



Ottawa, Friday, July 20, 1990

Review No.: RR-89-009

IN THE MATTER OF a review, under section 76 of the *Special Import Measures Act*, of the finding of material injury of the Anti-dumping Tribunal in Inquiry No. ADT-1-83 dated April 7, 1983, as altered in Review No. R-3-85 dated April 3, 1985, concerning:

**STAINLESS STEEL BARS AND STAINLESS STEEL WIRE IN  
CUT LENGTHS, ORIGINATING IN OR EXPORTED FROM BRAZIL,  
THE FEDERAL REPUBLIC OF GERMANY, FRANCE, JAPAN,  
THE REPUBLIC OF KOREA AND SPAIN**

**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 Anti-dumping Tribunal on April 7, 1983, as altered in Review No. R-3-85 dated April 3, 1985.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds the above-mentioned finding of April 7, 1983, as altered in Review No. R-3-85 dated April 3, 1985.

John C. Coleman

John C. Coleman  
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan  
Member

Charles A. Gracey

Charles A. Gracey  
Member

Michel Granger

Michel Granger  
Acting Secretary



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*Special Import Measures Act* - Whether to continue, with or without amendment, or rescind the finding 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 finding, as altered. Although significant changes have occurred in the marketplace since 1983, in particular the acquisition of the Canadian producer Atlas Specialty Steels by Sammi of South Korea, the current weak market conditions leave Atlas Specialty Steels vulnerable, in the short term, to material injury should dumping resume. However, evidence on the behavior and intentions of exporters from the named countries, including Sammi, and on world production capacity and consumption trends leads the Tribunal to conclude that dumping is not likely to recur in the foreseeable future.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: May 7 to 9, 1990  
Date of Order and Reasons: July 20, 1990

Tribunal Members: John C. Coleman, Presiding Member  
Kathleen E. Macmillan, Member  
Charles A. Gracey, Member

Director of Research: S. Shainfarber  
Research Manager: K. Campbell  
Statistical Officer: R. Larose  
Registration and Distribution Clerk: L.E. Pharand

**Participants:** John M. Coyne, Q.C. and  
Ronald C. Cheng  
for Atlas Specialty Steels

**(Manufacturer)**

Peter Clark and  
Peter Burn  
for Villares S.A.

for Peter E. Kirby  
Thyssen Marathon Canada Ltd.  
and Thyssen Edelstahlwerke AG

Mark Naidoo  
Purchasing and Inventory Control Manager  
and Eamonn P. Godsell  
Finance Manager & Corporate Accountant  
for Kronen Machinery Co. Ltd.  
Solar Service

**(Importer/Exporters/User)**

**Witnesses:**

David G. Pastirik  
Manager  
Market Development  
Atlas Specialty Steels

Joseph G. Thompson  
Director of Technology  
Atlas Specialty Steels

Don Cody  
Manager  
Financial and Product Analysis  
Atlas Specialty Steels

Denis L. Redican  
Product Sales Manager  
Stainless Steels  
Atlas Alloys  
A Division of Rio Algom Limited

James H. Hollett  
General Manager  
Unalloy Steel  
A Division of Samuel Manu-Tech Inc.

Rowland Maddison  
Director  
Sammi Atlas Inc.

Robert Hurley  
Manager  
Stainless Steel  
Thyssen Marathon Canada Ltd.

Eamonn P. Godsell  
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THE FEDERAL REPUBLIC OF GERMANY, FRANCE, JAPAN,  
THE REPUBLIC OF KOREA AND SPAIN**

TRIBUNAL: JOHN C. COLEMAN, Presiding Member  
KATHLEEN E. MACMILLAN, Member  
CHARLES A. GRACEY, Member

**STATEMENT OF REASONS**

**SUMMARY**

The Canadian International Trade Tribunal (the Tribunal) has reviewed the finding of material injury caused by dumping that was made in 1983 and altered in 1985 concerning imports of stainless steel bars and wire from Brazil, the Federal Republic of Germany, France, Japan, the Republic of Korea and Spain. Atlas Specialty Steels (Atlas), the sole domestic manufacturer of these goods, asked the Tribunal to continue the finding. Thyssen Marathon Canada Ltd. (Thyssen Marathon), an importer, Thyssen Edelstahlwerke AG (Thyssen AG), an exporter from the Federal Republic of Germany, Kronos Machinery Co. Ltd., Solar Service (Kronos), a user, and Villares S.A., a Brazilian exporter, asked that the finding be rescinded.

