



Ottawa, Friday, December 14, 1990

Review No.: RR-90-002

IN THE MATTER OF a review, under section 76 of the *Special Import Measures Act*, of the finding of material injury of the Canadian Import Tribunal in Review No. R-16A-85 dated April 18, 1986, continuing with amendments the finding of the Anti-dumping Tribunal in Inquiry No. ADT-11-78, dated March 16, 1979, and a review of the finding of material injury of the Canadian Import Tribunal in Review No. R-16B-85, dated April 18, 1986, as amended in Review No. R-9-86, dated July 23, 1987, continuing with amendments the finding of the Anti-dumping Tribunal in Inquiry No. ADT-1-84, dated April 16, 1984, concerning:

**CERTAIN STAINLESS STEEL PIPE ORIGINATING IN OR
EXPORTED FROM JAPAN, THE UNITED KINGDOM, SWEDEN, THE
UNITED STATES OF AMERICA, THE FEDERAL REPUBLIC OF
GERMANY AND THE REPUBLIC OF KOREA**

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 made by the Canadian Import Tribunal in Review No. R-16A-85, dated April 18, 1986, continuing with amendments the finding in Inquiry No. ADT-11-78, dated March 16, 1979, and the finding of material injury of the Canadian Import Tribunal in Review No. R-16B-85, dated April 18, 1986, as amended in Review No. R-9-86, dated July 23, 1987, continuing with amendments the finding in Inquiry No. ADT-1-84, dated April 16, 1984.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds the above-mentioned findings of April 18, 1986, as amended, effective December 14, 1990.

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.
Presiding Member

John C. Coleman

John C. Coleman
Member

W. Roy Hines

W. Roy Hines
Member

Robert J. Martin

Robert J. Martin
Secretary



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

DECISION: The Canadian International Trade Tribunal rescinds the above-mentioned findings. The principal Canadian manufacturer of the subject goods supported the continuation of the findings in respect of Sweden and the Republic of Korea, excluding seamless stainless steel pipe, and the rescission of the findings in respect of Japan, the United Kingdom, the United States and the Federal Republic of Germany. Associated Tube Industries had found no evidence of a propensity to dump and, therefore, of a resumption of injurious dumping by producers in Japan, the United Kingdom, the United States and the Federal Republic of Germany. There was no persuasive evidence to support the contention that Sweden and the Republic of Korea would resume dumping of the subject goods should the findings be rescinded. Low Canadian prices and strong demand in their home and export markets suggest instead that exporters from the named countries would continue to find the Canadian market unattractive. The evidence did not suggest that the domestic industry would be materially injured if a resumption of dumping from those two countries were to occur.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: October 8 and 9, 1990
Date of Order and Reasons: December 14, 1990

Tribunal Members: Robert J. Bertrand, Q.C., Presiding Member
John C. Coleman, Member
W. Roy Hines, Member

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Research Manager: Daryl Poirier
Research Officer: John O'Neill
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Clerk: Margaret J. Fisher

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Gregory O. Somers
for Associated Tube Industries
A Division of Samuel Manu-Tech Inc.

(Manufacturer)

M. Ian Muffett
for Atlas Alloys
A Division of Rio Algom Limited

Peter E. Kirby
for Avesta Sandvik Tube AB
and Avesta Stainless Inc.

(Importers/Exporter)

Witnesses:

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Vice-President and
General Manager
Associated Tube Industries
A Division of Samuel Manu-Tech Inc.

Mark L. Winkler
Controller
Associated Tube Industries
A Division of Samuel Manu-Tech Inc.

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Ottawa, Friday, December 14, 1990

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**CERTAIN STAINLESS STEEL PIPE ORIGINATING IN OR
EXPORTED FROM JAPAN, THE UNITED KINGDOM, SWEDEN, THE
UNITED STATES OF AMERICA, THE FEDERAL REPUBLIC OF
GERMANY AND THE REPUBLIC OF KOREA**

TRIBUNAL: ROBERT J. BERTRAND, Q.C., Presiding Member
JOHN C. COLEMAN, Member
W. ROY HINES, Member

STATEMENT OF REASONS

SUMMARY

The Canadian International Trade Tribunal (the Tribunal) has reviewed the findings of material injury to the domestic production of certain stainless steel pipe. The first finding was made in 1979 and covered imports from the United Kingdom, Japan and Sweden. The subject goods included stainless steel tubing, as well as stainless steel pipe. The second finding, in 1984, related to certain stainless steel, nickel and nickel alloy pipe and tubing from the United States, the Federal Republic of Germany (Germany), and the Republic of Korea (Korea). The size range of the subject goods in this finding was broader than that of the 1979 finding. Subsequent reviews of the two findings excluded stainless steel tubing and nickel and nickel alloy pipe and tubing.

