



Ottawa, Tuesday, May 1, 1990

Review No.: RR-89-006

IN THE MATTER OF a review, under section 76 of the *Special Import Measures Act*, of the findings of material injury of the Anti-dumping Tribunal in Inquiry Nos. ADT-10-83 and ADT-13-83 dated December 7, 1983, and January 26, 1984, respectively, as amended by the Canadian Import Tribunal in Review No. R-10-88 dated September 16, 1988, concerning:

**CERTAIN CARBON AND ALLOY STEEL PLATES ORIGINATING
IN OR EXPORTED FROM BELGIUM, BRAZIL, CZECHOSLOVAKIA,
THE FEDERAL REPUBLIC OF GERMANY, FRANCE,
THE REPUBLIC OF SOUTH AFRICA, THE REPUBLIC OF KOREA,
ROMANIA, SPAIN, THE UNITED KINGDOM AND THE NETHERLANDS**

ORDER

The Canadian International Trade Tribunal, under the provisions of section 76 of the *Special Import Measures Act*, has conducted a review of the findings of material injury made by the Anti-dumping Tribunal dated December 7, 1983, and January 26, 1984, respectively, as amended by the Canadian Import Tribunal on September 16, 1988, relating to the subject carbon and alloy steel plates.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds the above-mentioned findings of December 7, 1983, and January 26, 1984, as amended on September 16, 1988, effective May 1, 1990.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

John C. Coleman

John C. Coleman
Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Robert J. Martin

Robert J. Martin
Secretary



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Special Import Measures Act - Whether to continue, with or without amendment, or rescind the findings of the Anti-dumping Tribunal and the review finding of the Canadian Import Tribunal relating to the above-mentioned goods.

DECISION: The Canadian International Trade Tribunal rescinds the above-mentioned findings. Exporters from the named countries have been able to compete successfully in the Canadian market at prices above their normal values, thus indicating a low propensity to dump. The industry's improved sales and financial performance, and the enhanced competitive ability brought about by its modernization and rationalization have made the industry far less vulnerable to material injury from dumping than at the time of the original findings.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	February 5 to February 8, 1990 and February 14, 1990
Date of Order and Reasons:	May 1, 1990
Tribunal Members:	Arthur B. Trudeau, Presiding Member John C. Coleman, Member Kathleen E. Macmillan, Member
Director of Research:	S. Shainfarber
Research Manager:	K. Campbell
Statistical Officer:	M. Saumweber
Registration and Distribution Clerk:	L.E. Pharand
Participants:	John M. Coyne, Q.C. Ronald C. Cheng and Gregory O. Somers for The Algoma Steel Corporation, Limited Dofasco Inc. IPSCO Inc. and Stelco Inc.

(Manufacturers)

Peter Clark
and Peter Burn
for Companhia Siderurgica
Paulista - COSIPA and
Usinas Siderurgicas de Minas Gerais
S.A. - USIMINAS

Peter Clark
and Mary Ellen Murdock
for British Steel Canada Inc.

Donald J. Goodwin
for ENSIDESA
Pohang Iron and Steel Co., Ltd.
and Stahlwerke Peine-Salzgitter AG

Glenn A. Cranker
for Forges de Clabecq, S.A.

Richard S. Gottlieb
and Peter E. Kirby
for Charleroi (USA)
and Fabrique de Fer Charleroi S.A.

Richard S. Gottlieb
for Canadian Klöckner Ltd.
and Klöckner-Werke AG

Manfred F. Wirth
Chairman
Wirth Limited

(Importers/Exporters)

Witnesses:

Ian E. Williams, P. Eng.
General Manager
Sales and Marketing
The Algoma Steel Corporation, Limited

Tom J. Oelkuch
Sales Manager
Steel Service Centres
Dofasco Inc.

J.A. Anderson
Sales Manager - Plate Sales
Stelco Steel

Joe Russo
Vice-President
and General Manager
Flat Rolled Products
IPSCO Inc.

Gerald Fagan
Purchasing Manager
A.C. Leslie
(Division of Newman Steel Ltd.)

William Joseph Kissick
Manager
Government Affairs
The Algoma Steel Corporation, Limited

R.H. Thompson
Cost Supervisor
Stelco Steel

Fred C. Alcock
Sales Accounting Manager
Dofasco Inc.

Bruce L. McKee, C.M.A.
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John B. Currie
Vice-President
British Steel Canada Inc.

Serge G. Vinograd
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Charleroi (USA)

S.K. Lee
Director
U.S.A. Region
Pohang Iron & Steel Co., Ltd.

Klaus H. Thomas
Export Manager
Salzgitter Stahl GmbH

Manfred F. Wirth
Chairman
Wirth Limited

Dennis G. Martin
Manager
Market Information
Dofasco Inc.

Heinz-Juergen Wiecken
Vice-President & General Manager
Canadian Klöckner Ltd.

