



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2008-001

Structural Tubing

*Order and reasons issued
Monday, December 22, 2008*

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IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on December 23, 2003, in Inquiry No. NQ-2003-001, concerning:

**CERTAIN STRUCTURAL TUBING ORIGINATING IN OR EXPORTED FROM
THE REPUBLIC OF KOREA, THE REPUBLIC OF SOUTH AFRICA AND THE
REPUBLIC OF TURKEY**

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its finding made on December 23, 2003, in Inquiry No. NQ-2003-001, concerning structural tubing known as hollow structural sections (HSS) made of carbon and alloy steel, welded, in sizes up to and including 16.0 inches (406.4 mm) in outside diameter (O.D.) for round products and up to and including 48.0 inches (1,219.2 mm) in periphery for rectangular and square products, commonly but not exclusively made to ASTM A500, ASTM A513, CSA G.40.21-87-50W and comparable specifications, originating in or exported from the Republic of Korea, the Republic of South Africa and the Republic of Turkey.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its finding in respect of the aforementioned goods.

André F. Scott

André F. Scott
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Diane Vincent

Diane Vincent
Member

Hélène Nadeau

Hélène Nadeau
Secretary

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	October 28 and 29, 2008
Tribunal Members:	André F. Scott, Presiding Member Serge Fréchette, Member Diane Vincent, Member
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STATEMENT OF REASONS

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ of the finding made by the Canadian International Trade Tribunal (the Tribunal) on December 23, 2003, in Inquiry No. NQ-2003-001, concerning certain structural tubing originating in or exported from the Republic of Korea (Korea), the Republic of South Africa (South Africa) and the Republic of Turkey (Turkey) (the subject goods).
2. On April 9, 2008, the Tribunal decided to initiate an expiry review and sent a notice of expiry review to known interested parties.² The Tribunal also sent letters requesting the domestic producers, potential importers and exporters/foreign producers to complete expiry review questionnaires. These questionnaires and the replies thereto form part of the expiry review record of both the Tribunal and the Canada Border Services Agency (CBSA).
3. On April 10, 2008, the CBSA initiated an expiry review investigation to determine whether the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods.
4. On August 7, 2008, the CBSA determined, pursuant to subsection 76.03(7) of *SIMA*, that the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods.
5. On August 8, 2008, following the CBSA's determination, the Tribunal proceeded with its expiry review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the finding respecting the subject goods was likely to result in injury or retardation. As part of this process, in addition to requesting the domestic producers to provide information on their production, financial performance, employment and investments for the period from January 1, 2005, to March 31, 2008, the Tribunal requested the domestic producers and potential importers and exporters/foreign producers to update their questionnaire replies to include data for the first six months of 2007 and 2008. The period of the Tribunal's expiry review is from January 1, 2005, to June 30, 2008. In view of the volatility of recent conditions in the Canadian and global markets for hollow structural sections (HSS), the Tribunal accepted evidence up to the date of the hearing.
6. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, on October 28 and 29, 2008.
7. A coalition of Canadian producers consisting of Atlas Tube Inc. (Atlas), Welded Tube of Canada (Welded Tube) and Novamerican Steel Inc. (Novamerican) (the Coalition), filed submissions, provided evidence and made arguments in support of a continuation of the finding. The Coalition was represented by counsel and presented witnesses at the hearing. In addition, Evraz Inc. NA Canada (Evraz) filed a submission and was represented by counsel, but it did not participate at the hearing.
8. As part of this expiry review, no parties appeared before the Tribunal or provided submissions in opposition to the continuation of the finding.
9. The record of these proceedings consists of all relevant documents, including the CBSA's expiry review report, statement of reasons, index of background information and related documents; the replies to the expiry review questionnaires; the pre-hearing staff reports prepared for this expiry review; requests for

1. R.S.C. 1985, c. S-15 [*SIMA*].

2. C. Gaz. 2008.I.1184.

information and parties' replies in accordance with the Tribunal's directions; submissions, witness statements and exhibits filed by the parties throughout the expiry review; the Tribunal's notice of expiry review; the Tribunal's finding, statement of reasons and staff reports issued in Inquiry No. NQ-2003-001; and the administrative record in Expiry No. LE-2007-003. All public exhibits were made available to interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of protected information.