In January and March of 1990, two major importers of the subject goods petitioned the Tribunal to exclude the United States from the 1986 review finding. On June 15, 1990, the Tribunal decided, under section 76(2) of the *Special Import Measures Act* (SIMA), to initiate a review of the findings respecting stainless steel pipe.

In its submission to the Tribunal, Associated Tube Industries (ATI) proposed that the findings be continued with respect to only Sweden and Korea, and with respect to only welded stainless steel pipe. It had no objection to the exclusion of seamless stainless steel pipe from the continuation of the findings. It said it lacked evidence on the likelihood of resumed dumping and, therefore, of a resumption of injurious dumping, to support a request for continuation of the findings against the exporters of the United Kingdom, Germany, Japan and the United States. Accordingly, ATI proposed that those countries be excluded from any continuation of the findings.

With respect to the likelihood of a resumption of dumping by Sweden and Korea, the Tribunal finds no persuasive evidence to support the allegations of ATI in this regard. The low prices currently prevailing in the domestic market are in contrast to the apparently buoyant markets prevailing in Europe, the United States and Japan. The subject exporters would appear to have little incentive to export to Canada under the prevailing market conditions.

The Swedish exporter has not dumped stainless steel pipe in Canada in the size ranges not subject to the finding. ATI testified that imports of the subject goods from the Swedish exporter's plant in Holland had not caused it any difficulty in the Canadian market. These facts indicate a lack of aggressive marketing of the subject goods in Canada by the Swedish firm.

As far as Korea is concerned, the only evidence presented to the Tribunal involved three low-price offerings made by Korean exporters in other markets. The Tribunal did not consider these offerings, by themselves, to be indicative that dumping was taking place in other markets, or was likely to take place in Canada.

The Tribunal finds that dumping, if it were to resume from Sweden and Korea at prices and volumes experienced in the past, would not be likely to cause material injury to the domestic industry, and particularly ATI, which constitutes almost the entire industry with respect to the subject goods. The company's financial results have shown strong improvements since 1986, due in large part to the contribution to profits made by sales of the subject goods. Market share has been regained, and the company's production capacity and production efficiency have both been enhanced by the investments made by ATI during the prolonged period of expansion in market demand and decline in imports from the named countries. ATI's export initiatives have allowed it to gain a strong foothold in the US market, and the company plans to carry those export successes into other markets as well. Demand for, and profits earned on, the subject goods in Canada are undergoing a downturn at the present time, but this may be due primarily to a decline from the strong and lengthy period of growth that the industry has just experienced.

The major Canadian producer argued that its position was now being affected by low-priced imports from non-subject countries, as well as by the reduced level of demand in the Canadian market. The Tribunal was not persuaded that the impact of these low-priced imports on the financial performance of ATI led inevitably to the conclusion that ATI would be materially injured if there were a resumption of dumped imports.

In conclusion, the Tribunal did not find that dumping by the subject exporters was likely to resume should the findings be rescinded; nor did it find that a resumption of dumped goods was likely to cause material injury to the industry.

BACKGROUND

This is a review, under section 76 of SIMA, of the findings of material injury made by the Canadian Import Tribunal (CIT) respecting certain stainless steel pipe. Review No. R-16A-85 (April 18, 1986), covered stainless steel pipe, welded and seamless, in sizes from ¼ in. outside diameter to 2½ in. outside diameter and with a wall thickness from .022 in. to .154 in., originating in or exported from Japan, the United Kingdom and Sweden. Review No. R-16B-85 (April 18, 1986), as amended July 23, 1987, covered stainless steel pipe, welded and seamless, in the following size ranges: welded, in sizes from ½ in. (3.175mm) to 5 in. (127mm) outside diameter and with a wall thickness from .006 in. (.152mm) to .250 in. (6.35mm); seamless, in sizes from ½ in. (3.175mm) to 2½ in. (63.5mm) outside diameter and with a wall thickness from .006 in. (.152mm) to .154 in. (3.912mm), originating in or exported from the United States, Germany, and Korea.

Under section 76(2) of SIMA, the Tribunal decided to initiate a review of the findings and issued a Notice of Review on June 15, 1990. This notice was forwarded to all known interested parties and was published in Part I of the June 30, 1990, edition of the Canada Gazette.