In conducting a review of a finding of material injury caused by dumping, the Tribunal looks for persuasive evidence that the recent behavior of exporters and market conditions in the countries of origin, Canada and elsewhere make it likely that dumping will resume in the foreseeable future. The Tribunal also determines, based on evidence of market conditions, profitability and the general health of the industry, whether Canadian producers are likely to be injured by a resumption of dumping. However, unless it is persuaded of the likelihood of resumed dumping, the Tribunal will be unable to draw a causal link between dumping and material injury.

In the present case, the Tribunal has found that if the dumping resumes, Canadian production will be materially injured. Atlas' position has strengthened in

some respects since 1983 as a result of an improved distribution system and mill stocking procedures, the installation of a continuous strand caster and its acquisition by Sammi of South Korea. The latter is considering investment and implementation of North American marketing arrangements that will strengthen Atlas.

Furthermore, production of the subject goods was at decade high levels in 1988 and 1989, helped by Atlas' rising exports to the United States and Europe. However, Atlas has not recovered the domestic market share it had before the finding. It was unable to produce at a profit even in the boom year of 1988 because its costs rose even more rapidly than its prices. The Tribunal concludes that, over the short term, while current weak market conditions prevail and while Sammi's plans for Atlas are still being developed, Atlas' production of the subject goods will be materially injured if the dumping resumes.

However, the Tribunal did not find persuasive evidence that exporters from the named countries would resume dumping in the foreseeable future. Atlas presented evidence to show that a worldwide expansion of stainless steel production capacity would create an oversupply leading to renewed dumping. However, the evidence did not relate production capacity to consumption of stainless bars that is also growing moderately. As a result, the Tribunal was unable to estimate net capacity additions and relate them to demand trends. Moreover, much of the increased production capacity is in the Republic of Korea, and Atlas acknowledged that Sammi, as Atlas' owner, was no longer a dumping threat. With respect to the likely behavior of exporters in other named countries, the Tribunal puts weight on evidence that in the foreseeable future steel plants will be facing fairly buoyant conditions in their home markets and will have little spare capacity to serve export markets.

In conclusion, the Tribunal finds that renewed dumping by the named countries will cause material injury to Canadian production of stainless steel bars and wire. However, the Tribunal finds no likelihood that dumping by the named countries will resume in the foreseeable future. Accordingly, the Tribunal rescinds the finding, as altered.

## **BACKGROUND**

This is a review, pursuant to section 76 of the *Special Import Measures Act* (SIMA), of the finding of material injury made by the Anti-dumping Tribunal in Inquiry No. ADT-1-83 dated April 7, 1983, concerning stainless steel bars and stainless steel wire in cut lengths, originating in or exported from Brazil, the Federal Republic of Germany, France, Japan, the Republic of Korea and Spain, as altered on April 3, 1985, in Review No. R-3-85, to exclude heat-resisting stainless steel round bars, identified as Lister-22.

Under section 76 of SIMA, the Tribunal initiated a review of the finding and issued a notice of review on November 22, 1989. This notice was forwarded to all known interested parties and was published in Part I of the Canada Gazette of December 2, 1989. On January 18, 1990, a notice of change of date of public hearing was forwarded to all interested parties informing them that the new hearing date would be May 7, 1990. This notice was published in Part I of the Canada Gazette of January 27, 1990.

As part of this review, the Tribunal sent a questionnaire, on December 29, 1989, to Atlas, the sole domestic manufacturer of the subject goods, and to 20 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. The Tribunal members visited the manufacturing facilities of Atlas to view the production process. In connection with research activities, a member of the Tribunal's staff met with officials of Atlas, Atlas Alloys, Avesta Stainless Inc. and Unalloy Steel to answer any questions pertaining to the questionnaires. The record of this review consists of all relevant documents, including the original finding, the review finding, the Notice of Review, the Notice of Change of Date of Public Hearing 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 May 7 to May 9, 1990.

Atlas was represented by counsel at the hearing, submitted evidence and made argument in support of continuing the finding, as altered.

