1985 period. Although the major proportion of those imports were by Uddeholm Limited (Uddeholm) and Thyssen Marathon Canada Inc. (TMCL), Atlas' two major competitors, the evidence indicates that these importers have competed with undumped imports during the past few years. Moreover, Uddeholm became a distributor for Atlas, while TMCL endeavored to complement its imports from the Federal Republic of Germany with products from steel mills in Canada and the United States. The evidence provided leads the majority of the Tribunal to conclude that there is little likelihood on the part of these importers to resume dumping.

DISSENT (Member Trudeau)

Member Trudeau would have concluded that the findings should be continued with amendment. There exists a reasonably high propensity to dump. Although imports from the subject countries have decreased in recent years, sizable anti-dumping duties have been collected by Revenue Canada. Following the findings, and because of them, imports from the seven named countries lost significant volume and market share and importers had to go elsewhere, including the domestic producers, to source alloy tool steel to maintain their presence in the market. A resumption of unchecked dumping from these countries would likely cause material injury to Atlas which is vulnerable. Since 1986, Atlas' profitability on the sale of subject goods has been poor, its share of the market is still low, orders are declining in a softening market, and production is well below capacity.

STATEMENT OF REASONS - MAJORITY OPINION

BACKGROUND

This is a review under section 76 of SIMA of the finding of material injury dated April 8, 1983, as made by the Anti-dumping Tribunal, respecting certain alloy tool steel bars, plates and forgings originating in or exported from Brazil, the Federal Republic of Germany and Japan in Inquiry No. ADT-2-83, as amended,¹ and the finding of the Canadian Import Tribunal dated June 27, 1985, respecting the same goods as set out

1. Amended by Amending Order No. ADT-2-83 dated April 19, 1983, and Order No. ADT-2-83 dated November 25, 1983, of the Anti-dumping Tribunal and by Review Finding No. R-17-85 dated March 11, 1986, Review Finding No. R-2-87 dated March 13, 1987, Review Finding No. R-10-87 dated December 21, 1987, and Review Finding No. R-7-88 dated December 5, 1988, of the Canadian Import Tribunal.

above originating in or exported from Austria, the Republic of Korea, Sweden and the United Kingdom in Inquiry No. CIT-3-85, as amended.²

Pursuant to section 76 of SIMA, the Tribunal initiated a review of the findings and issued a Notice of Review on October 26, 1989. In the notice, the Tribunal pointed out that the market circumstances had changed sufficiently to warrant a review of the findings. This notice was forwarded to all known interested parties and was published in Part I of the Canada Gazette of November 4, 1989.

As part of this review, the Tribunal sent detailed questionnaires to Canadian manufacturers and known importers of the subject goods. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports relative to the review. In addition, the record of this review consists of all relevant documents, including the original findings, the amending orders, the orders, the review findings, the Notice of Review and public and confidential sections of the replies to the questionnaires. All public exhibits were made available to interested parties and protected exhibits, to independent counsel only.

The Tribunal also invited the Executive Vice-President of Uddeholm and the Marketing Manager of Atlas Alloys, A Division of Rio Algom Limited, to answer questions put to them by the members of the Tribunal and by counsel for each side.

Public and *in camera* sessions were held in Ottawa, Ontario, on January 29, 30 and 31, and February 1, 1990.

Atlas, a manufacturer, was represented by counsel at the hearing, submitted evidence and made argument in support of continuing the findings.

TMCL and Thyssen Edelstahlwerke AG (TEW), an importer and an exporter of the subject goods, were represented by counsel at the hearing, submitted evidence and made argument in support of rescinding the findings.

Acos Villares S.A., an exporter, was also represented by counsel at the hearing and made argument in support of rescinding the findings.