As part of this review, the Tribunal sent detailed questionnaires to the Canadian manufacturers and known importers of the subject goods. From the replies to these questionnaires and from other sources, the Tribunal's research staff prepared protected and public pre-hearing staff reports. Members of the Tribunal's staff visited the production facilities of all four Canadian manufacturers of the subject goods. Tribunal members visited the plants of the two largest manufacturers, as well as one of the largest distributors of the subject goods in the Canadian market.

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 only to independent counsel.

Public and *in camera* hearings were held in Ottawa on October 9 and 10, 1990.

ATI, the largest Canadian manufacturer of the subject goods, was represented by counsel at the hearing. Mr. R. Scott Sweatman, Vice-President and General Manager, and Mr. Mark L. Winkler, Controller, appeared as witnesses.

Mr. M. Ian Muffett, Product Manager, Fluids Handling Products for Atlas Alloys, A Division of Rio Algom Limited, appeared and testified at the hearing.

The Swedish exporter of the subject goods, Avesta Sandvik Tube AB, and its Canadian distributor, Avesta Stainless Inc., were represented by counsel at the hearing. Mr. Barry Trerise, Canadian Marketing Manager of Avesta Stainless Inc., appeared as a witness for both companies.

SUMMARY OF PAST FINDINGS AND REVIEWS

Inquiry No. ADT-11-78

On March 16, 1979, in Inquiry No. ADT-11-78, the Anti-dumping Tribunal (ADT) found that the dumping of certain stainless steel pipe and tubing from Japan, the United Kingdom and Sweden was injurious to Canadian production. In that inquiry, the ADT first determined that seamless and welded pipe and tubing were like goods.

The market for the subject goods had fluctuated sharply during the period under examination in terms of volume and market share. The domestic industry had done reasonably well notwithstanding the fact that price cutting was widespread. Although ATI's profit margins had been reduced considerably, it continued to offer competitive prices to protect its sales volume while improving its efficiency and increasing exports. As a result, ATI's financial performance declined significantly during this period. In the absence of other adverse factors that might explain this drop in performance, the ADT concluded that the material injury suffered by the industry was attributable to dumped offshore products offered in the Canadian marketplace at prices that reflected a substantial margin of dumping.

Inquiry No. ADT-1-84

On April 16, 1984, in Inquiry No. ADT-1-84, the ADT found that the dumping of certain stainless steel, nickel and nickel alloy pipe and tubing, welded and seamless, from the United States, Germany and Korea was materially injurious to the production in Canada of like goods.

Although the market had grown significantly during the period under review with virtually all of the increase accruing to the domestic producers, the ADT concluded that this had been achieved by meeting severe price competition in the marketplace. When the industry lowered its prices to compete, its profit margins fell sharply and its financial performance deteriorated.

The ADT had no doubt that the 1981-82 recession had had an impact on the performance of the industry. It left the industry more vulnerable to the effects of competition from dumped imports. The ADT was persuaded that the price competition caused by dumped goods and the consequent effect on profitability were materially injurious to the domestic production of like goods.

During the proceedings, numerous submissions were received for the exclusion of specific product lines in the event of a finding of injury. In considering the evidence, the ADT was satisfied that the industry had the ability to respond to the demand for various grades, dimensions and forms of the subject goods. With the exception of goods used in aircraft production and/or repair, and tubing for use in electric heating elements, the ADT was not persuaded that the requested exclusions were warranted.

Review Nos. R-16A-85 and R-16B-85

On April 18, 1986, the CIT, in Review No. R-16A-85, continued the 1979 finding with respect to stainless steel pipe, but excluded stainless steel tubing. In parallel Review No. R-16B-85 it continued the 1984 finding with respect to stainless steel, nickel and nickel alloy pipe, but excluded stainless steel, nickel and nickel alloy tubing.

While the 1979 finding had been in effect for seven years at that time, a relatively short time had elapsed since the 1984 finding, which encompassed the same products. The continuation of the 1984 finding recognized that circumstances had not changed appreciably and that the contribution to revenues of pipe sales for both ATI and Nor-Sand Metals Inc. was substantial. Furthermore, it was the CIT's practice, where separate findings of injury were in force against different countries or groups of countries, and unless exceptional circumstances dictated otherwise, to dispose of the reviews in the same manner.