Thyssen Marathon, an importer, Thyssen AG, an exporter from the Federal Republic of Germany, and Villares S.A., a Brazilian exporter, were represented by counsel at the hearing. They submitted evidence and made argument in support of rescinding the finding, as altered.

Krones, a user of the subject goods, was represented by company officials who gave evidence supporting the rescission of the finding, as altered, or, alternatively, excluding bars produced to metric measurements.

## **THE PRODUCT**

The products under consideration in this review are described in the Anti-dumping Tribunal's finding as stainless steel bars and stainless steel wire in cut lengths (excluding heat-resisting stainless steel round bars, identified as Lister-22, as defined in the Canadian Import Tribunal's review finding dated April 3, 1985).

Stainless steel is a corrosion-resistant and heat-resistant steel that contains a minimum of 10 percent chromium by weight. It is used in both production and maintenance applications that require resistance to corrosion and heat. There are many individual chemical compositions for stainless steel, some of which include other alloying elements besides chromium, such as nickel or molybdenum. They may be tailored to the mechanical and physical property requirements of a particular end-use application. These compositions are classified by grade by the American Iron and Steel Institute (AISI) by a series of numerical designations.

Stainless steel bars may be sold in the hot-rolled or cold-finished form in cut lengths, in round, flat and hexagonal sections. Wire is a cold drawn and cut-to-length product of 1/2 in. in diameter and less. The most popular grades of stainless steel bars are AISI types 303, 304, 304L, 316, 316L, 410, 416 and 17-4 PH. These eight grades account for over 85 percent of the total Canadian consumption of stainless steel bars.

Stainless bars and wire are basic construction materials for much of the fabricated machinery and equipment used by Canadian primary industries. In addition, they are widely used in secondary industries, either as materials for parts production or as construction materials for process equipment.

Stainless bars are used in many applications where corrosive media or high-temperature service is a factor. These applications are most generally found in the pulp and paper, food and beverage, aircraft, petrochemical, power generation, mining and automotive industries. Examples of such applications would include aircraft and industrial fittings, industrial valves, propeller shafting, electrical switchgear components and automotive engine valves.

### **THE DOMESTIC INDUSTRY**

Atlas of Welland, Ontario, is Canada's sole manufacturer of stainless steel bars and wire. On August 1, 1989, Atlas as well as Atlas Stainless Steels, of Tracy, Quebec, and AlTech Specialty Steels, of New York State, were acquired by Sammi Steel Canada Inc. from their former owner, Rio Algom Limited. A new company, Sammi Atlas Inc., was subsequently created to own and oversee the operations of the three acquired companies. Atlas operates as a division within the new Sammi-Atlas structure.

Atlas produces a full range of stainless bar products, in all popular grades, at its Welland mill. In the specialty steel area, Atlas produces, in addition to stainless steel bars and wire, alloy tool steel, AISI P-20 mold steel, carbon tool steel, hollow and solid mining steels, bearing steel, and cold-finished and heat-treated alloy engineering steels. The company also manufactures carbon and low alloy steels.

Atlas markets approximately 85 percent of the subject goods through service centres and the rest directly to large volume end users. The service centres, which act as steel distributors, purchase bars from the Welland mill, hold inventory of a wide range of products and resell in smaller quantities to end users. Atlas' distribution system consists of 11 service centres, 2 of which specialize in sales to the aerospace industry. Atlas also utilizes a "master" distributor that stocks large volumes in the more popular sizes and grades and resells to other distributors. In all, the Atlas distribution system has warehouse facilities in over 40 Canadian locations.

### **SUMMARY OF THE 1983 FINDING**

On April 7, 1983, the Anti-dumping Tribunal found that the dumping of the subject goods from Brazil, the Federal Republic of Germany, France, Japan, the Republic of Korea and Spain had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

The second half of 1981 was marked by sharply rising interest rates and the onset of a severe economic recession. The evidence in the case showed that inventories of importing mill depots (which sold goods to other distributors) rose sharply during this period, and the cost of carrying these inventories became extremely heavy. As a result, importers with these inventories offered very favorable prices to distributors in order to move their product on to the market.