PRODUCT

Product Description

10. The subject goods are defined as structural tubing known as hollow structural sections made of carbon and alloy steel, welded, in sizes up to and including 16.0 inches (406.4 mm) in outside diameter (O.D.) for round products and up to and including 48.0 inches (1,219.2 mm) in periphery for rectangular and square products, commonly but not exclusively made to ASTM A500, ASTM A513, CSA G.40.21-87-50W and comparable specifications, originating in or exported from Korea, South Africa and Turkey.

Production Process

11. HSS production involves the transformation of commercial grade hot-rolled sheet or strip into round, rectangular or square sections. The production process begins with the hot-rolled coil being slit into the appropriate width of strips for the production of tubes of a given circumference. Each strip is then passed through a series of rolls that gradually bend it into a round tube. This tube is electric resistance welded (ERW) and excess metal is removed from the weld on the outside surface of the tube. If the purchaser requests it, excess metal is also removed from the weld on the inside surface. The tube is then cooled and processed through a set of sizing/shaping rolls in order to cold-form it into a round, square or rectangular section. Finally, tubes are cut to length, bundled and tagged.

Product Uses

12. The subject goods are used in general construction for structural elements in buildings and bridges, as protective structures on heavy equipment and for other purposes such as highway railings and barriers and outdoor lighting. These goods may also be applied to non-structural uses in manufactured products, such as agricultural implements, trailers and racking and storage systems.

13. The subject goods are not used for such things as automotive tubing for exhaust systems, bumpers and the like, which are typically made from tubing produced to specialized automotive specifications.

Marketing and Distribution

14. Domestic producers sell HSS to steel service centres and fabricators. The majority of domestic sales of HSS are to service centres, although, in some cases, they also sell directly to end users/fabricators. Producers market HSS through inside and outside sales forces that contact their respective customers on a regular basis.

15. Importers of HSS sell to both segments of the market, i.e. service centres/wholesalers/distributors/re-sellers and to end users/fabricators.

DOMESTIC PRODUCERS

16. The following seven companies were identified as Canadian producers of HSS during the period of review and replied to the Producer's Expiry Review Questionnaire: ArcelorMittal Tubular Products Canada Inc. (ArcelorMittal), Atlas, Bull Moose Tube AULC. (Bull Moose), Evraz, Novamerican, Quali-T-Group ULC. (Quali-T-Group) and Welded Tube.

17. ArcelorMittal (formerly Dofasco Tubular Products Inc.) produces HSS and other products such as fabricated automotive components at its facilities in Woodstock, Ontario. ArcelorMittal is owned by ArcelorMittal S.A., Luxembourg.

18. Atlas has five plants throughout Canada and the United States in which it produces in excess of 1.2 million tons of HSS annually. In 2005, Atlas purchased the HSS business of Maverick Tube, Arkansas, and that of Copperweld Corporation, Brampton, Ontario (one of the four domestic producers that were represented in the 2003 inquiry.) On December 8, 2006, the Atlas group of companies was purchased by John Maneely Company (John Maneely) of New Jersey.

19. Bull Moose is headquartered in Burlington, Ontario, where it produces HSS. Bull Moose also produces other products, such as mechanical tube, at its Burlington facility. Bull Moose has been a subsidiary of the Caparo Group of London, England, since the 1980s.

20. Evraz (formerly IPSCO Inc.) produces HSS at plants located in Regina, Saskatchewan, and Red Deer, Alberta. Evraz also produces other products, such as plate, hot-rolled sheet and strip, oil country tubular goods (OCTG), standard pipe and line pipe at these plants. On July 18, 2007, IPSCO Inc. was acquired by SSAB Canada Inc., a subsidiary of SSAB Svenskt Stal AB of Sweden. On June 12, 2008, SSAB Canada Inc. divested the IPSCO Inc. tubular businesses and related operations to Evraz Group S.A. of Luxembourg. On October 15, 2008, IPSCO Inc. was officially renamed Evraz.

21. Novamerican of Norwood, Massachusetts, conducts its Canadian tube manufacturing, steel processing and distribution operations through Novamerican Steel Canada Inc., an indirect, wholly owned subsidiary. It produces HSS at its plants located in Baie d'Urfé, Quebec, and Ville LaSalle, Québec. Novamerican also produces other products, such as hot-rolled pickled and oiled and cold-rolled products at these plants.