Other considerations applied to tubing. During the months preceding the review, a great deal of uncertainty appeared to have been generated in the marketplace as to precisely what was available in Canada in the way of tubing. The CIT noted that, in the single year of 1985, the US share of the market in stainless steel tubing, where the bulk of demand resided, advanced strongly, and this in the face of an injury finding. The CIT concluded that this success was not reflective of dumping, but rather of the domestic industry's inability to respond to the demands of the Canadian market. In light thereof, the CIT was persuaded that the findings, insofar as they applied to tubing, should be rescinded.

Review No. R-9-86

On July 23, 1987, the CIT reviewed Review finding No. R-16B-85, and decided to exclude nickel and nickel alloy pipe. In its notice of review, the CIT noted that the review had been requested because nickel and nickel alloy pipe was not produced in Canada. The CIT concluded that anti-dumping protection for nickel and nickel alloy pipe served no purpose because the Canadian manufacturer (Nor-Sand, now Sandvik Tube) had not met and was not meeting the needs of the Canadian market, even with anti-dumping protection.

THE PRODUCT

The 1979 finding covered a broad class of goods, including both stainless steel pipe and tubing. The 1984 finding covered an even broader class of goods, including, in addition to stainless steel pipe and tube, nickel and nickel alloy pipe and tube. Neither finding covered all sizes of stainless steel pipe. In subsequent reviews, the findings were narrowed to cover only stainless steel pipe.

The outside dimensions of the stainless steel pipe involved in the 1979 finding against Sweden, the United Kingdom and Japan were from ¼ in. (6.35mm) to 2½ in. (63.5mm), while the outside dimensions of the stainless steel pipe involved in the 1984 finding against the United States, Germany and Korea were from _ in. (3.175mm) to 5 in. (127mm).

Stainless steel pipe is produced from a variety of grades of stainless steel (predominantly in ASTM standard alloys 304, 304L, 316 and 316L). It may be seamless or welded. The 304 and 316 alloys contain molybdenum for corrosion resistance, while the 304L and 316L designations have a low carbon content. Much of the pipe produced in Canada is dual certified, meeting standards for both molybdenum and carbon content. Pipe is also identified by International Pipe Size (IPS) that designates wall thickness and inside diameter (ID). These specifications are contained in schedules to the ASTM standards (i.e., 5, 10, 40 and 80), which set out these two essential criteria.

The subject goods include pipe made from non-standard and proprietary grades of stainless steel, as well as from standard alloys. While some proprietary grades of stainless steel are substitutable for standard grades, others are unique and have been developed for very specific end uses.

Welded pipe is manufactured from cold-rolled strip or sheet that is roll-formed either in cut lengths or on a continuous basis, and welded by an electric arc process. It then passes through an annealing furnace and other processes, and is then subjected to various tests to ensure that resistance requirements are met. The strip or sheet is either imported or purchased from domestic suppliers such as Atlas Steels that produces it directly from its constituent raw materials. It is in the production of the cold-rolled strip or sheet that the thickness, hardness, weldability and other qualities of the finished product are determined.

Seamless pipe is produced from a round bar of steel that has been cored and possibly subjected to hot extrusion to produce a hollow. A redraw mill then reduces and/or redraws the hollow to size and processes it to appropriate specifications. The seamless pipe is then subjected to processes similar to those used for welded pipe. In the case of Sandvik, the round hollows are imported (primarily from their parent company in Sweden, but also increasingly from suppliers in the United Kingdom and Germany), and cold reduced on a pilger mill to appropriate specifications.

Stainless steel pipe is commonly used for pipeline and piping systems. Because of its corrosion- and heat-resistant qualities, it is used primarily in pulp and paper mills, and the mining, chemical and petrochemical industries. It is also used in the oil and gas industries, in the food, beverage, and other manufacturing industries, and for pressure vessels and heat exchangers for thermal electricity generation.

THE INDUSTRY

There are four Canadian manufacturers of the subject goods, all located in Ontario. These are: ATI, Henderson, Barwick Inc. (Henderson), and Canadian Erectors Pipe, manufacturers of welded pipe, and Sandvik Tube (ST), the sole manufacturer of seamless pipe.

ATI is by far the largest manufacturer of the subject goods, producing welded stainless steel pipe (among other products) at its plant in Markham. Other products include mechanical and pressure tubing in stainless steel and nickel alloys, as well as heating element tubing, beverage tubing, instrumentation tubing and tubes for other processing applications. The company also has a fabricated tubular parts division that transforms pipe or tube produced by ATI into finished parts, sub-assemblies or complete component assemblies for their customers.