THE PRODUCTS

The products under consideration are described in the findings as: certain alloy tool steel bars, plates and forgings originating in or exported from Brazil, the Federal Republic of Germany, Japan, Austria, the Republic of Korea, Sweden and the United Kingdom. The findings and the amendments of the findings resulted in the exclusion of the following products: chipper knife steel identified as YCK4, having typical chemical composition C 0.48%-0.53%, Si 0.80%-1.00%, Mn 0.30%-0.40%, P 0.030% maximum, S 0.030% maximum, Cr 7.6%-8.4%, Mo 1.3%-1.7% and V 0.40%-0.55%, manufactured by or on behalf of Hitachi Metals Ltd. of Tokyo, Japan; high speed tool steel AISI type M-2; oil hardening drill rod AISI type 0-1; high speed AISI type M-2 steel; grade 0-1 tool steel in flat sections less than 0.500 in. in thickness; round alloy tool steel bars under 3/4 in.

2. Amended by Review Finding No. R-2-87 dated March 13, 1987, Review Finding No. R-10-87 dated December 21, 1987, and Review Finding No. R-7-88 dated December 5, 1988, of the Canadian Import Tribunal.

in diameter; alloy tool steel hot rolled bars of rectangular cross-section, of Chipper Knife grade and AISI S-5 grade, having a thickness less than 0.340 in. and a width less than 12.000 in., or having a thickness of 0.340 in. or greater but less than 1.375 in. and a width greater than 6.750 in., but less than 12.000 in., when certified that in the condition as imported the bars are to be manufactured into chipper knives or veneer knives in Canada.

Alloy tool steel is hardenable steel used primarily for the manufacture of cutting or forming tools for a broad variety of secondary manufacturing industries. There are many individual chemical analyses of alloy tool steel tailored for the mechanical or wear/toughness requirements of particular end-use applications, and these are classified into grades by the American Iron and Steel Institute (AISI) by a series of alphanumeric designations. There are also proprietary grades or modifications of recognized grades which carry no AISI designation.

Alloy tool steel is supplied in bars, plates or forgings and each form may be either hot finished (hot rolled or hammer forged) or cold drawn machined, ground or polished. High speed steel is supplied in bar or rod mill form. Round bar products are normally in the cold finished centreless ground condition.

THE DOMESTIC INDUSTRY

The three Canadian producers of the subject goods are: Atlas, of Welland, Ontario; Sorel Forge (Sorel Forge), of Sorel, Quebec; and GBF Forging Specialists Company (GBF), of Brantford, Ontario. Atlas was the only complainant in the 1983 and 1985 inquiries. Atlas has been by far the largest supplier of domestic production for domestic consumption among the three producers and, for purposes of the 1983 and 1985 inquiries, it was considered the domestic industry. In the present review, Atlas is also considered to constitute the domestic industry.

Atlas was an unincorporated division of Rio Algom Limited until it was acquired by the Sammi Group of South Korea in August 1989. In Rio Algom's organization, Atlas was part of the company's steel corporation, which included a sales division called Atlas Alloys.³ The major proportion of Atlas' domestic production for domestic consumption was channelled through the sales division, which also carried imported products. In addition, Atlas sold semi-finished products directly to end users and non-branded tool steel, to independent distributors. The distributors were: Teledyne Canada, Neepsend Steel of Canada, Bruce-Mueller and Canalloy. Since 1985, Atlas has engaged two more distributors: Uddelholm and Vanguard Steel Limited.

3. Rio Algom's sale of Atlas did not include the sister company, Atlas Alloys. As a consequence, after the acquisition of Atlas, Atlas Alloys ceased its corporate affiliation with Atlas.

The most popular grades which Atlas produces at the Welland plant are:

<u>AISI Designation</u>	<u>Trade Name</u>
O-1	Keewatin
A-2	Cromoloy
D-2	FNS
H-13	VAD 13
S-5	Monarch 2
S-7	Atlas S-7
Special purpose non-classified	Beaver
Special purpose non-classified	Chipper Knife

Atlas estimates that these grades account for the major proportion of the alloy tool steel products sold in Canada. In addition to specialty steel, Atlas produces at the Welland facility carbon and low alloy steels, stainless steel bar, mold steel and other steel products. Of the total mill output, the alloy tool steel products represent a minor proportion.