22. Quali-T-Group is headquartered in Bromont, Quebec, where it produces HSS. Quali-T-Group also produces other products, such as mechanical tubing, at its Bromont facility.

23. Welded Tube, a privately owned company, is headquartered in Concord, Ontario, where it produces HSS in two plants. Welded Tube also produces other products at its Concord facilities, such as mechanical tubing and OCTG.

IMPORTERS AND EXPORTERS

24. Expiry review questionnaires were sent to 78 known potential importers of HSS from the subject countries and non-subject countries. Responses were received from 11 companies, and an additional 23 companies indicated that they did not import HSS.

25. Expiry review questionnaires were sent to 23 known potential exporters/foreign producers of the subject goods. No replies were received.

SUMMARY OF FINDING

26. On December 23, 2003, in Inquiry No. NQ-2003-001, the Tribunal determined that the dumping of the subject goods had caused material injury to the domestic industry in the form of underutilized capacity, lost production, sales volume and market share, price suppression and price undercutting, lost revenues and sustained substantial financial losses.

27. The Tribunal found that the structural tubing produced by the domestic industry constituted like goods in relation to the subject goods. The Tribunal was also satisfied that, taking into account the conditions of competition, it was appropriate to make an assessment of the cumulative effect of the dumped goods from all subject countries.

28. In 2000, only imports from Korea were present in the domestic market, with a market share of 1 percent. From the second half of 2002, imports from South Africa and Turkey entered the market, and the volume of imports from Korea increased, resulting in a dramatic increase in the volume of imports and in their market share at the expense of the domestic industry. The Tribunal attributed part of the decline in domestic shipments to a modest slowdown in market demand and to advance purchasing by a large buyer in anticipation of rising prices for structural tubing in the second half of 2002. However, neither of these factors could explain the nature and extent of the market disruption that occurred. The Tribunal concluded that the surge in the volume of imports of the subject goods caused a significant decline in domestic production and sales.

29. The Tribunal noted that rising prices of hot-rolled steel in the first half of 2002 led to sharply higher prices for structural tubing. A growing spread had also developed between the prices of hot-rolled steel sheet and HSS in North America and those in Europe and Asia, causing some purchasers to turn to foreign sources of supply. As a consequence, the subject goods began arriving in substantial volumes in the second half of 2002 when domestic prices were peaking. The domestic industry had little choice but to lower its prices. However, the prices of the subject goods fell even further. While recognizing that some of the price decline could be attributed to the market slowdown and declining prices for hot-rolled steel sheet, the Tribunal found that prices would not have declined as steeply and rapidly had it not been for the dumping. The Tribunal found that the prices of the dumped imports had undercut and suppressed the prices of the like goods.

30. The Tribunal noted that the domestic industry was profitable in the years 2000 and 2001 when the subject goods were present in only small volumes. Although the domestic industry had its most profitable year in 2002, the effect of the dumped imports became greater in the last three months of 2002. This downward trend accelerated in the first half of 2003 and, by the second quarter, all the major producers experienced losses in net income, as unit selling prices declined more rapidly than unit costs. The preponderance of evidence established that the subject goods were the main reason for the domestic industry performing so poorly. The Tribunal found that the injury suffered by the domestic industry was material.

ANALYSIS

31. On August 7, 2008, the CBSA determined that, pursuant to paragraph 76.03(7)(a) of *SIMA*, the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods. Consequently, the Tribunal is required pursuant to subsection 76.03(10) to determine whether the expiry of the finding is likely to result in injury or retardation, as the case may be, to the domestic industry.³

32. The Tribunal is required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the finding, if it determines that the expiry of the finding is unlikely to result in injury, or continuing the finding, with or without amendment, if it determines that its expiry is likely to result in injury.

33. Before proceeding with its analysis concerning the likelihood of injury, the Tribunal will first determine: (1) which domestically produced goods are “like goods” in relation to the subject goods; (2) what constitutes the “domestic industry” for the purposes of its analysis; and (3) whether the analysis must be done separately for each subject country or cumulatively for all countries.

Like Goods

34. Subsection 2(1) of *SIMA* defines “like goods” in relation to any other goods as follows: “... (a) goods that are identical in all respects to the other goods, or (b) in the absence of any [such] goods . . . , goods the uses and other characteristics of which closely resemble those of the other goods”. In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.