Henderson and Canadian Erectors Pipe are both much smaller manufacturers of welded stainless steel pipe.

Henderson purchased the former Brockville plant of Uddeholm Ltd., of Sweden, in 1984. Its stainless steel pipe production is predominantly in sizes larger than those of the subject goods. Henderson is also involved in metal fabrication and the production of storage tanks.

Canadian Erectors Pipe is a new entrant into the market, having commenced production in Kingston in 1990. It is A Division of Canadian Erectors Limited, which has six plants operating in the metal fabrication/construction industry. It produces welded stainless steel pipe in 3 in., 4 in., and 6 in. sizes, of which the first two sizes are subject goods.

ST is the only Canadian producer of seamless stainless steel pipe (and other related products) at its plant in Arnprior. The plant was originally built to produce seamless nickel alloy tubing for the nuclear power industry, but subsequently, in 1982, also went into the production of seamless stainless steel pipe and tubing. The bulk of the company's production now consists of stainless steel tubing.

POSITION OF PARTIES

Domestic Industry

ATI submits that the findings, as amended, should be continued with respect to Sweden and Korea for welded stainless steel pipe, including non-standard and proprietary grades, but excluding seamless stainless steel pipe. The United Kingdom, Japan, the United States and Germany should be excluded.

ATI acknowledges that it has experienced strong growth in domestic production, continued investment and increased capacity, development of export markets, and strong profit levels, over the period from 1986 to 1989. It submits, nevertheless, that the deterioration of the market starting in the latter half of 1989, and particularly in July and August of 1990, has made the company vulnerable to renewed dumping. Two factors were identified to explain this situation: the severe drop in demand and the rapid penetration of the Canadian market by firms in Taiwan at very low prices. To maintain market share, ATI has had to meet these low prices. It sees no improvement in this situation for the next year or so.

In ATI's view, both Sweden and Korea would resume dumping of the subject goods in Canada should the findings be rescinded. Counsel argued that both countries had displayed a general tendency to dump in the past and that this was indicative of the likelihood of resumption of such dumping in the future.

In particular, ATI noted the finding of dumping against Sweden by the US Department of Commerce and the very low price quotes for subject goods by different Korean manufacturers in the US and South American markets. It stated that exports to Canada by the Swedish firm's Dutch subsidiary were at prices below those that normally obtained on sales by the same exporter in European markets, while acknowledging that those exports were not disruptive in the Canadian market. ATI suggested further that Sweden would resume dumping in the event of a worldwide market decline for the subject goods.

In contrast, ATI had no evidence to submit that there would be a resumption of injurious dumping if the findings against the United States, Japan, the United Kingdom and Germany were rescinded. The participation of the latter three countries in the Canadian market for welded stainless steel pipe had been found by ATI to be only marginal, and there was no evidence of price undercutting by US pipe producers in the Canadian or other foreign markets. Furthermore, while the United States is a major participant in the Canadian stainless steel pipe market, ATI contends that US manufacturers supply primarily non-standard grades of pipe that do not compete with ATI's production of the four standard grades.

With respect to seamless stainless steel pipe, ATI noted the significantly greater intermediate material and production costs associated with its manufacture. As a result, the cost of a given grade and size of seamless pipe exceeds that of a comparable welded product to such an extent that it effectively precludes the cross-substitution of seamless pipe for welded pipe.

Henderson, in its response to the Tribunal's questionnaire, stated that the findings have had no material impact on the company's overall performance. They cover only a small percentage of its total product range in stainless steel pipe. In its opinion, the findings have had a beneficial impact on other Canadian producers of the subject goods, and dumping would likely recur if the findings were rescinded.

ST supports the rescission of the findings with respect to seamless stainless steel pipe from all named countries except the United States. It acknowledges that it has always produced more tubing than pipe. During the prolonged period of economic expansion, the demand for stainless steel tubing had been so strong that the effect of the pipe finding on ST's performance had not been noticeable. It does not support rescission of the finding on imports from the United States because of what it perceives as a defect in the rules of origin of the Canada-United States Free Trade Agreement, which places it at a disadvantage vis-à-vis producers in the United States.

Exporter/Importers

Avesta Sandvik Tube AB (AST), of Sweden, was the only exporter to participate in the review. AST submitted that the finding, insofar as it applied to Sweden, had served its purpose and should be rescinded. Furthermore, counsel argued that the rescission should be retroactive to at least the date on which the Tribunal decided to initiate this review.