Sorel Forge is a wholly owned division of Slater Steels Corporation. It produces alloy tool steel forgings in grades H-13 and D-2 at its production facility in Sorel, Quebec. The major proportion of its annual production is exported to the United States.

GBF is a producer of tool steel forgings. GBF buys most of its requirements of alloy tool steel ingots or blooms from Atlas, which it then forges to large diameter bars or blocks. A minor proportion of its input is imported.

SUMMARY OF 1983 FINDING

On April 8, 1983, the Anti-dumping Tribunal found that the dumping of alloy tool steel bars, plates and forgings, including high speed AISI type M-2, but not including other high speed steels, AISI P-20 mold steel and die blocks, originating in or exported from Brazil, the Federal Republic of Germany and Japan, and excluding chipper knife steel manufactured by or on behalf of Hitachi Metals Ltd. of Tokyo, Japan, had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

Atlas, the complainant, alleged that the dumping caused material injury in the form of retardation of investment, loss of orders, price erosion and suppression, loss of profits, loss of employment and underutilization of capacity. Further, it was contended that the complainant's marketing strategy, initiated in 1979, failed because of the aggressive thrust of the suppliers of dumped product. Finally, the likelihood of material injury was claimed because of world overcapacity and a low level of demand for alloy tool steel.

The Canadian market for alloy tool steel declined markedly subsequent to the peak year of 1979. Throughout this period, ending with the third quarter of 1982, Atlas maintained its market share at around 25 percent. The complainant's traditional sources of competition, namely, the United States, Sweden and the United Kingdom, lost 10 points of market share during this period.

The available data showed that the three dumping countries were the beneficiaries of the market share lost by the traditional suppliers. Combined, the three dumping countries increased their share from 3 percent of the market in 1979 to 16 percent in 1981. In the first three quarters of 1982, the named countries increased their market share by a further 3 percent when the impact of the recession had its greatest effect and the market as a whole declined by 20 percent.

In the view of the Anti-dumping Tribunal, Atlas was prevented from increasing its market share due to severe price competition encountered from the dumping countries. The complainant lost some orders and, in some instances, had to grant additional discounts to distributors because of price pressures.

The Anti-dumping Tribunal was also of the opinion that the dumping had a deleterious effect on Atlas' financial performance. In 1979-80, Atlas increased prices moderately, but in 1981-82, despite rising costs, it had to lower them because of price pressures exerted by the dumped imports.

In excluding from the finding chipper knife steel manufactured by or on behalf of Hitachi Metals Ltd., Japan, the Anti-dumping Tribunal noted that it had not been proven that Atlas had lost sales to Hitachi. However, the Anti-dumping Tribunal restricted that exclusion to chipper knife steel from that source as it was satisfied that the complainant could manufacture that special product for the major Canadian user provided it received a minimum amount of orders, but that these products would be sold at higher prices, depending on the volume and tolerance required, because additional investments would be necessary.

SUMMARY OF 1985 FINDING

On June 27, 1985, the Canadian Import Tribunal found that the dumping of alloy tool steel bars, plates and forgings, including high speed AISI type M-2, but not including other high speed steels, AISI P-20 mold steel and die blocks, originating in or exported from Austria, the Republic of Korea, Sweden and the United Kingdom, had not caused, was not causing, but was likely to cause material injury to the production in Canada of like goods with the exception of high speed tool steel AISI type M-2 and oil hardening drill rod AISI type 0-1.

Counsel representing the domestic industry alleged that the dumping of the subject goods had caused material injury in the form of loss of market share, lost sales, price suppression and loss of profits.

Counsel for the major Austrian exporter and two Canadian importers suggested that Atlas had lost sales to imports from the United Kingdom and the Republic of Korea, with which Atlas would not have been able to compete because of the low prices for the subject goods from these two countries. The vast majority of alloy tool steel from Austria consisted of types which commanded prices that were comparable or higher than those of Atlas. Finally, they requested the exclusion of a number of items not produced by Atlas.