35. In the original inquiry, the Tribunal noted that HSS produced in Canada and the subject countries were produced to common international standards that specify their chemical, tensile and other properties.⁴ The Tribunal also noted that, while several grades of HSS were produced domestically and imported from the subject countries, the evidence showed that these grades were interchangeable in many applications and that they competed with each other in the domestic market.⁵ Accordingly, the Tribunal found that the domestically produced HSS, of the same description as the subject goods, constituted like goods in relation to the subject goods.

36. In this expiry review, the Tribunal heard no evidence or argument that warrants departing from the conclusion on like goods that it reached in the inquiry. Accordingly, the Tribunal concludes that HSS produced by the domestic producers, defined in the same manner as the subject goods, constitute like goods in relation to the subject goods.

3. Subsection 2(1) of *SIMA* defines “injury” as “... material injury to a domestic industry” and “retardation” as “... material retardation of the *establishment* of a domestic industry” [emphasis added]. Given that there is currently an established domestic industry, the issue of whether the expiry of the finding is likely to result in retardation does not arise in this expiry review.

4. *Structural Tubing* (23 December 2003), NQ-2003-001 (CITT) at 7 [*Structural Tubing*].

5. *Structural Tubing* at 8.

Domestic Industry

37. The domestic industry is defined in subsection 2(1) of *SIMA* as the “. . . domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods”

38. As previously noted, seven companies were identified as Canadian producers of HSS during the period of review and replied to the Producer’s Expiry Review Questionnaire.⁶ These include four small producers and the three major domestic producers that fully participated during the Tribunal’s expiry review, namely, Atlas, Welded Tube and Novamerican. According to the evidence, the combined production of these three major domestic producers accounted for approximately 90 percent of total known domestic production of HSS during the Tribunal’s period of review.⁷ The Tribunal considers that, for the purposes of this expiry review, the seven producers together, which constitute the totality or quasi-totality of domestic production of like goods, constitute the domestic industry.

Cumulation

39. In accordance with subsection 76.03(11) of *SIMA*, the Tribunal is required to make an assessment of the cumulative effect of the dumping of goods from more than one country if it is satisfied that such an assessment would be appropriate, taking into account the conditions of competition between the goods imported from any of the countries and the goods from any other of those countries, or like goods of domestic producers. If the Tribunal is not satisfied that such an assessment would be appropriate, then it must assess the effects of dumping for each country separately.

40. In considering the conditions of competition between goods, the Tribunal typically takes into account the following factors: the degree to which the goods from each subject country are interchangeable with the subject goods from the other subject countries or with the like goods; the presence or absence of sales of imports from different subject countries and of the like goods into the same geographical markets, or the presence or absence of offers to sell such goods; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, and of the availability of like goods supplied by the domestic industry. As the Tribunal has previously stated in other cases, it recognizes that there may be other factors that it can consider in deciding whether the exports of a particular country should be cumulated and that no single factor may necessarily be determinative.⁸

41. In the original inquiry, the Tribunal found that the subject goods from the three subject countries should be cumulated, given that these goods and the like goods were fungible, that they competed directly with each other in various geographical markets, that they were marketed or sold through similar distribution channels and that they were sold, or made available to purchasers, at approximately the same time.⁹

6. Another company, Bolton Steel Tube Co. Ltd. (Bolton), which was considered a producer of HSS in the Tribunal’s original inquiry, did not reply to the Producers’ Expiry Review Questionnaire. However, the Tribunal notes that, during its original inquiry, which covered the period from January 2000 to June 2003, Bolton’s percent share of total domestic production was determined to be negligible.

7. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-001-06 (protected), Administrative Record, Vol. 2.1 at 87.

8. See, for example, *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at 12.

9. *Structural Tubing* at 10-12.