AST testified that it had no intention to dump any product in Canada and that there was no evidence of any propensity to dump on its part. Counsel for the Swedish exporter pointed out the low volume of Swedish exports of the subject goods to Canada in recent years, and argued that, since the finding, the Swedish exporter had not dumped stainless steel pipe in Canada in non-subject size ranges. That the Swedish exporter had not dumped stainless steel tubing in Canada subsequent to its exclusion from the finding was additional proof of lack of propensity to dump. In the same vein, counsel noted the lack of any disruptive importations of the subject goods from AST facilities in Holland.

Counsel for the Swedish exporter argued that the dumping that had occurred in the United States had not only been inadvertent, but had taken place over four years ago. As a result of restructuring in the Swedish stainless steel pipe industry in 1984, one firm now controlled all Swedish exports. Corporate policy would prevent any incidence of dumping from recurring. Evidence was also provided to show that the Swedish exporter's production facilities were operating at a high rate of capacity utilization. The witness for Avesta Stainless Inc. contended that world demand for the subject goods was continuing to increase and that, in this context, Canada was not considered an attractive market; prices and demand were better in other markets.

While many distributors of stainless steel pipe in Canada made submissions with respect to the continuation, rescission or amendment of the findings, only Atlas Alloys (Atlas) appeared before the Tribunal and gave testimony. Atlas is one of the largest Canadian distributors of stainless steel pipe, purchasing both domestic and imported goods. In his submission, the witness for Atlas contended that Sweden, Korea and Japan would resume dumping in Canada if the opportunity arose. In testimony, he confirmed Atlas' position that the finding should be continued against those countries and that it should be continued not only for welded, but also for seamless stainless steel pipe. On the other hand, Atlas felt that the United States should be excluded from the findings, or the products should be better defined to address the industry's concerns. Atlas claimed that the items sourced in the United States are not manufactured in Canada because of insufficient quantity for manufacture or size/specification non-availability.

ECONOMIC INDICATORS

The Tribunal examined production levels, shipments, imports, exports, investment, production capacity, employment, market share and profitability in the Canadian stainless steel pipe market from 1986 to the first half of 1990.

It found that the domestic industry producing the subject goods, as well as the market for the subject goods, had changed substantially since the findings were continued in 1986. The only domestic producer of seamless pipe, ST, has gradually moved away from the production of stainless steel pipe and concentrated its efforts on

seamless stainless steel tubing. In addition, the higher prices of seamless stainless steel pipe in recent years have made welded stainless steel pipe much more attractive for certain uses.

ATI remains the largest manufacturer by far of welded stainless steel pipe. That company's economic position has, however, changed substantially. ATI has greatly enhanced its production capacity since 1986, and has simultaneously improved its production efficiency and its competitive position both in Canada and abroad. The installation of an additional pipe mill, along with the installation of the latest welding technology on existing mills, have been the major factors behind that improvement.

Revenue Canada enforcement data show that import volumes of the subject goods, expressed in linear feet, from the six named countries have declined from 1986 to 1989, falling by almost 73 percent over that period. Import volumes from the subject countries in the first four months of 1990 continued to be negligible, except for a slight increase in the level of undumped imports from Korea.

Statistics Canada data and ATI's estimates in its submission both show increased exports to the Canadian market by non-subject countries such as Taiwan, Holland, Spain and Mexico.

After a period of strong growth from 1986 to 1988, ATI's domestic sales of welded stainless steel pipe declined sharply in the second half of 1989 and continued at that same reduced level in the first half of 1990. Nevertheless, figures supplied by ATI on the total apparent market for the welded subject goods show that its domestic shipments and market share were considerably higher in 1989 than they had been in 1986. On an annualized basis, production levels in 1990 would be considerably higher than in 1986.

From 1986 to 1989, ATI developed significant export sales to the United States, with more recent, and smaller, export successes in the South American market. It is now looking to develop export markets in Europe. Its export sales in 1989 exceeded those in 1988, which, in turn, were substantially higher than the volumes exported in previous years. Even with a decline in the first half of 1990, exports in that six-month period were double the value of exports in the full year 1986. ATI stated that netback prices on export sales in 1990 were higher than on domestic sales. Export sales now represent a sizeable percentage of sales of the subject goods by ATI.

ATI's overall profitability over the period from 1986 improved in line with its higher production and sales levels for stainless steel pipe. The contribution to net income from sales of the subject goods was greater than that from sales of other products manufactured by ATI. As noted above, however, the profit and sales picture began to weaken in 1989 and continued to decline in 1990.