The competition for sales to distributors in the first half of 1982 became intense as Atlas set about matching prices, in particular those set by the importing mill depots. Downward price pressures were at the same time being spread throughout the market, as importers generally began to offer dumped products to independent distributors at prices below Atlas' list prices to its distributors. The impact of price suppression during this period showed clearly on Atlas' income statement relating to the subject goods. Lost sales and reduced market share were also recorded.

The evidence suggested that importing mill depots could sell at discounted prices even though they had to absorb part of the costs of carrying inventory, only because their supplies had entered Canada at dumped prices. The evidence also showed that the competitive pressures were exerted upon Atlas via the end-user market and that they were just as severe as the more direct pressure exerted upon Atlas at the distributor level.

The Tribunal, therefore, was persuaded that the dumping of the subject goods was the cause of injury to Atlas and, based on the evidence, was convinced that this injury was material. The Tribunal also found that the probability of continued dumping in Canada was high and, if allowed to continue, would cause material injury to the production in Canada of like goods.

In early 1985, a second inquiry was conducted respecting stainless steel bars and stainless steel wire in cut lengths, originating in or exported from Italy. On April 19, 1985, the Canadian Import Tribunal found that the dumping from Italy had not been, nor was likely to be, the cause of material injury to the production in Canada of like goods.

## **POSITION OF PARTIES**

### **The Industry**

In its submission to the Tribunal, Atlas took the position that the finding should be continued. The company claimed that, before the commencement of dumping in Canada, it had held a substantial share of the stainless bar market and was generating an acceptable level of profit on stainless bar sales. However, dumping by the subject countries resulted in lost sales and suppressed prices that placed the Atlas bar business in a loss position. Since the finding in 1983, despite substantial capital expenditures and the implementation of new marketing programs, Atlas has been unable to achieve its pre-dumping share of the Canadian market or generate acceptable long-term levels of profitability.

In particular, Atlas noted that there had been a sharp decline in the volume of subject goods sold in the Canadian market in 1989, in the order of 20 percent. This reduced market demand, when combined with the emergence of low-priced stainless steel bars from India,<sup>1</sup> resulted in severe losses in 1989.

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1.

On May 3, 1990, as a result of a complaint filed by Atlas, the Deputy Minister of National Revenue for Customs and Excise initiated an investigation into the alleged injurious dumping of certain stainless steel bars in straight lengths originating in or exported from India.



Counsel for Atlas drew attention to evidence from several witnesses that the declining market demand, which commenced in the second half of 1989, would continue in 1990 and that demand could decrease further by 5 to 20 percent in volume and in value during the current year. Consequently, the production of the subject goods by Atlas would be highly vulnerable to material injury as a result of any resumption of dumping that could occur if the finding were rescinded.

Counsel noted the expectation that the acquisition of Atlas by Sammi Atlas Inc. would be positive for the company. However, they cautioned that Sammi Atlas Inc.'s plans for strengthening Atlas could be affected by a rescission of the finding. It was not reasonable to suppose that Sammi Atlas Inc. would proceed with any significant investments in Atlas if business prospects appeared poor for the company.

With respect to the likelihood of resumed dumping, counsel for Atlas argued that there was no reason to believe that exporters from the named countries would not return to their former dumping practices should the finding be rescinded. In the pre-1983 period, imports from the named countries were "substantial and predominant." Although market share held by these countries had decreased over the past few years, this simply showed that the exporters could not compete in Canada at normal values. Moreover, Atlas suggested that, in the event of a rescission, the recent appearance of low-priced (allegedly dumped) Indian bars would induce the subject countries to resume dumping as they would be forced to do so in order to be price competitive.

Counsel also claimed that dumping pressures would be created by recent growth in world production capacity that was outpacing the moderate rate of growth in world consumption of stainless bars. More particularly, counsel noted that major new production facilities had recently been completed or were currently under construction. These included facilities in the Federal Republic of Germany, Japan and the Republic of Korea, which combined will add approximately 150,000 tons of new stainless bar production capacity. However, since Sammi is the only South Korean exporter of the subject goods, counsel conceded that dumped imports from the Republic of Korea were no longer likely as a result of the Atlas-Sammi affiliation. This growth of new capacity, without a corresponding rise in consumption, would eventually cause producers to compete aggressively for export market shares, increasing greatly the likelihood of dumping.