42. The Tribunal notes that, contrary to the situation that prevailed prior to the Tribunal's original inquiry where there were imports of the subject goods, there was only a negligible amount of imports of the subject goods during the Tribunal's period of review.¹⁰

43. However, the Tribunal has previously stated that, in the context of expiry reviews, the effect of continued or resumed dumping must be looked at prospectively and that, therefore, its assessment of the conditions of competition must be prospective.¹¹ Moreover, as noted in *Carbon Steel Welded Pipe*, when the Tribunal makes a prospective assessment of the conditions of competition in expiry reviews, "... [i]t is obvious that any examination of conditions of competition presupposes that competition will actually exist, i.e. that goods from competing producers will be in the same market at the same time ...".¹²

44. Based on the information on the record, and as will be further explained below, the Tribunal is of the opinion that the expiry of the finding will likely result in the reappearance of structural tubing from Korea, Turkey and South Africa in the Canadian market. Notably, the evidence demonstrates that, during the period of review, overall exports of pipe and tubular products (which include various HSS) from each of the subject countries were substantial.¹³ In the Tribunal's view, this, together with the CBSA's determination of likelihood of resumed dumping, tends to support the domestic producers' claim that the foreign producers in all three subject countries have excess production capacities, that they continue to rely on export markets and that, as a result, imports of structural tubing from the subject countries are likely to reappear in the Canadian market should the finding be rescinded.

45. The Tribunal is also of the opinion that, should the finding be rescinded, structural tubing from all three subject countries, as well as the like goods, will likely compete directly against each other in the Canadian market. In the Tribunal's view, there is no reason to believe that the conditions of competition, as the Tribunal had found them to exist in the original inquiry, will not be the same in the near to medium term.

46. Accordingly, the Tribunal is satisfied that it is appropriate to make an assessment of the cumulative effect of the dumping of goods from Korea, Turkey and South Africa in its analysis of likelihood of injury.

Likelihood of Injury

47. Subsection 37.2(2) of the *Special Import Measures Regulations*¹⁴ lists the factors that the Tribunal may consider in addressing the question of likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed below.

48. In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus must be on circumstances that can reasonably be expected to exist in the near to medium term, which is generally 18 to 24 months from the expiration of the finding or order, as opposed to more remote circumstances.¹⁵ However, given the existing global economic uncertainty and the volatility of the global and domestic markets for HSS, the producers and distributors that testified at the hearing could not provide

10. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-001-05, Administrative Record, Vol. 1.1 at 23.

11. See *Carbon Steel Welded Pipe* (24 July 2001), RR-2000-002 (CITT) at 6-7.

12. *Carbon Steel Welded Pipe* at 7.

13. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-001-05, Administrative Record, Vol. 1.1 at 71-73.

14. S.O.R./84-927 [*Regulations*].

15. *Preformed Fibreglass Pipe Insulation* (17 November 2003), RR-2002-005 (CITT) at 11; *Prepared Baby Foods* (28 April 2003), RR-2002-002 (CITT) at 8; *Solder Joint Pressure Pipe Fittings* (16 October 1998), RR-97-008 (CITT) at 10.

forecasts beyond the fourth quarter of 2009. In addition, the various trade journals and publications filed as evidence did not provide forecasts beyond that time frame. Therefore, for the purposes of the expiry review, the Tribunal will focus on the circumstances that can reasonably be expected to exist for the remainder of 2008 and 2009.

Changes in Market Conditions

49. In coming to its view on the likely volumes and prices of the subject goods and their impact on the domestic industry if the finding were rescinded, the Tribunal first considered changes in both international and domestic market conditions pursuant to paragraph 37.2(2)(j) of the *Regulations*.

International Market Conditions

50. By all accounts, the changes in the international market conditions witnessed in 2008 do not reflect the market conditions observed during the period from 2005 to 2007. The year 2008 is an exceptional year in terms of the volatility experienced. Specifically, record high prices were followed by a steep and rapid decline in both prices and world demand for HSS. The first seven months of 2008 were characterized by strong demand and surging prices for HSS; whereas, during the latter part of the year, market conditions changed significantly, with demand for HSS falling dramatically and prices returning to levels observed in 2007. The depth and speed of the decline in prices and demand experienced during the latter part of 2008 were much more important than those observed during past business cycles.

51. Global average HSS prices, which followed the general trend seen in other steel products, surged over the first half of the year, rising from below US\$1,000 per tonne in the early part of the year to reach an historical peak in July, rising above US\$1,500 per tonne.¹⁶ The rise in prices followed a similar increase in the price of hot-rolled coil and the strong demand for HSS over the preceding 18 months.¹⁷

52. This expiry review is held during one of the most serious global financial and economic crisis experienced in recent times. This crisis has extended beyond the U.S. financial market and has embraced the investment, banking and capital markets around the world. Numerous trade journals, metal bulletins, industry reports and news articles, which were placed on the record, describe the market conditions in various countries around the world.