Raleigh A. Miller
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Ottawa, Tuesday, May 1, 1990

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IN OR EXPORTED FROM BELGIUM, BRAZIL, CZECHOSLOVAKIA,
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THE REPUBLIC OF SOUTH AFRICA, THE REPUBLIC OF KOREA,
ROMANIA, SPAIN, THE UNITED KINGDOM AND THE NETHERLANDS**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
JOHN C. COLEMAN, Member
KATHLEEN E. MACMILLAN, Member

STATEMENT OF REASONS

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 findings of material injury of the Anti-dumping Tribunal dated December 7, 1983, and January 26, 1984, which were continued, with amendment, by the Canadian Import Tribunal in a review finding dated September 16, 1988, respecting certain carbon and alloy steel plates. In conducting its review of the findings, the Tribunal addressed two essential questions - what is the propensity to dump if the findings are rescinded and how vulnerable is the domestic industry to dumping?

With respect to a propensity to dump, the Tribunal notes that there has been virtually no dumping from 5 of the 11 named countries and that for the remaining 6 countries, the margins of dumping and the volume of dumped goods have been generally quite small. The evidence indicates that European mills reduced excess steel capacity over the past decade, that they are more profit-oriented and less inclined to produce for inventories, and that they are operating at respectable load levels which should keep their attention focussed on European markets. Similar tendencies are observed in the other named countries. The Tribunal considers that the Canadian government's carbon steel import monitoring program may act as a deterrent to dumping since it positions the industry to take timely remedial action in the event of a resumption of injurious dumping. The Tribunal is also of the view that the United States' Voluntary Restraint Agreements (VRAs) on steel have not increased the

propensity to dump in the relatively open Canadian market because quota allocations, which recently have been expanded, are not being fully utilized by the VRA-targeted countries.

Turning to the question of industry vulnerability to a resumption of dumping, the Tribunal notes that recent declines in Canadian steel plate production and prices were taking place against a background of very strong sales and financial performance in the past few years. Moreover, in the six years since the findings were put in place, a number of events have occurred which should help the industry to weather the market downturn which is now in progress. Industry plate sales and profitability have been at their highest level in a decade, the industry continues to maintain a large share of the domestic market and its exports outside North America have been increasing. The industry's ongoing process of modernizing and restructuring has further enhanced its ability to compete with any of the international steel mills. Further reinforcing the industry's competitive position against offshore mills are the natural advantages it derives from being a preferred supplier to major steel service centres.

The Tribunal is of the view that there is a low probability of a resumption of dumping and not any significant vulnerability. Accordingly, the Tribunal now rescinds the steel plate findings.

BACKGROUND

This is a review under section 76 of SIMA of the findings of material injury made by the Anti-dumping Tribunal dated December 7, 1983, and January 26, 1984, as amended by the Canadian Import Tribunal on September 16, 1988, concerning certain carbon and alloy steel plates described as follows:

No. ADT-10-83 (December 7, 1983)

Carbon steel plate, including high strength low alloy plate; and alloy steel plate, both not further manufactured than hot rolled or heat treated, and whether or not coiled or with rolled surface pattern, but excluding wheel rim base sections, carbon and alloy tool steel, stainless steel, mold steel, flanged or dished plate, fabricated or coated plate, high speed steel, plate for saws and plate clad with stainless steel, with the exception of the subject goods in thicknesses greater than six inches and of the subject goods within the following ASTM specifications: A203, A204, A302, A353, A387, A533, A553 and A645 and of the subject goods produced by Creusot-Loire, Paris, France, originating in or exported from Belgium, Brazil, Czechoslovakia, the Federal Republic of Germany, France, the Republic of South Africa, the Republic of Korea, Romania, Spain and the United Kingdom.

No. ADT-13-83 (January 26, 1984)

Carbon steel plate, including high strength low alloy plate; and alloy steel plate, both not further manufactured than hot rolled or heat treated and whether or not coiled, but excluding plate skelp, surface patterned floor plate, wheel rim base sections, carbon and alloy tool steel, stainless steel, mold steel, flanged or dished plate, fabricated or coated plate, high speed steel, plate for saws and plate clad with stainless steel, with the exception

of the subject goods in thicknesses greater than six inches and of the subject goods within the following ASTM specifications: A203, A204, A302, A353, A387, A533, A553 and A645, originating in or exported from the Netherlands.

On September 16, 1988, in Review No. R-10-88, the Canadian Import Tribunal issued a review finding which excluded all grades of universal mill plates, rolled simultaneously between both horizontal and vertical rolls, trimmed on the ends only, and having mill edges, in widths up to and including 26 in. (660 mm) and in thicknesses up to and including 3 in. (76.2 mm) effective April 20, 1988. The sole purpose of the review, which was conducted without a hearing, was to consider the exclusion of the above-mentioned goods.

Pursuant to section 76 of SIMA, the Tribunal initiated a review of the findings and issued a Notice of Review on November 2, 1989. This notice was forwarded to all known interested parties and was published in Part I of the Canada Gazette of November 11, 1989.

As part of this review, the Tribunal sent detailed questionnaires to known manufacturers and importers of the subject goods. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports relative to the review. In connection with research activities, a member of the Tribunal's staff met with industry officials in Ottawa, Ontario, and visited the premises of British Steel Canada Inc. (British Steel) in Montréal, Quebec, to answer any questions pertaining to the questionnaires. In addition, the record of this review consists of all relevant documents, including the original findings, the Notice of Review, and public and confidential sections of replies to the questionnaires. All public exhibits were made available to interested parties, while protected exhibits were provided to independent counsel only.

Public and *in camera* sessions were held in Ottawa, Ontario, from February 5 to February 8, 1990, and on February 14, 1990.