### **Importers/Exporters**

Counsel for Villares S.A., a Brazilian exporter of the subject goods, argued that in determining whether a finding had served its purpose, the Tribunal should refer to Article 9, paragraph 1 of the GATT Anti-dumping Code, which states that an anti-dumping duty shall remain in force only as long as, and to the extent necessary, to counteract dumping that is causing injury. They contended that, in this case, after providing Atlas with seven years of protection, the finding had served its purpose, and now should be rescinded.

Counsel also argued that if Atlas were presently vulnerable, this was a result of competition from the United States and not from countries such as India, whose competitiveness was in doubt because of quality problems associated with its goods. Yet, no industry complaints had been made against the United States. In any event, it was

counsel's view that any current vulnerability by Atlas would be offset by opportunities that would be opened up, in the United States and elsewhere, through its development within the Sammi Group.

Turning to the likelihood of resumed dumping, counsel for Villares S.A. argued that the subject countries would be governed by common sense and, accordingly, it would be highly imprudent for them to resume dumping. They noted that dumping, not only from Brazil, but from all the subject countries had been minimal since the finding had been in place. Moreover, they argued that it was evident, from a review of past findings, that foreign producers tend not to resume dumping after the rescission of a finding. Indeed, their analysis showed that, of the 79 findings rescinded up to the end of 1988, in only one instance did the exporters who benefited from the rescission come back before the Tribunal as "repeat offenders."

Counsel for Thyssen AG, an exporter from the Federal Republic of Germany, and for its Canadian affiliate, argued that the Tribunal had to look at the domestic industry to see whether it had taken steps to grow stronger during the period of protection. In his view, Atlas had become much stronger since 1983 and was no longer vulnerable to a resumption of dumping. He noted that Atlas had strengthened its distribution network, had developed new product lines and had started mill stocking procedures. Atlas was a high-quality producer with geographical advantages over its offshore competitors in terms of delivery and service. In these circumstances, he found it inexplicable that Atlas had been unable to make acceptable profits, as it claimed. Counsel argued that Atlas' association with Sammi of South Korea would enhance its sales in Canada, the United States and offshore markets, and bring further investments and benefits to the company.

Counsel also argued that there was no likelihood that Thyssen AG would resume dumping. He introduced evidence to show that Thyssen AG was operating at full capacity at its European mills to satisfy buoyant European demand, which he argued would continue into the foreseeable future. Counsel stated that his client was a niche marketer whose Canadian market share had been, and would be, reasonably stable and somewhat small. In sum, his client did not have the product or the need to search for markets at any price. Moreover, Thyssen AG's express corporate policy prohibited dumping by its officers and agents.

Krones, a Canadian parts manufacturer for label machines, requested that the finding be rescinded or, in the alternate, be amended to exclude stainless steel bars manufactured to metric specifications. Krones claimed that the company, in spite of its efforts to source domestically, was unable to do so because the small quantities required did not justify mill runs. In addition, European (DIN) specifications and precision tolerances could not be met locally. Consequently, the company had to import its bar requirements from its West German parent.

### **ECONOMIC INDICATORS**

As is the case with other steel products, market demand for stainless steel bars and wire tends to fluctuate with general economic activity. Atlas' counsel described 1979 as a "boom" year and said that the buoyant market conditions continued through the first half of 1981. In the latter half of 1981, however, demand began to slide as

recessionary pressures increased. In 1982, at the depth of the recession, demand for the subject goods fell to a level that was more than 40 percent lower than in 1979. It was under these severe market pressures that Atlas commenced its anti-dumping action against the named countries.

As economic activity gained momentum throughout 1983, domestic demand for the subject goods began to accelerate and, by 1985, the total market volume matched the level achieved in 1979. In 1988, the market peaked, exceeding by about 10 percent previous highs recorded in 1979 and 1985. Although domestic demand fell by roughly 20 percent in 1989 from the peak level of 1988, total volumes sold were in the average range recorded since 1979.