REASONS FOR DECISION

In the consideration of whether to rescind or continue a finding pursuant to a review under section 76, there are two questions that the Tribunal addresses. First, is it established by the evidence that the importation of dumped goods is likely to resume in the foreseeable future? Second, if the importation of dumped goods does recur, is it likely to cause material injury to the domestic production of the subject goods?

LIKELIHOOD OF DUMPING

In determining whether there is a likelihood of resumed dumping from the subject countries, the Tribunal examined evidence presented by parties respecting import patterns, prices, market demand, the production capacity of exporters concerned and their recent behavior in the North American and other markets.

ATI submitted that, as there was no evidence of a likelihood of resumed dumping, the findings against exporters in the United States, the United Kingdom, Germany and Japan should be rescinded. It estimated that approximately 80 percent of US exports to Canada comprised the welded subject goods in non-standard grades that were not produced regularly by ATI. It had no evidence of price undercutting by US pipe producers in the Canadian or other foreign markets and, in any event, the original rationale underlying inclusion of the United States in the 1984 finding was largely obviated by the CIT's decision in 1986 to exclude stainless steel, nickel and nickel alloy tubing from that finding. In the case of exporters in Germany, the United Kingdom and Japan, ATI stated that it had no evidence that dumping was likely to resume, so as to justify continuation of the findings. In the absence of such evidence, the Tribunal sees no reason to continue the findings against the United States, Germany, the United Kingdom and Japan.

ATI did argue, however, that the findings be continued against exporters in Sweden and Korea.

In the case of Sweden, ATI provided evidence concerning a 1986 finding of dumping by the US Department of Commerce respecting exports of stainless steel pipe by AST. Counsel argued that this was solid evidence of the propensity of the Swedish exporter to dump the subject goods, and that resumed dumping into the Canadian market would follow directly from rescission of the finding against Sweden.

In rebuttal, counsel for the Swedish exporter and the importer of the Swedish goods into Canada pointed out that the US finding related to an instance of dumping that took place four years ago. In 1986, AST had not fully consolidated its control over the three Swedish companies that had previously operated autonomously. Proper control mechanisms were not yet in place to prevent the inadvertent dumping situation that took place in the United States. Changes in corporate policy flowing from AST's assumption of complete control over its marketing of welded pipe now precluded such dumping from recurring.

The Tribunal finds the evidence of the US finding of dumping against AST to be insufficient to lead it to conclude that there is a likelihood of resumption of dumping in Canada from Sweden. In the four years since AST was caught up in the US dumping action it has completed its corporate reorganization enabling it to ensure that inadvertent dumping does not occur. Other evidence of a more contemporary nature on the pricing and marketing behavior of AST in Canada for Swedish products similar to the subject goods, and for subject goods from AST's plant in Holland, was found by the Tribunal to be more relevant. For example, the Tribunal found no evidence that the Swedish exporter has dumped the subject goods in Canada in the size ranges from over 2½ inches to 5 inches, sizes that are outside the range of the subject goods applicable to Sweden. Furthermore, exports of the subject goods from the Swedish manufacturer's plant in

Holland are not constrained by any dumping or injury finding, and those exports to Canada have been described by ATI to have been made at "responsible" prices. If the Swedish manufacturer had intended to engage in injurious dumping in Canada, it could have done so from its plant in Holland. This evidence, along with data respecting the high level of capacity utilization in AST's plants in Sweden, convince the Tribunal that there is little likelihood of resumption of dumping from Sweden. The rescission of the finding against the United States would also mean that AST could serve the Canadian market from its recently acquired welded stainless steel pipe plant in the United States, without any recourse to dumping.

In the case of Korea, ATI's evidence of a likelihood of resumption of dumping consisted essentially of three price offerings by Korean manufacturers. Counsel argued that these offerings were conclusive as an indicator of dumping in other markets, and that the Tribunal had accepted similar evidence in past cases as indicating a likelihood of resumption of dumping. However, for those offerings to be considered likely to pertain to exports to Canada, they would have to have been sufficiently widespread, numerous and contemporary as to demonstrate a pattern of marketing behavior which would lead to the conclusion that dumping would be likely to resume. While the prices quoted did appear to be low, it was not clear that those prices were dumped prices. Even if the prices were dumped, that would not be sufficient to indicate a pattern of dumping, or an intention to dump in Canada. Where the Tribunal has given weight to low price offerings, it has had before it other evidence of the likelihood of resumed dumping, such as production capacity and load levels in the exporting country, and export sales volumes and sales prices in other markets. No such corroborating evidence was adduced in this review

On the other hand, witnesses testified that they were unaware of any dumping actions against Korean producers in the United States or in Europe that would lend any credence to the alleged propensity to dump on the part of those producers.