The Algoma Steel Corporation, Limited (Algoma), Dofasco Inc. (Dofasco), IPSCO Inc. (IPSCO) and Stelco Inc. (Stelco), domestic manufacturers of the subject goods, were represented by counsel at the hearing, submitted evidence and made argument in support of maintaining the findings.

Forges de Clabecq, S.A. (Clabecq), Companhia Siderurgica Paulista - COSIPA (COSIPA), Usinas Siderurgicas de Minas Gerais S. A. - USIMINAS (USIMINAS), British Steel, ENSIDESA, Pohang Iron and Steel Co., Ltd. (Posco), Stahlwerke Peine-Salzgitter AG (Peine-Salzgitter), Charleroi (USA), Fabrique de Fer Charleroi S.A. (Charleroi), Canadian Klöckner Ltd. (Klöckner), Klöckner-Werke AG (Klöckner AG), importers and exporters of the subject goods, were all represented by counsel at the hearing. In addition, a representative of Wirth Limited was present at the hearing. They all submitted evidence and made argument in support of rescinding the findings.

Hoogovens IJmuiden Verkoopkantoor BV, an exporter of the subject goods, was not represented at the hearing, but did submit evidence in support of rescinding the findings.

JURISDICTION OF THE TRIBUNAL

At the outset of the hearing, counsel for British Steel presented a motion requesting that the Tribunal declare itself out of time and without jurisdiction for conducting the review. This was in reference to subsection 76(5) of SIMA. Counsel argued that the French version of subsection 76(5) requires the Tribunal to complete its review and make an order or finding within five years of the previous finding.

In a ruling delivered from the bench during the hearings, the Tribunal asserted its jurisdiction to conduct this review and promised to elaborate on this matter in its statement of reasons.

The Tribunal bases its conclusions on the wording of section 76 and also on the general purpose and scheme of SIMA. In so doing, it has applied the rule set out by the Supreme Court of Canada in *Slaight Communications Inc. v. Davidson*,¹ which requires that the two language versions of a statutory provision be reconciled by finding "... the meaning common to them both and ascertain whether this appears to be consistent with the purpose and scheme ..." of the legislation.

The question is whether, as counsel for British Steel contended, the French version of subsection 76(5) means that a review must be completed within five years of the original finding or order. The English version of subsection 76(5) states that an order or finding expires within five years, "Where the Tribunal has not initiated a review ...," whereas the French version states, "*À défaut de réexamen...*". Counsel argued that the French version was more consistent with the spirit of SIMA which they saw as setting a maximum limit of five years for any order or finding.

Counsel also argued that subsection 76(4): "*À la fin du réexamen visé au paragraphe (2), le Tribunal rend une ordonnance...*" and "... The Tribunal shall, on completion of the review, make an order ..." means that the order (*ordonnance*) is part of the review and thus must be rendered within the five-year period.

Finally, counsel argued that accepting the English version of subsection 76(5) could result in an absurd situation where the Tribunal had only to initiate a review within five years of the original order and then might leave the matter unresolved for an indefinite and possibly lengthy period.

The Tribunal cannot accept these arguments and makes the following observations on them.

Firstly, all provisions of section 76 must be read together, in both languages, to derive their general meaning and intention. Subsection 76(2) states that a review may be conducted "at any time" following the original order or finding and it provides no deadline for the review to be initiated or completed with reference to the five years referred to in subsection 76(5). A review is not conducted in a trice. It takes weeks or months to complete, starting with staff work before the Notice of Review and continuing

1. [1989], 1 S.C.R. 1038, p. 1071.

through staff research, public hearings and the issuing of a finding with reasons by the Tribunal. Parliament could not logically have required in subsection 76(5) that the review be completed before the expiration of five years from the original order when it has already empowered the Tribunal to initiate a review "at any time" during that period.

Secondly, the Tribunal considers that the plain meaning in both languages of subsection 76(4) is that the Tribunal must make an order immediately following the completion of a review. The order sets out the conclusions reached in the review.

Thirdly, the Tribunal considers that the overall purpose of SIMA is to ensure that Canadian production of like goods is protected from material injury caused by dumping and subsidizing, subject to review to ensure that such special protection is still justified. Such a review may be initiated at any time after the making of an order or finding, but not later than five years. Subsection 76(5) is only meant to ensure that the order or finding be deemed to have expired if the Tribunal has not initiated a review within five years of having made such an order or finding.

Parliament did not provide for the specific duration of an order or finding made by the Tribunal under section 43. This is because it is not possible to predict how long dumping or subsidizing, and the injury from it, will continue. If parliament's overriding purpose was to ensure that an injury finding last no more than five years, it would have said so in SIMA. Instead, parliament placed the five-year provision in the context of the section 76 review procedures. The spirit of SIMA and the thrust of section 76 as a whole is neatly expressed in the English version of subsection 76(5). The French phrase "*À défaut de réexamen...*" that is, "unless there is a review ...," reflects the fact that a review is a process and not a brief moment in time.

Finally, a party which considered that the Tribunal, having initiated a review, was taking too long to conduct it and issue its decision, could seek appropriate remedies elsewhere.