From 1979 to 1983, Atlas held the major share of the domestic market. Atlas' production peaked in 1979. While production declined in 1980-82 before recovering moderately in 1983, Atlas was able to maintain the lion's share of the domestic market during these years. However, in 1984, the overall market grew while Atlas' production declined. As a result, Atlas' share of market plunged. In 1985, market demand increased sharply and, despite a modest growth in Atlas' output, its market share fell even further. Although the company increased output somewhat in 1986 and 1987, it was unable to regain the market share it had held before the injury finding. Atlas' market share in 1988 and 1989 remained below pre-1983 levels, despite the fact that its production tonnage increased sharply in 1988 and again in 1989, approaching the "boom" year levels achieved in 1979 and 1980.

Market share held by the six subject countries fell sharply in 1983 but recovered somewhat from 1985 through 1987. The combined share held by these countries fell again, in both 1988 and 1989, to the lowest levels recorded since 1979. Products originating in the Republic of Korea dominated, followed to a considerably lesser extent by West German goods. Since 1983, the major market share gains in the Canadian market were made by countries not covered by the finding, notably Italy, the United Kingdom and more recently, India. While the United States remains the single largest foreign supplier to the Canadian market, its market share has held quite constant since 1979.

With respect to other economic indicators, Atlas' recent strong production performance was reinforced by its enhanced export activity that reached record tonnage levels in 1989. Employment relating to the manufacture of the subject goods increased significantly and, in 1989, stood at the highest level achieved over the 11-year review period. However, while the company earned what it referred to as "acceptable" net profits on sales of the subject goods before the 1982 recessionary period, in subsequent periods, profits were modest or non-existent. In 1989, the company incurred a significant loss on both domestic and export sales.

As previously noted, 1988 was a banner year resulting in decade high sales for the subject goods. Atlas was able to impose surcharges to cover sharply increased costs for nickel and chromium. It was also able to increase its base prices, confirming the strength of the market during the year. This buoyancy continued until the latter half of 1989 when demand began to weaken and prices softened. Income statements submitted by Atlas reveal increases in the value of subject goods sold in both domestic and export markets over the past two calendar years, although increases in the cost of

sales outpaced revenues. Participants at the review hearing were unanimous in their forecasts that the current year will see market volumes and values continue to slide. Estimates of the decline ranged between 5 and 20 percent.

### **REASONS FOR DECISION**

In a review of an anti-dumping finding, the Tribunal must consider two basic questions. Firstly, is there a likelihood that the dumping, which led to the original finding, will resume if the finding is rescinded? Secondly, if the dumping resumes, will it cause material injury to Canadian production, as it did in the past? The Tribunal and parties appearing before it have often used the terms "propensity to dump" and "vulnerability of the domestic industry" as a shorthand description of these two questions that the Tribunal judges in a review.

The judgments made in a review are similar to those that the Tribunal makes in an original anti-dumping inquiry when it considers the threat of future injury. While the GATT Anti-dumping Code has not been expressly incorporated into SIMA, the Tribunal finds Article 3, paragraph 6 of the Code to be instructive in interpreting the concept of threat of injury. Article 3, paragraph 6 reads as follows:

*A determination of threat of injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.*

In judging the first question referred to above, the Tribunal looks for persuasive evidence that the recent behavior of exporters and market conditions in the countries of origin, Canada and elsewhere make it likely that dumping will resume in the foreseeable future. Because a determination of likelihood of dumping should not be based on conjecture, the Tribunal typically focuses on circumstances in the next year or two and places considerably less weight on the possibility of dumping sometime later in the five-year period during which a finding might be continued.

The second question the Tribunal must address is: If dumping resumes at any level, will the resulting volume of dumped imports cause material injury to the domestic industry? In judging whether the injury will prove material, the Tribunal must consider many factors including changes in import shares, the health of the domestic industry, market conditions and any other changes in circumstances that might render the industry more or less vulnerable than at the time of the original finding.

### **LIKELIHOOD OF DUMPING**

Counsel for the industry have made a number of arguments that dumping by the subject countries is likely to recur if the finding is rescinded.

Firstly, counsel for the industry have argued that it is reasonable to suppose that, eventually, foreign producers who dumped in Canada in the past will return to their prior dumping practices. However, it might be equally reasonable to suppose that the exporters covered by the finding will act cautiously to avoid getting caught up in future actions. In determining whether there is a likelihood of dumping, the Tribunal must

look beyond the behavior of the distant past to the situation of the present and near future. Based on this situation, the Tribunal sees little evidence to support the position argued by Atlas.