In the Tribunal's opinion, no convincing evidence was brought forward to indicate the likelihood of resumption of dumping from Korea in the event of rescission.

LIKELIHOOD OF MATERIAL INJURY

The evidence presented during this review did not support a conclusion of likelihood of material injury if there were a resumption of dumping from Sweden and Korea.

ATI has regained market share in Canada, and the net income earned on sales of the subject goods has exceeded that of the company's sales of other goods. ATI is seen as a highly reliable supplier offering a quality product, good service and, particularly in this time of slower demand, much speedier delivery than can be obtained from offshore sources. ATI has significantly strengthened its position in the Canadian market. It has reinforced its distribution network and consolidated its position as an essential source of supply to its major distributors of the subject products. This has been achieved through superior service and volume purchase discounts which, through a well-known volume discount schedule, tend to entrench the dominant position of the three largest distributors in the Canadian market, and thus their attachment to ATI.

ATI's export initiatives have allowed it to gain a solid foothold in the United States market where it now considers itself to be on an equivalent competitive footing to domestic US manufacturers of welded stainless steel pipe. It is exploring other markets where it expects to be able to duplicate its export successes in North America. Indeed, ATI acknowledged that part of its greatly enlarged production capacity was installed with a view to allowing the company to penetrate other markets while at the same time meeting the needs of its long-standing domestic distributors.

ATI's sales and financial results for 1990 showed a weakening throughout the year. There are a number of possible explanations for this downturn. Following a period of very rapid growth and very high levels of production, there has been an overall decline in demand, which ATI recognizes. ATI attributes the decline in its performance equally to price pressures from Taiwanese goods entering the Canadian market, which have forced it to reduce prices. Counsel for AST suggested that another contributing factor may have been the timing of reductions in raw material prices, which form an important part of the total production cost of stainless steel pipe for all manufacturers. While each of these factors may have been at play, the Tribunal is not able to judge their relative influence on ATI's recent performance.

Although the current market decline is likely to present some difficulties for ATI, it is much better prepared today to meet those challenges than it was a relatively few years ago. ATI has achieved financial success in the past four or five years and, since 1988, has benefited from the marketing and financial strength of its new parent company, Samuel Manu-Tech Inc. The Tribunal finds that the investments which ATI has made to modernize and expand its production of the subject goods have considerably enhanced its competitive position in both the Canadian and export markets.

In the Tribunal's view, ATI has recovered from the material injury it was suffering in 1986, and is not likely to suffer material injury in the event there were a resumption of dumping from the subject countries following rescission of the findings.

CONCLUSION

Current conditions are such, both in Canada and abroad, that it is unlikely that Sweden or Korea would resume dumping in the Canadian market. With respect to the United States, the United Kingdom, Germany and Japan, ATI, having submitted no evidence to support continuation, has proposed that the findings should not be continued. Furthermore, the Tribunal finds little evidence to suggest that domestic manufacturers of welded stainless steel pipe would be vulnerable to renewed dumping. Notwithstanding current depressed market conditions for the subject goods, ATI, the dominant Canadian manufacturer, has experienced several years of strong growth in production, investment, installed capacity, domestic and export market sales, profitability and market share. The company is well positioned to cope with a period of reduced demand, lower prices, and decreased profitability. In light of the foregoing, and given the length of time these findings have been in place, the Tribunal must be guided by the GATT principle that such findings should be maintained no longer than necessary to counteract the effect of the dumping.

Accordingly, the findings are rescinded.

EXCLUSIONS

ATT's submission called for the continuation of the findings for all welded stainless steel pipe, including non-standard and proprietary grades, but excluding seamless stainless steel pipe. In view of the Tribunal's decision to rescind the findings, the foregoing request need not be addressed.

RETROACTIVITY

Counsel for the Swedish exporter and its Canadian subsidiary argued that any order to rescind should be retroactive to at least the date upon which the Tribunal decided to initiate this review. The Tribunal recently ruled on the matter of retroactivity in the carbon and alloy steel review (Review No. RR-89-006). As stated in the reasons for that decision, the Tribunal does not consider that subsection 76(4) of SIMA gives it the power to make orders or findings with retroactive effect upon the completion of a review.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

John C. Coleman
John C. Coleman
Member

W. Roy Hines
W. Roy Hines
Member