THE PRODUCTS

The products under consideration in this review comprise certain carbon and alloy steel plates. Steel is defined as a hard metal composed of iron alloyed with various small percentages of carbon, manganese and other alloying elements. Steel is considered to be carbon steel when no minimum content is specified or required for any element added to obtain the desired alloying effect. High-strength, low-alloy steels comprise a group with chemical compositions specifically developed to impart better mechanical properties and greater resistance to atmospheric corrosion than are obtainable from conventional carbon structural steels. Alloy steel is so categorized when the content of alloying elements is specified.

The dimensional ranges for the carbon and alloy steel plates, which are the subject of this review (excluding the ranges of universal mill plates as defined in the Canadian Import Tribunal review finding dated September 16, 1988), were described in the findings of the Anti-dumping Tribunal as follows:

<u>Width</u>	<u>Thickness</u>
over 8 in. to 48 in.	over 0.2299 in.
over 48 in.	over 0.1799 in.

Prime plate must conform to recognized standards (AISI, ASTM, etc.) with respect to dimensional tolerances, flatness, surface finish and strength level. Where plate conforms to all standards except strength levels, it can be sold at a lower price as non-prime plate for applications not requiring specific strength warranties.

The subject goods are used in the manufacture of structural shapes for bridges and highrise buildings, ship hulls, barges, drilling rigs, pressure vessels, automobile wheel rims, rail cars, earthmoving equipment and agricultural equipment.

Carbon plate is sold by domestic producers to end users, service centres and fabricators. In some cases, the end user will use the plate to make a product such as a pressure vessel. Sales in this instance will be conditional on successful bid tenders. In other cases, an end user will fabricate the plate into a structure for a commercial project. The fabricator will bid on the project after obtaining the most favorable price from a supplier, be it domestic or foreign.

Domestic producers sell a significant percentage of their production of the subject goods, as noted, to service centres which maintain inventories in coil and plate form to supply users with smaller volumes. Service centres are often equipped to perform shearing, torch cutting and other operations such as decoiling and cut-to-length.

Foreign plate is generally imported by agents who, in turn, sell to end users and steel service centres. Imported products can normally be supplied three to five months after the date of order.

THE DOMESTIC INDUSTRY

The complainants in the original inquiries were Algoma, Stelco, Dofasco and CHT Steel Company (CHT). There were two other small producers of the subject goods: Interprovincial Steel and Pipe Corporation Ltd. (IPSCO) and Sidbec-Dosco. Since the finding, there have been major developments within the industry with respect to ownership changes.

On August 19, 1988, Dofasco acquired a 100 percent ownership interest in Algoma from Canadian Pacific Ltd. and became the largest fully integrated domestic steel producer, accounting for about 40 percent of total Canadian steel production on a consolidated basis. In September 1989, Stelco acquired CHT, which is a heat treater of carbon and alloy steel plates.

Algoma of Sault Ste. Marie, Ontario, which continues to operate as a separate corporate entity, is the largest individual domestic producer of the subject goods. Algoma produces the subject goods on its plate mill (up to 153 in. wide) and on its continuous hot strip mill (up to 96 in. wide).

Dofasco, located in Hamilton, Ontario, manufactures a wide range of products, including hot-and cold-rolled steel plate. In 1989, Dofasco began shifting its commercial structure from a product basis to one which is market-oriented. This reorganization will result in all flat-rolled products at Algoma and Dofasco being marketed and sold through a centralized sales group in Hamilton. Dofasco produces the subject goods on a continuous hot strip mill (up to 60 in. wide).

Stelco of Toronto, Ontario, is Canada's second largest fully integrated steel producer whose production represents approximately 30 percent of the nation's steel. Currently, Stelco can produce the subject goods on three mills: the 148 in. (wide) plate mill located at Hilton Works in Hamilton; the 56 in. (wide) hot strip mill, also located at Hilton Works; and the 80 in. (wide) hot strip mill located at Lake Erie Works. In January 1988, Stelco was reorganized to create two divisions: Stelco Enterprises and Stelco Steel. It is the latter division which is responsible for the production and marketing of the subject goods.

IPSCO, located in Regina, Saskatchewan, is a publicly held company engaged in the production and distribution of a wide variety of steel products, including hot-rolled plate. In October 1988, IPSCO purchased Western Canada Steel, a producer of bar, angles and channels. IPSCO produces the subject goods on a reversing hot strip mill (up to 74 in. wide).

Sidbec-Dosco of Montréal, Quebec, produces small volumes of carbon and alloy steel plates on its reversing hot strip mill (up to 52 in. wide). The production of subject goods represents a very small percentage of the company's total production of steel.

SUMMARY OF 1983 FINDING

On December 7, 1983, the Anti-dumping Tribunal found that the dumping of the subject goods (with exceptions) from Belgium, Brazil, Czechoslovakia, the Federal Republic of Germany, France, the Republic of South Africa, the Republic of Korea, Romania, Spain and the United Kingdom had caused, was causing and was likely to cause material injury to domestic production. No material injury was found respecting the subject goods produced by Creusot-Loire, Paris, France.

In its assessment of material injury, the Anti-dumping Tribunal focussed its attention on the market peak in 1981 and market developments in 1982 and 1983. Although the initial outlook for market growth appeared very positive for 1981, most of the growth occurred during the first half of the year. During this period, all three complainants had their customers on allocation. Stelco's allocation lasted until the beginning of its four-month strike, which commenced in August, while Algoma and Dofasco had their customers on allocation until late 1981. Imports, which had maintained their normal participation in the first quarter of 1981, increased very sharply in the second quarter with most of the surge originating in the named countries. Although the market started to decline in the third quarter, reflecting falling plate usage, service centre inventories began to climb as import orders placed some four to five months earlier arrived in large volumes in the third and fourth quarters.