Counsel for the industry have argued as well that suppliers from the countries covered by the finding cannot compete in Canada at non-dumped prices. According to counsel, this is proven by the fact that shipments to Canada from the subject countries have declined substantially since the original finding. Leaving aside the Republic of Korea (which the industry conceded is no longer a likely source of dumping because of Atlas' Korean affiliation), the subject countries' share of the Canadian market, since 1988, has been minimal. Counsel contended that, to become competitive, exporters in the countries covered by the finding would sell at dumped prices if the discipline imposed by the finding were not present.

The Tribunal notes that a decline in shipments does not automatically establish that a foreign producer cannot compete in Canada at normal values. For instance, the evidence presented by counsel representing West German interests showed that his client in the Federal Republic of Germany was operating at full production capacity, under buoyant demand conditions, which left little spare capacity to serve export markets. The evidence also shows that Atlas' shipments of subject goods to Western Europe have increased substantially since 1988, which tends to confirm that demand in European markets is robust.

Regarding a third contention, Atlas introduced evidence to show that excess global production capacity existed for the subject goods. Counsel for Atlas argued that this excess capacity would lead to dumping in Canada.

The Tribunal is unable to reach the same conclusion from the evidence submitted. The Tribunal notes that the Republic of Korea, a country which no longer represents a dumping threat to Atlas, accounts for most of the planned expansion in production capacity for the subject goods. The evidence submitted by Atlas does not show whether there have been reductions in world capacity to offset planned additions. Moreover, the evidence does not relate capacity to consumption of stainless bars that, according to witnesses' testimony, is growing moderately.

The lack of information on net capacity additions and how they relate to demand patterns in the present and future make it difficult to conclude, as Atlas has argued, that dumping pressures are likely to follow.

Finally, the Tribunal notes that, during the hearing, evidence was introduced by industry counsel indicating the low and allegedly dumped prices at which Indian products are available in Canada as well as the low Indian prices that prevail in the United States. Counsel for Atlas argued that these low Indian prices would induce exporters covered by the finding to dump in Canada if the finding were rescinded.

In considering this matter, the Tribunal notes the uncontradicted evidence by several witnesses who testified that, in 1988, significant quality problems were encountered with Indian products, about one year after Indian goods first appeared on the Canadian market. These problems caused domestic purchasers of Indian goods to switch to other suppliers, including Atlas, to replace their unsuitable Indian stock. The

witnesses also emphasized the importance of quality and reliability in the market for the subject goods, especially given their extensive use in many critical machinery and equipment applications. It is not surprising, therefore, that following these quality problems, there has been a marked decline in shipments to Canada from India, as recorded by import statistics. This leaves the Tribunal with considerable doubt that Indian stainless steel bars and wire, whether or not dumped, will serve as an important benchmark for the Canadian pricing activities of other countries, including subject countries, over the near term.

As the Tribunal has noted at the outset, a judgment that there exists a likelihood of dumping must be based on persuasive evidence. In the present case, the evidence has not established, to the satisfaction of the Tribunal, that dumping by the subject countries is likely to recur in the foreseeable future if the finding is rescinded.

### **LIKELIHOOD OF MATERIAL INJURY**

The Tribunal was presented with evidence and arguments on the likelihood that resumed dumping by the subject countries would cause material injury to Canadian production. Counsel for Atlas draw attention to the company's failure to regain the market share it had held before the dumping occurred and to its weak and deteriorating profitability since the finding was put in place. These arguments were countered by counsel for the importers who drew attention to Atlas' improved distribution arrangements, production improvements, recent all-time high production levels and the Sammi-Atlas link.

The evidence suggests that, since the time of the original finding in 1983, the industry has undertaken a number of important initiatives. For example, soon after the 1983 finding, Atlas introduced mill stocking procedures that allow it to shorten substantially its delivery times on a variety of popular product grades, giving it a competitive edge over importers who require longer lead times for delivery. Atlas also took steps to strengthen its distribution network by increasing its authorized distributors from four to eleven. Under these new distribution arrangements, certain important distributors are now authorized to sell Atlas' products, where formerly they had no choice but to purchase and sell offshore products.