Counsel representing Uddeholm Limited and Uddeholm Tooling A.B. asked the Canadian Import Tribunal to exclude from any injury finding imports from Sweden because his clients' prices of alloy tool steel had been increasing and their share of market had been declining since 1981.

The Canadian Import Tribunal noted that, despite the existence of the 1983 finding of past, present and future material injury against Brazil, the Federal Republic of Germany and Japan, Atlas found itself unable to realize the objectives of its marketing plan because imports from Austria, the Republic of Korea, Sweden and the United Kingdom replaced those from the three countries whose sales of dumped alloy tool steel to Canada were curtailed by the finding of material injury.

With the general economic recovery in 1983, the domestic market rose by 45 percent in 1984. This recovery benefited all sources of supply except the United States which lost volume.

The evidence showed that Atlas' gains in 1984 were achieved in a climate of unabated intense price competition to obtain volume, and that Atlas was forced to expand the scope of the discounting practice which it had introduced in previous years. In the opinion of the Canadian Import Tribunal, this price suppression was the prime contributor to Atlas' financial loss in 1984.

In evaluating the specific contribution of the dumped imports to the injury suffered by Atlas, the Canadian Import Tribunal stated that, although the dumping had caused some injury to Atlas, it did not find the extent of the injury as being sufficiently material.

With respect to future injury, the Canadian Import Tribunal concluded that the market presence of the new dumping was large and expanding. Should the dumping from the four mentioned countries be allowed to continue unimpeded, such continued expansion was likely to cause material injury to Canadian production.

The Canadian Import Tribunal excluded from its finding high speed tool steel AISI type M-2 and oil hardening drill rod AISI type 0-1 because Atlas had not been an active supplier of those products, nor were there any plans to produce them in Canada. However, the Canadian Import Tribunal did not exclude precision flat ground tool steel, flat ground tool steel, AISI grade H-13 and chipper knife steel because they were available in Canada from Canadian sources.

INDUSTRY'S POSITION

Atlas was the sole Canadian producer to take an active role in the review proceedings and it argued in favor of the continuation of the findings.

In its public and confidential briefs, Atlas indicated that the two findings had helped it to implement most of the objectives set out in its Alloy Tool Steel Marketing Plan. Atlas added, however, that it had failed to increase market share to a reasonable level while selling alloy tool steel at profitable margins. Atlas also alleged that after the 1985 finding, low-priced imports from non-subject countries (Italy and Poland) exerted downward pressures on Atlas' prices and financial performance. Although Atlas had gained from the maintenance of the findings since 1983, it was concerned that their rescissions would encourage the subject countries to resume dumping. Moreover, Atlas argued that, because Revenue Canada had assessed annual anti-dumping duties against a number of countries, this indicated that these countries had a significant propensity to dump.

With respect to the future, Atlas was of the opinion that the anticipated slowing down in the North American economy, in 1990 and 1991, would induce importers to lower their prices to retain sales tonnages in a contracting market. If the Tribunal chose to rescind the two findings, dumping would resume by the seven countries, because these countries have the propensity to dump.

In argument, counsel asked the Tribunal to evaluate Atlas' vulnerability in terms of its financial results. They explained that, during the period of 1982 to 1989, Atlas improved its financial position only in 1986 and 1987. Moreover, despite the significant level of capital expenditures undertaken to improve productivity and efficiency, Atlas continues to be vulnerable to a resumption in dumping.

Counsel concluded that both TMCL and Uddeholm were still a major force in the marketplace. To gain lost market shares, Uddeholm and TMCL would resort to aggressive competition. They also cautioned the Tribunal that, in the real world, TEW's policy not to dump the subject goods in export markets would be difficult to implement.

Finally, while counsel recommended the continuation of the two findings, they supported Neepsend's and Uddeholm's applications for an exclusion of four products from these findings.

IMPORTER/EXPORTERS' POSITION

The two exporters, as well as the importer, which participated in the proceedings, argued in favor of a rescission of the two findings.