During the first two quarters of 1982, the usage index continued to fall while service centre inventories continued to climb. It was only in the second quarter that inventories started to fall, spurred by high interest rates in a market that was quickly disappearing. Inventories continued to be sold off throughout the balance of 1982, as the usage index continued its decline.

It was the view of the Anti-dumping Tribunal that the buildup of service centre inventories from the third quarter of 1981 until the end of the first quarter of 1982 was caused in large part by the anticipation of continued market growth and the belief that the strike at Stelco would not reach an early settlement. During this buildup period, close to 35 percent of service centre purchases were from the named countries, this compared to just over 10 percent during the first quarter of 1981. More importantly, this inventory, which included significant volumes of products found by the Deputy Minister to be dumped, was subsequently sold on the market throughout 1982 in the face of the market collapse, resulting in lost volume and price pressures on domestic products. In the second quarter alone, while the market declined by 23 percent, carbon plate production plunged by close to 40 percent, and seven points of market share were lost. In addition to losing sales to service centres in 1982, there were several instances where dumped imports underpriced industry products on major project bids.

In 1983, although the domestic industry announced general price reductions, which resulted in an increase in its market share, dumped imports continued to underprice the domestic producers and prevented them from capturing additional market share. Based on the evidence, the Anti-dumping Tribunal concluded that the industry suffered past and present material injury from the dumping. Moreover, in view of the uncertain conditions in the carbon plate market, the excess capacity of the domestic producers and the surplus capacity in the named countries, the Anti-dumping Tribunal concluded that the industry was likely to be materially injured if dumping were allowed to continue.

SUMMARY OF 1984 FINDING

On January 26, 1984, the Anti-dumping Tribunal extended the 1983 finding to the Netherlands. The complainants were again Algoma, Stelco and Dofasco. As in the 1983 finding, they claimed material injury in the form of lost orders, price erosion and suppression, lost profits and reduced employment and person-hours worked as a result of dumped Dutch imports.

The Anti-dumping Tribunal noted that this inquiry began less than six weeks after the commencement of the previous inquiry concerning the dumping of almost identical goods from 10 other countries. Thus, the dumping from the Netherlands had its impact on the domestic industry at a time when the industry was already suffering from depressed markets and injurious dumping from 10 other countries.

With the introduction of the Dutch plate (amounting to 8,805 tonnes) into the Canadian market, the producers came under almost immediate pressure from their other service centre customers for price concessions. Fearing the possibility that some of these customers would turn to offshore suppliers, and faced with the necessity of defending

their market position at a time of severely depressed demand, the producers, in the opinion of the Anti-dumping Tribunal, had little alternative but to grant these concessions.

In addition to the impact on prices of the Dutch importations, the industry was deprived of the sales it would have made, in the absence of dumping, to two service centres which purchased the Dutch product. This loss of sales resulted in lower levels of production, employment and utilization of capacity. Furthermore, it was the opinion of the Anti-dumping Tribunal that the dumping, if unchecked, would continue, adversely affecting the industry's future viability, profitability and recovery.

POSITION OF PARTIES

The Industry

The industry claimed that market conditions which led the Anti-dumping Tribunal to find that the named countries were likely to cause material injury to domestic production in 1983 are very similar to market conditions which exist today. Domestic production, sales and employment are declining, and forecasts suggest that further declines will materialize in 1990. These declines reflected recent decreases in steel demand in Canada, as well as most other western countries. Given these declines, counsel argued that now is not the appropriate time to rescind the findings.

The industry noted that market circumstances began to change in the second quarter of 1989 when domestic demand began to contract. This was combined with a sudden and dramatic fall in prices, particularly in western Canada. According to the industry, an equally sharp fall in world steel prices is in progress.

Counsel also argued that, partially due to the appreciation of the Canadian dollar vis-à-vis the US dollar, imports of US plate into Canada in recent quarters had been increasing while, at the same time, the domestic manufacturers had seen their exports to the United States fall. This would have adverse effects on the industry's financial results as well as on its employment and capacity load levels. In sum, rapidly deteriorating market conditions meant that the industry was increasingly vulnerable to any resumption of dumping.

With respect to the propensity to dump, the industry argued that demand in the home markets of the dumping countries was declining and, consequently, there now exists substantial excess production capacity. Excess capacity, when combined with the capital intensive nature and high fixed cost structure of the steel industry, creates situations whereby producers ignore trade laws of other countries in order to sustain production levels. At the same time, they promote barriers to imports within their own borders.

Counsel further submitted that the propensity to dump by the named countries was increased due to the US VRAs, which limit the volume of imports into the US market. Lacking open access to the US market, plate imports would be diverted to the open Canadian market, further intensifying the competitive domestic situation.

In the industry's view, the injury findings have played a major role in establishing a stable domestic market since 1983. However, it was submitted that, if the findings were not continued, the orderly pricing practices which have prevailed in the market would be abandoned by the 11 named countries and this destabilization would spread to other countries.