53. For instance, the August 2008 edition of the *Welded Steel Tube and Pipe Monthly*, published by *Metal Bulletin Research* (MBR), showed that North American and global HSS markets deteriorated starting in July 2008. As the weakening economy affected the non-residential construction market, North American substrate costs moderated and demand eroded. The report added that HSS prices were falling in Europe and that Turkish export price offers were falling as companies tried to find business.¹⁸ In its October 10, 2008, edition, the *CIBC World Markets* reported that “the global credit crunch has led to a dramatic decline in liquidity concerns and project delays have reduced steel buying activity over the past month. The lack of buying has coincided with a sharp decline in steel prices.”¹⁹

16. Manufacturer’s Exhibit A-09, Tab 3, Administrative Record, Vol. 11. All prices or costs are in Canadian dollars unless otherwise indicated.

17. Manufacturer’s Exhibit A-01 at 12, Administrative Record, Vol. 12.

18. Manufacturer’s Exhibit A-09, Tab 2, Administrative Record, Vol. 11.

19. Manufacturer’s Exhibit A-10, Tab 9, Administrative Record, Vol. 11.

54. The evidence shows that the economies of Turkey, Korea and South Africa were hit particularly hard by the economic crisis. In its October 9, 2008, edition, the *Globe and Mail Report on Business*, referred to Korea as being "... on the brink of crisis ...".²⁰ According to the October 21, 2008, edition of the *International Herald Tribune*, the Korean economy was especially exposed to the financial turmoil, prompting the Korean government to rescue its financial system, whose strength was being sapped by a shortage of liquidity and the prospect of weaker economic growth next year. The Korean government recently stated that it would spend about US\$4 billion to prop up Korea's wilting construction industry.²¹ South Africa's central bank governor, as reported by *Yahoo News* on October 11, 2008, warned that economic slowdown and other factors, including high commodity prices and the credit crunch, threatened to undermine the policy gains that it had made over the last decade. The African economy is highly dependent on exports of commodities and raw materials, but these prices are falling rapidly, as growth slows due to the financial crisis.²² On October 23, 2008, *Hot News Turkey* noted that economists warned that Turkey fell behind its emerging market peers in lessening the effects of the global crisis. Possible bank measures against volatility in the exchange market are at the top of the list, with the Turkish lira depreciating by more than 40 percent against the U.S. dollar since early August.²³

55. In its September 4, 2008, edition of the *North American Steel Markets Monthly*, American Metal Market (AMM) stated that, for the U.S. steel industry, there was little hope for an improvement in demand at home or overseas before 2009. The deterioration of global markets, together with the strengthening of the U.S. dollar, diminished export opportunities, while at same time making a resurgence of imports more probable.²⁴

56. In the October 20, 2008, edition of the *Welded Steel Tube and Pipe Monthly*, MBR indicated that it was unclear how long the current financial crisis would last. "... Housing and construction have been the hardest hit so far and demand for construction pipe and tubing is expected to be under pressure through the first half of 2009 as non-residential construction succumbs to the malaise ...". Regarding HSS sold in the U.S. market, MBR added that "[d]emand is severely limited by the construction slowdown and service centres are only buying enough material to supply immediate customer needs. Distributors will look to reduce inventories for the rest of the year ... Domestic HSS prices have fallen to [US]\$1,250-1,300/ton in October, down by [US]\$60-100/ton from last month ... and **the trend is moving downward through the month ...**". MBR forecasted HSS prices to fall in the fourth quarter of 2008 to US\$1,200 per tonne in the United States and to US\$800 per tonne²⁵ in Asia and Turkey. MBR also stated that "[o]verseas demand has fallen precipitously and has resulted in greater numbers of offers for import tonnage from Turkey and China to the US at steep discounts ...".²⁶

57. Recent developments and trends in the Chinese steel industry have had a significant impact on the global steel market. In fact, the remarkable rise in world steel output in recent years is mainly attributable to increased economic activity in China and the corresponding rise in steel production in that country. The witness for Russel Metals, the largest distributor of structural tubing in Canada and one of the two largest