TEW and TMCL

In their public and confidential briefs, TMCL and TEW submitted that the two findings had stabilized the market for alloy tool steel products as demand for the subject goods had been strong and should continue in the foreseeable future. Because Atlas had expanded its product line, increased the number of its distributors and established a mill depot, the vulnerability of the Canadian producer had dissipated. Counsel claimed that Atlas had repeatedly refused to sell alloy tool steel products to TMCL. Had the former acquiesced to supply TMCL, then imports from TEW in the Federal Republic of Germany would have been displaced by Canadian production. Counsel added that his clients had not dumped the subject goods since the 1983 finding because of a corporate policy which prohibits dumping.

Counsel argued that the provision of section 76 of SIMA embodies the spirit of article 9 of the Anti-dumping Code, which provides that anti-dumping measures remain in place so long as is necessary to eliminate injury. Moreover, this premise was reflected in the Tribunal's approach of successive reviews of its findings. Counsel explained that Atlas was not still vulnerable to a resumption in dumping because: (a) Atlas had benefited from the protection provided by the findings; (b) despite its unrealistic, targeted market share, Atlas had become a viable producer, especially after its acquisition by the Sammi Group; (c) Atlas' hope of increasing market share would be fulfilled by selling the subject goods to TMCL; (d) Atlas' financial performance would not be enhanced by the maintenance of the findings as the only way for Atlas to improve its profitability would be to reduce production costs; (e) should the Tribunal accept the witnesses' evidence that the statistics of US imports are unreliable, then it becomes clear that Atlas has already achieved its market share objectives; and (f) both Uddeholm and

TMCL, Atlas' major competitors, had organized their business to compete in the Canadian market without resorting to dumping. Should dumping resume, the domestic industry could obtain immediate relief under SIMA.

With respect to the allegations that TMCL and TEW have the propensity to dump, counsel argued that since 1983, TMCL and TEW had paid nominal amounts of anti-dumping duty because of a corporate policy against dumping. TEW's limited excess capacity and a lengthy lead time have induced TMCL to seek other sources in North America. Counsel added that TMCL would continue to attempt to source certain steel products from Canadian producers, even if the Tribunal rescinds the two findings. Counsel concluded that his clients had the ability to maintain their market share without resorting to dumping.

ACOS VILLARES S.A.

Counsel for this Brazilian exporter asked the Tribunal to rescind the two findings because the evidence did not support their maintenance. They questioned Atlas witnesses' lack of knowledge of the US market and contended that US exports of alloy tool steel products to Canada were growing. However, counsel submitted that, if it were true that import statistics of US products did not reflect their actual volume as stated by a number of witnesses, then Atlas must have realized its market share goal. Counsel explained the comparative strength of the Canadian dollar versus its US counterpart in recent years and suggested that the strengthening of the Canadian dollar must have had a favorable impact on Atlas' profitability.

Finally, counsel stated that Brazilian suppliers did not constitute a threat to Atlas, because they were never in the market in a substantial way.

UDDEHOLM

In its reply to the importer's questionnaire, Uddeholm wrote that the maintenance of the findings would continue to affect negatively the necessary supply and prices of alloy tool steel products in the domestic market. According to Uddeholm, because Revenue Canada has recently changed its methodology of computing normal values, Uddeholm's normal values were increased excessively. As a consequence of Revenue Canada's decision, Uddeholm had to reduce imports from Sweden and ultimately suffer from a reduction in market share. To comply with Revenue Canada's ruling on normal value, the parent company raised its export prices, causing Uddeholm to increase its retail prices in Canada.

During the cross-examination of Uddeholm's witnesses, it was indicated that should the Tribunal rescind the findings, Uddeholm would only source from Sweden, high value, low volume alloy tool steel products and where price would not be an important factor.

CONSIDERATION OF THE EVIDENCE

The evidence provided by witnesses indicates that the market for the subject goods is mature and should remain flat over the next two years. The recessionary pressures in the early 1980s caused the volume of Canadian consumption of alloy tool steel products to decline from its highest level in 1979, to a low in 1983, the year of the first finding. Between 1983 and 1988, consumption gradually recovered although the

1988 volume was still lower than the 1979 level. Total consumption of the subject goods increased marginally in interim⁴ 1989 over interim 1988.