Counsel also noted that if the findings were continued, this would not necessarily have to mean another five years of protection for the domestic industry. If conditions improve in a few years time, the Tribunal could always review the findings before the normal five-year expiry period.

Importers/Exporters

Counsel on behalf of COSIPA and USIMINAS, two Brazilian exporters of the subject goods, noted that the findings had been in place for some seven years, had now served their purpose and therefore should be rescinded. Counsel argued that there was no propensity to dump by their clients as they had not shipped plate to Canada since the findings were made in 1983. In any event, they submitted that exporters were well aware that they would be subjected to further action against dumping and subsidizing if they resumed unfair trading practices upon rescission of the findings. They also noted that, historically, exporters had not shown a tendency to resume dumping in those instances where the Tribunal had rescinded findings.

Counsel on behalf of British Steel noted the small margin of dumping determined by Revenue Canada in its 1983 final determination of dumping. They also claimed that, since the finding, their client had not dumped and would continue to be restrained by common sense. Moreover, they submitted that the company had reduced production capacity and had become a very low-cost producer of plate which was competitive in Canada at normal values. Counsel argued that recent price declines in the domestic market could not be attributed to dumping. Counsel suggested that US suppliers were the major source of competition for the Canadian industry and that there was a clear causal link between increasing US imports and lower domestic prices. Counsel also argued that there had been no forecasts which would support industry claims that the economy was about to experience a recession as severe as in 1982. Instead, they suggested that the evidence showed that the Canadian economy was in for a "soft landing" which the industry could weather without too much difficulty.

Counsel on behalf of ENSIDESA, a Spanish exporter, Posco, a South Korean exporter, and Peine-Salzgitter, a West German exporter, argued that there was no evidence of a propensity to dump by any of his clients and that, in fact, these companies had been selling above-normal values to all markets. Moreover, he claimed that domestic market demand in the three countries was very strong and, as a result, these mills did not have excess production capacity.

Counsel on behalf of Charleroi and Clabecq, two Belgian exporters, argued that their clients had always been orderly marketers of steel. Even in connection with the 1983 findings, negligible levels of dumping were found by Revenue Canada. Since then no dumping from Belgium has occurred. Moreover, production capacity in Belgium, and Europe in general, has been reduced. It was also the view of counsel that the Canadian

industry was not now vulnerable to resumed dumping because of its high profit margins and large share of the domestic market.

Manfred Wirth, an importer, in written argument on behalf of his company, requested a rescission of the findings with respect to Belgium, West Germany and Spain. In his view, the depreciation of the Canadian dollar against the currencies of the three European countries provides a strong safeguard against the likelihood of injury since this made the Canadian market less attractive to European exporters. Further, he argued that plate production capacity in the three countries, as well as other countries of the European Economic Community, had been drastically reduced in recent years.

Counsel on behalf of Klöckner AG, a West German exporter, and its Canadian affiliate, argued that certain pickled and oiled steel should have been found to be either not covered by the original injury findings or, in the alternative, exempt from these findings retroactive to early 1988, at which time Canadian Klöckner imported a certain volume of these pickled and oiled goods. Considerable technical evidence was advanced to explain why the particular pickled and oiled goods should be found to fall outside the scope of the findings. In support of the alternative argument, it was claimed that an exemption was not injurious to domestic production because the said goods were not available from domestic manufacturers in 1988, when the importation was made.

CONSIDERATION OF EVIDENCE

As is the case with a number of other steel products, the market for carbon steel plate is cyclical in nature with peaks and troughs fluctuating in line with general economic cycles. The Anti-dumping Tribunal, in its 1983 injury finding, noted that 1979 was a banner year for the plate market with the volume reaching almost 1.4 million tonnes. In 1980, the market declined by 12 percent, but rebounded in 1981, falling short of the 1979 market by just 3 percent. However, the year 1982 proved to be disastrous for the domestic steel industry. The carbon plate market fell by close to 50 percent, followed by a further decline of 22 percent during the first half of 1983, when compared to the corresponding period in 1982.

In 1984, the domestic market, in response to an upturn in economic activity, increased to nearly 1.0 million tonnes, a growth of 37 percent over the 1982-83 recessionary period. In 1987, and again in 1988, market demand for plate increased sharply to peak at slightly over 1.4 million tonnes in 1988, the highest level achieved over the 10-year period. In the first three quarters of 1989, demand weakened somewhat from the high level witnessed in the corresponding period of 1988. However, all indications are that 1989 as a whole will still have seen very good sales volumes.

Notwithstanding these variations in market demand, the market shares held by the domestic producers have been relatively constant, at around 80 percent since the findings were issued. The share of market held by imports from the subject countries fell sharply in 1983 and has stayed between 5 and 10 percent since that year. With the exception of a 4-percent market share held by Romanian plate in 1989, none of the subject countries has obtained more than 2 percent of the market in any period since 1986.

Market share held by imports originating in non-subject countries has been very stable over the decade, ranging from 10 to 15 percent. However, within the group of non-subject countries, plate volumes originating in the United States have shown dramatic increases, nearly tripling in 1988 and registering further large gains in 1989.