Evidence submitted by the industry shows further that, since the mid-1980s, Atlas has begun to focus increasingly its corporate resources on the production of higher value specialty and stainless steels. This shift has been accompanied by innovative efforts to develop new stainless bar grades and finishes that have solidified and enhanced Atlas' reputation as a high-quality supplier of the subject goods. Atlas has also made major investments in state-of-the-art production technology, most notably in 1987 with the installation of a continuous strand caster that should enhance Atlas' long-run competitiveness in the subject goods market.

The most significant change occurred in 1989, when ownership of Atlas was transferred from Rio Algom to the Sammi Group of South Korea, a conglomerate that includes world-class producers of steel, including specialty and stainless steels. In addition to the Atlas acquisition, Sammi of South Korea acquired two other companies -a specialty steel producer in Quebec and a specialty and stainless steel producer in the

United States. Atlas has thus become a partner in a global alliance that could significantly improve the prospects of this industry in Canada.

Sammi of South Korea has already taken steps to rationalize the US marketing activities of the three newly acquired companies by merging their efforts into a single US marketing entity. This is an opportune development for Atlas since it coincides with a major push into the US market that was underway at the time of the Sammi takeover. In addition, according to Sammi and industry witnesses, a strategic review of Atlas' operations is currently underway to ensure that Atlas produces goods, including subject goods, which maximize its comparative advantages and best complement Sammi's overall global production and market strategy.

The Tribunal notes that, according to a witness representing Sammi, the existence of the anti-dumping finding did not have "a major effect" on Sammi's decision to buy Atlas. This would suggest that Sammi's future investment decisions with respect to Sammi will be based, similarly, on longer term economic considerations that are, more or less, independent of whether or not the present anti-dumping restrictions are maintained.

The Tribunal notes the evidence shows that, despite steady and, at times, substantial increases in production tonnage, sales revenue, export sales and employment since the 1983 finding, Atlas has not yet returned to what it considers to be acceptable levels of profitability, even in the boom year of 1988, when Atlas could increase its base prices and impose special surcharges to cover alloy cost increases. In elaborating on some of the reasons for this overall poor financial performance, industry witnesses referred to such factors as unexpected start-up costs and problems associated with the new strand caster and significant inventory charges that were taken in 1989 as inventory values had to be written down to reflect falling metal prices. The Tribunal notes that such factors reflect, for the most part, temporary or non-recurring constraints on profitability that tend to mask the overall improvement in Atlas' situation since the finding, as altered, has been in place.

Nevertheless, it appears to the Tribunal that, over the short term, Atlas' prospects for a return to profitability are diminished by the market downturn that is currently underway. According to the evidence of several witnesses, the weakening in demand and softening of prices that began in the latter half of 1989 will continue for the balance of 1990 and beyond that year. This will create pressures on margins at all trade levels.

The industry has also noted that its average market share in the post-1983 period has fallen several points from its pre-1983 average market share. The Tribunal notes that market share data must be read with other industry performance indicators to be put in proper perspective. When this is done in this case, the facts show that, despite an average 1988-89 market share that was below pre-1983 levels, Atlas' domestic sales and total production were at decade high levels in 1988 and 1989. Thus, although Atlas' market share has fallen, this has occurred in an expanding market that has boosted Atlas' performance in a number of important respects.

In sum, in the opinion of the Tribunal, the changes that have taken place since 1983 are significant and make Atlas somewhat less vulnerable to material injury from dumping than at the time the finding was made. In particular, the acquisition of Atlas

by Sammi of South Korea could well strengthen production of the subject goods in Canada. However, the full benefits that may eventually flow from these changes have yet to emerge. This leads the Tribunal to conclude that, over the short term, while weak market conditions prevail, Atlas would likely be materially injured by resumed dumping from the named countries.

### **CONCLUSION**

Although the industry would be vulnerable to material injury should dumping by the named countries resume, in the short term, the evidence does not establish, to the satisfaction of the Tribunal, that dumping by these countries is likely to resume in the foreseeable future.

Therefore, the Tribunal hereby rescinds the 1983 finding, as altered in 1985. In light of this decision, the request for exclusion of certain stainless steel bars in metric sizes by Kronos need not be addressed.

John C. Coleman  
John C. Coleman  
Presiding Member

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Member

Charles A. Gracey  
Charles A. Gracey  
Member