During the pre-1983 period, the domestic producers' share of the apparent market for alloy tool steel products fluctuated irregularly, remaining at less than 30 percent of the apparent market. Following the 1983 finding, the industry improved its position considerably. Atlas, which accounted for about 90 percent of domestic production for domestic consumption during the 1983-89 period, experienced a marked growth in its market share, attributable principally to the dramatic rise in the sale of alloy tool steel plate. The market share held by the seven subject countries, which, until 1985, accounted for 40 to 50 percent of the total market, declined sharply in 1986, and was approximately one-third of the market by 1989. From 1985 to 1989, the market share of imports from the Federal Republic of Germany and Sweden declined by approximately 40 percent. Since 1987, the combined market share of alloy tool steel products from Japan, Austria, the Republic of Korea and the United Kingdom averaged about one-eighth of the total market, while the market share for Brazilian products was nil.

Since the 1985 finding, TMCL and Uddeholm have begun to source certain grades of the subject goods from steel mills in Canada and the United States. According to the evidence, TMCL has been unsuccessful in sourcing certain alloy tool steel from Atlas, while Uddeholm was appointed a distributor for Atlas in 1989. Imports from non-subject countries, namely, the United States, Italy, Poland and France, have gradually displaced imports from the subject countries. In recent years, those countries, particularly the United States, have become an important source of imported alloy tool steel products.

For purposes of this review, pricing data are based on the domestic producers' average wholesale selling prices and importers' average landed values.⁵ From 1985 to 1988, average wholesale values computed for Atlas were consistently lower than the average import values of alloy tool steel products from Sweden, the Federal Republic of Germany, Austria, Japan and the United Kingdom. Similarly, during the first three quarters of 1988 and 1989, Atlas' average values remained below those of four of these countries (but not the Federal Republic of Germany). In contrast, over the same period, average import values for products from Brazil and the Republic of Korea were markedly below those of Atlas'.

Atlas was the only producer to provide data on the profitability of domestic sales. Between 1985 and 1986, net profits before taxes expressed as a percentage of net sales improved by about nine percentage points, that is, from a loss position to a fairly profitable one. They hovered around the 1986 level until the end of 1988 and dropped somewhat in interim 1989, but remained profitable.

Atlas' other economic indicators (production, sales, exports, employment, capacity, order backlog and utilization rate) have improved, especially during the first three quarters of 1989 over the same period of the preceding year.

4. The interim period covers the first three quarters of the specified calendar year.

5. The landed value is the cost to import a foreign product to its Canadian destination. It includes the price paid by the importer, as well as duty, freight, brokerage fee and federal sales tax, when applicable.

Enforcement data provided by Revenue Canada indicated that the volume of alloy tool steel products found to be dumped increased markedly between 1983 and 1986. By 1988, the volume of dumped imports diminished by approximately 76 percent compared to 1986. Between 1986 and 1988, the ratio of dumped imports to total imports declined from 38 percent to 16 percent. Similarly, the amount of anti-dumping duty assessed on imports of mostly low volume, high value special tool steel products from the subject countries declined by more than one-half. During the period beginning in 1984, the evidence shows that TMCL paid nominal amounts of anti-dumping duties, while Uddeholm stopped paying anti-dumping duties in 1988.

TEW contends that its plants in Europe are operating at full capacity, a situation that is not expected to change in the near future. According to Uddeholm, however, if the findings were rescinded, it would source certain grades from its parent in Sweden without resorting to dumping.

DECISION

The Tribunal is concerned primarily in determining whether the subject countries have a propensity to resume dumping, and whether the domestic industry is vulnerable to material injury resulting from such a resumption in dumping.