The past three years, therefore, have seen buoyant market conditions. The evidence shows that, in 1988, plate customers were on allocation indicating that the industry was operating at high load levels. On a value basis, net sales of carbon plate by the domestic producers grew by 26 percent in 1987 and a further 27 percent in 1988, representing a 60-percent increase over the two years. In the first nine months of 1989, net sales declined slightly, by 3 percent, from the high revenues achieved in the corresponding period of 1988. The high level of sales over the three-year period resulted in significant improvements in the industry's profitability.

Industry market forecasts indicate that demand, which weakened somewhat in 1989, will soften further in 1990. Moreover, increased price competition will likely result in downward pressure on margins. The evidence indicates that competition in western Canada, which has been a traditional market for offshore and US sourced plates, will be especially strong over the short term. Export sales to the United States, by far the largest foreign purchaser of Canadian plate, will likely not be a source of strength for Canadian producers if the dollar stays at current high levels vis-à-vis the US dollar and US market prices remain low.

REASONS FOR DECISION

In reviewing a finding of injury from dumping to determine whether it should be continued or rescinded, there are two essential questions which must be addressed. Firstly, what is the propensity to dump if the finding is rescinded? Secondly, how vulnerable is the domestic industry to dumping?

Propensity to Dump

With respect to the first question, the propensity to dump, the Tribunal notes that data collected by Revenue Canada in its enforcement of the injury findings reveal that, since 1983-84, there has been virtually no dumping from 5 of the 11 named countries. For the remaining 6 countries, the margins of dumping, the volume of dumped goods and the percentage of dumped goods to total subject goods imported have been generally quite small. Exporters, for the most part, have been able to compete in the Canadian market at or above the normal values established by Revenue Canada and have been able to maintain a significant share of the Canadian market.

Turning to the international situation, the Tribunal heard evidence that there had been a change in the production and marketing strategies of European producers since the early 1980s. According to one witness, European mills are now driven primarily by profit considerations rather than a desire to maintain production and employment levels at any cost. There was also evidence that some excess steel capacity had been reduced over the decade as the industry had rationalized, resulting in the shutdown of several mills throughout Europe. In addition, witnesses referred to developments which, in their view, would keep European mills operating at respectable load levels and would keep their attention focussed on European markets. These developments included the

demands which would be generated by the rebuilding requirements of Eastern Europe, as well as major projects such as the 1992 Barcelona Olympics.

With respect to South Korea, the Tribunal heard testimony that steel mills in that country had been operating at, or near, full production capacity in order to supply a booming domestic economy. The evidence that at least one of the Canadian producers had made significant sales of the subject plate to South Korea in recent times tends to confirm the testimony on the buoyancy of the Korean economy and the consequent reduced Korean capacity available to serve export markets.

The Tribunal notes the industry's contention that restrictions imposed on access to the US steel market through the operation of the VRA program increase the propensity to dump subject goods in the relatively open Canadian market. However, the evidence shows that US plate prices have been so low that the VRA quota allocations have not been fully used by VRA-targeted countries, including several of the countries covered by the findings in this case. Moreover, individual country quota allocations recently have been expanded. It is, therefore, not evident that VRAs are currently restricting access to the US market in a way which presents any imminent threat of significant trade diversion in plate products to Canada.

The Tribunal also considers it relevant that, in 1986, the Canadian government began monitoring carbon steel imports under the *Export and Import Permits Act*. The Tribunal considers that the existence of this program may well act as a deterrent to dumping since it provides timely information on imports and permits the industry to take swift remedial action in the event of a resumption of injurious dumping.

Therefore, in the present case, the Tribunal has formed the view, based on the considerations described above, that the propensity to dump is low.

Industry Vulnerability

Turning to the second question, the vulnerability of the industry to a resumption of dumping, the Tribunal notes that in the intervening six years since the findings were put in place, a number of events have occurred which should help the industry to weather the market downturn which is now in progress. Certainly, industry plate sales and profitability have been at their highest level in a decade. The Tribunal also notes that profitability on sales of the subject goods exceeds profits earned on industry sales of other steel products. Moreover, the industry continues to maintain a large and stable share of the Canadian market - about 80 percent.

The Tribunal also notes that, since the early 1980s, the industry has made significant investments in modernizing its production facilities making it competitive today with most international steel mills. In addition, it is the opinion of the Tribunal that the restructuring, which has been occurring within the Canadian steel industry, should further enhance the industry's competitiveness. As a result of the acquisition of Algoma in 1988, Dofasco has become Canada's largest fully integrated steel producer. Dofasco's related rationalization of steel production and marketing should result in enhanced efficiencies and competitive advantages for the two companies. Similarly, Stelco's acquisition of CHT in 1989 will add to its flexibility in serving the domestic market. In the Tribunal's view, these steps have undoubtedly contributed to enhancing the

industry's positive financial performance over the past few years and will continue to enhance the cost effectiveness of the industry in the future.

Further reinforcing the industry's competitive position against offshore mills are the natural advantages it derives from being a preferred supplier to major steel service centres. According to a witness (called by the Tribunal), who represents one of Canada's largest steel service centres, domestic mills offer a high quality product at competitive prices. This, together with shorter delivery times and closer customer relations, provides domestic mills with certain advantages over offshore mills and encourages domestic steel service centres to source upwards of 90 percent of their requirements, on a regular basis, from domestic producers.