Since the 1985 finding, the majority of the Tribunal notes that several changes have occurred in the structure of the industry and the market. In this mature market, Atlas has been successful in implementing most of the objectives set out in its 1979 Alloy Tool Steel Marketing Plan. Those objectives were: to increase market share; to improve plant and equipment; to introduce new products; to increase the number of distributors; to improve delivery time and reduce distributors' costs; and to promote Atlas' products more aggressively. Despite the continuing import competition from non-subject countries, Atlas has made considerable gains in production, exports, sales and market share. Although Atlas may consider its ratio of net profits to net sales on the subject goods to be less than acceptable, the majority of the Tribunal is persuaded that this has been influenced by factors largely unrelated to dumped imports from the subject countries. Moreover, Atlas has become a viable producer and its future prospects are good.

As a result of the findings, TMCL and Uddeholm, Atlas' major competitors in the Canadian market, have modified certain aspects of their business. The evidence shows that these importers/distributors have switched the sourcing of certain grades of alloy tool steel products from their parent companies in Europe to steel mills in Canada and the United States. The majority of the Tribunal also notes that, during the last five years, TMCL and Uddeholm have competed successfully in Canada with undumped products at average prices somewhat higher than those quoted by Atlas.

The Tribunal heard evidence and the majority of the Tribunal is prepared to accept that there does not exist a propensity to dump on the part of TEW for the following reasons. Firstly, TEW does not intend to jeopardize its investment in Canada. Secondly, TEW's capacity limitations have induced TMCL to source more of its alloy tool steel requirements from North American suppliers. Thirdly, negligible amounts of anti-dumping duties have been assessed against TEW's exports to Canada and, fourthly, TMCL has made firm commitments to attempt to source products from Canadian mills, even if the Tribunal rescinds the two findings.

With respect to Uddeholm, because it is now a distributor in Canada for Atlas' products, the majority of the Tribunal believes that it will be highly unlikely that the company will revert to dumping those products which it can source in Canada. At the same time, there may well be situations in which certain high quality or speciality grades, not available from Canadian sources, may be imported by this firm to compete with other offshore suppliers.

With respect to the remaining five subject countries covered by these findings, there was no substantive evidence adduced during the hearings that those countries would re-enter the market with dumped products. Imports from these sources have been minimal in recent years and they have never attained any significant market share. Indeed, the evidence clearly indicates that the primary sources of import competition are currently, and likely to continue to be, from non-subject countries.

The two findings in question have been in place for a number of years and, in the view of the majority of the Tribunal, they would appear to have had their intended effect. Atlas' position in the market has improved considerably based on the evidence put before the Tribunal. On the basis of this evidence, therefore, the majority of the Tribunal is not convinced that Atlas is vulnerable to material injury from dumping from the subject countries.

For the foregoing reasons, the majority of the Tribunal hereby rescinds the said findings of April 8, 1983, and June 27, 1985, as amended.

REQUEST FOR EXCLUSIONS

Two applications were submitted by Neepsend (Canada) Limited and Uddeholm for an exclusion of four alloy tool steel products from the two findings. In light of the decision to rescind the said findings, it is not necessary to comment on these requests.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

W. Roy Hines
W. Roy Hines
Member

DISSENTING VIEWS OF MEMBER TRUDEAU

A detailed review of all the evidence and arguments advanced during the course of this review brings me to different conclusions. On the facts of this case, I am unable to agree with my colleagues that Atlas is not vulnerable to material injury resulting from any potential resumption of dumping from the subject countries.

Atlas constitutes the domestic industry producing like goods for purposes of this review.

Propensity to dump

The countries found to have been dumping and causing material injury in 1983 (Japan, Brazil and the Federal Republic of Germany) and in 1985 (Austria, the Republic of Korea, Sweden and the United Kingdom) have been effectively restrained from aggressively competing on price in the Canadian market because of the findings.

Although imports from the subject countries have decreased in recent years, dumping has been substantial and persistent. Anti-dumping duties collected by Revenue Canada were in excess of \$500,000 on imports of \$4.8 million in 1987 alone. In 1988, all countries, with the exception of Brazil, contributed to the dumping. In that year, assessed anti-dumping duties were \$223,000 in total on imports of \$4.9 million. Comparable data for the full year 1989 were not available at the time of this review.

Since 1985, imports from these seven countries have lost significant volume and market share. Clear evidence was adduced, however, to conclude that because of the findings, importers and distributors of these products had to go elsewhere, including to domestic producers, to source alloy tool steel to maintain their presence in the market. No evidence was adduced which could provide another explanation for the reduction in volume and market shares of imports from the dumping countries.

It was argued on the part of TMCL that it would continue to source certain steel products from Canadian producers even if the Tribunal were to rescind the two findings. It was further argued that TMCL and TEW had the ability to maintain their market share without resorting to dumping. In my view, even if these constitute firm commitments on their part, they could not possibly lead to the definitive conclusion that TMCL and TEW would not re-enter the market with dumped products. Furthermore, the findings under review concern seven countries and not just one exporter from the Federal Republic of Germany.

For these reasons, and in the absence of any other convincing evidence, I am inclined to conclude that dumping could well recur if the findings were rescinded. Indeed, from the evidence, I conclude that the only reason that dumping countries have lost market share is because they were forced to sell at, or above, normal values. In addition, important evidence adduced by the major distributors revealed that the preferred source of supply for these goods were from manufacturers in Sweden and the Federal Republic of Germany, two of the countries found to have been dumping and responsible for the assessment of substantial anti-dumping duties. In the case of other named countries, it is reasonably clear from the evidence that, with the findings in place, it is difficult for them to be competitive in the Canadian market. Therefore, it is only fair to conclude that, to be competitive, their products will have to be offered below normal values and, hence, dumped.

For all the foregoing reasons, I conclude that there is still a propensity to dump by all the subject countries.

Vulnerability

The evidence indicates that Atlas' production of alloy tool steel under review (i.e., bars, plates and forgings), for domestic and export sales, has resulted in only minimal profits before taxes and interest since the findings have been in place. Prior to the dumping period and the 1981-83 recession, profitability for these goods was described as satisfactory. However, since 1986, the profitability for the production of subject goods has been described, during argument, as derisory by counsel for Atlas. The evidence indicates that net profits before taxes expressed as a percentage of sales are low from 1986 to 1988, and virtually nil in 1989. With respect to other indicators of injury, the evidence discloses that Atlas has only about one-third of the domestic market, orders are declining and production is well below capacity.

The Canadian market of the subject goods has been stagnant for several years, despite a relatively buoyant economy. Atlas had expected to substantially improve its market share as a result of the findings. But its share did not improve, in large part, because imports from other sources, the United States and elsewhere, replaced the volumes lost by dumping countries.

The statistics relating to US imports were the subject of much debate during the hearings and it was accepted that, if they were overstated, as suspected by all knowledgeable witnesses, Atlas would have recorded a larger improvement in its share of the market. This, however, does not explain why its financial performance and all other indicators are not better now than they were in 1985. Be that as it may, it is clear that Atlas has only gained some small ground since the 1985 finding in terms of market share and volume, although significant efforts have been made to improve the product and its marketing.

Although Atlas has appointed new distributors which previously purchased dumped imports, there is no assurance that, if better prices were available from acceptable suppliers or distributors, importers would not resume sourcing from such suppliers. This switch is particularly likely to happen if the findings are removed. Any loss of volume by Atlas would add to its current state of vulnerability.

The recent acquisition of Atlas by the Sammi Group is an important factor to consider in this review. Future prospects for enhanced profits on the production and sale of the subject goods are quite high. However, it will take some time before the current state of vulnerability regarding the production of subject goods can be significantly improved.

CONCLUSION

For all the foregoing reasons, I conclude that the domestic industry remains susceptible to material injury from a resumption of unchecked dumping. Therefore, I do not believe it is appropriate, at this time, to rescind the findings and I would have continued them, with amendment. That would have excluded the four products for which exclusions were sought by two distributors and agreed to by Atlas.

Arthur B. Trudeau _____
Arthur B. Trudeau
Member