The Tribunal notes further that the Anti-dumping Tribunal in 1983 found that an important cause of injury to the domestic industry stemmed from a significant buildup in inventories (comprised, in considerable part, of dumped goods) by steel service centres in 1981 and 1982 and the subsequent liquidation of those inventories in the midst of a major market contraction. There is no evidence of a similar inventory accumulation today, suggesting that steel service centres are applying the lessons learned from the difficulties encountered in 1982-83.

The Tribunal is aware of the pressures which the industry has encountered in recent quarters and which are forecast to continue throughout the current year. Much of this pressure appears to be resulting from US competition for domestic market sales, particularly in western Canada (where, as has been noted, imports have traditionally had a large presence). Export sales in the United States have also come under pressure. The appreciation during 1988 and 1989 of the Canadian dollar against its American counterpart and low US home market prices driven by the restructuring and low production costs of a number of US steel producers are largely at the root of these pressures from the United States.

Nevertheless, the Tribunal considers that the softening in domestic market demand and in plate prices must be viewed in relation to the decade high volumes and price levels achieved in 1988. Moreover, the consensus of current forecasts is that the domestic market is far more likely to encounter a "soft landing" in the near term than to suffer a downturn approaching the severity of the 1982-83 recessionary period. Accordingly, the Tribunal has concluded that the domestic industry is not significantly vulnerable to being materially injured by a resumption of dumping from the named countries.

Exclusion Request

Counsel for Klöckner and Klöckner AG asked the Tribunal to declare that carbon steel plate coils, pickled and oiled, not be contemplated by and subject to the finding of December 7, 1983. In particular, he asked the Tribunal to modify the class of goods covered by the finding to exclude pickled and oiled coils retroactively to January 1, 1988.

Counsel submitted that there was no statistical or other evidence that the 1983 finding had been meant to include pickled and oiled coils, which he argued are produced in a separate manufacturing process which gives them physical properties and end uses which are distinct from the subject goods. He also submitted evidence that the

goods in question were not available from domestic manufacturers in 1988 and so should be excluded from the order. He argued that the Tribunal has the jurisdiction, in a review conducted under section 76 of SIMA, to make such a declaration. Counsel based this submission on the decision of the Federal Court of Appeal in *DeVilbiss (Canada) Ltd. v. Anti-Dumping Tribunal*.²

The Tribunal has the following observations to make on these submissions.

Firstly, the Tribunal believes that the DeVilbiss case is not applicable to the present motion. Unlike the situation in DeVilbiss, Klöckner is not asking the Tribunal "to determine by evidence" (per Urie, J. at p. 715) the meaning of particular words in the finding that are not otherwise clear. Rather, the motion asks the Tribunal to modify the class of goods under review. This is not possible within the scheme of SIMA which makes it clear that the Deputy Minister is responsible under sections 31, 38, and 41 for specifying the class of goods covered by preliminary and final determinations. The Tribunal in inquiries conducted under section 42 or 76 of SIMA must then make a finding of material injury, taking as given the class of goods defined by the Deputy Minister.

If the Tribunal were to exclude goods from a finding it would be on the basis of evidence that imports of these goods would not cause material injury to Canadian production because, for example, they would be unavailable from Canadian production. This is different from saying that the goods are outside the class of goods defined by the Deputy Minister. Determinations as to whether imported goods are goods of the same description as goods to which the order or finding of the Tribunal applies are made by customs officers. A party which is not satisfied with a customs officer's determination may appeal this determination under sections 57 to 61, first to the Deputy Minister and then to the Tribunal. No such appeal to the Tribunal has been launched in this case.

Secondly, it is not evident whether the Tribunal has the power to retroactively amend orders or findings as the result of a review.

Subsection 76(4) under which orders following review are made, provides as follows:

On completion of a review pursuant to subsection (2) of an order or finding, the Tribunal shall make an order rescinding the order or finding or continuing it with or without amendment, as the circumstances require, and give reasons for the decision.

Parliament does not appear to have explicitly empowered the Tribunal to make an order or finding which would retroactively amend the order reviewed. This being said, the predecessor Tribunal, the Canadian Import Tribunal, from time to time did review orders for the purpose of retroactively excluding from them retroactively goods which were no longer produced in Canada. An example of this practice was the former Tribunal's review finding R-10-88 of September 16, 1988, where it retroactively excluded certain goods no longer being produced in Canada from the carbon and alloy steel plate

2. [1983] 1 F.C. 706.

findings which are the subject of the present review, but otherwise continued the findings.

The Tribunal has dwelt on these points because of their general relevance to its conduct of reviews under section 76. However, the present case can be decided on the facts above.

The domestic industry produced evidence, which was not contested, to show that pickled and oiled coils were indeed produced in Canada although, at the time of the Klöckner importation, customers were on allocation and not all orders could be filled. The Tribunal does not consider that a temporary lack of availability of goods constitutes grounds for excluding them permanently from the class of goods subject to an injury finding. Importers in these circumstances have available to them specific remedies to obtain relief, such as the duty remission provisions under the *Financial Administration Act*. Given the facts of this case, the question of whether the finding of 1983 should be amended to exclude pickled and oiled coil does not arise.

CONCLUSION

In view of the low probability of a resumption of dumping and the absence of any significant degree of vulnerability of the domestic industry to injury caused by any resumption of dumping, the Tribunal hereby rescinds the findings of 1983 and 1984, as amended in 1988.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

John C. Coleman

John C. Coleman
Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member