20. Manufacturer's Exhibit A-10, Tab 6, Administrative Record, Vol. 11.

21. Manufacturer's Exhibit A-11 at 20-21, Administrative Record, Vol. 11.

22. Manufacturer's Exhibit A-11 at 22, Administrative Record, Vol. 11.

23. Manufacturer's Exhibit A-11 at 26, Administrative Record, Vol. 11.

24. Manufacturer's Exhibit A-09, Tab 1, Administrative Record, Vol. 11. The references in this AMM report are to flat carbon steel products, but the industry argued that this is equally applicable to the declines in the HSS industry.

25. One tonne equals 1.1023 tons.

26. Tribunal Exhibit RR-2008-001-31.04 (single copy exhibit), Administrative Record, Vol. 1.01 at 152-55.

steel distributors in Canada,²⁷ indicated that China increased its steel production capacity by approximately 150 to 200 million tonnes between 2003 and 2008, to reach 500 million tonnes today. As a result, China has significantly more structural tube mills today than it had five years ago.²⁸ China is now the largest steel-producing country in the world and is recognized as a net steel exporter.²⁹ However, the evidence indicates that, in recent months, the Chinese economy has been slowing down significantly and that steel mills have reduced output as a result of shrinking downstream demand, high production costs and weaker export markets.³⁰ According to the August 2008 edition of the *Welded Steel Tube and Pipe Monthly*, demand for structural tubing in China stalled in 2008 due to the Olympic Games.³¹ The October 2008 edition of the *Welded Steel Tube and Pipe Monthly* indicated that prices were falling in the Chinese domestic market and that, as a result, mills and traders were again relying on aggressive export pricing tactics to maintain production volumes.³²

58. In recent decisions concerning *Light-Walled Rectangular Pipe and Tube from China, Korea, Mexico, and Turkey*,³³ the United States International Trade Commission (USITC) found that, over the period from 2005 to 2007, Turkish producers had increased capacity and production of light-walled rectangular (LWR) pipe and tube, with several producers reporting the opening of new LWR pipe and tube facilities.³⁴ Korean companies were also found by the USITC to have added capacity to their production lines.³⁵ The Tribunal is of the view that these USITC decisions are particularly relevant to this review, as the goods covered in those decisions are a subset of the goods subject to this review, the difference being that the goods subject to this review comprise tubing in square, rectangular and circular cross-sections with no specified wall thickness. The USITC also found that pipe and tube production industries in Korea, Mexico and Turkey exported at least 20 percent of their LWR pipe and tube production during its investigation period.³⁶

59. Witnesses testified that the U.S. steel industry has undergone considerable consolidation, resulting in a concentration of flat-rolled steel production in the hands of three firms.³⁷ It was argued that rationalization of capacity should permit supply to react more quickly to changes in demand. In this regard, the witness for Welded Tube stated that some 3.1 million tons of steel-making capacity had been taken out of the North American market by U.S. and Canadian producers in the fourth quarter of 2008 in response to declining demand.³⁸ The testimony indicated that the steel industries in the subject countries do not operate in the same way as in North America and that foreign producers had not begun to curtail steel production or re-structure their respective industries.³⁹

27. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 118-19.

28. *Ibid.* at 138-39.

29. Tribunal Exhibit RR-2008-001-04 (protected), Administrative Record, Vol. 2 at 16.

30. Manufacturers' Exhibits A-01 at 15-16, Administrative Record, Vol. 11, and A-10, Tab 8, Administrative Record, Vol. 11.

31. Manufacturer's Exhibit A-09, Tab 2, Administrative Record, Vol. 11.

32. Tribunal Exhibit RR-2008-001-31.04 (single copy exhibit), Administrative Record, Vol. 1.01 at 157.

33. Manufacturer's Exhibit A-08, Tabs 9 and 10, Administrative Record, Vol. 11.

34. Tribunal Exhibit RR-2008-001-12.11, Administrative Record, Vol. 1.4 at 182-83.

35. *Ibid.* at 180.

36. *Ibid.* at 81.

37. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 61-62.

38. *Ibid.* at 22.

39. *Ibid.* at 58-62.

60. Consistent with the USITC decisions, the evidence on the record indicates that, during the period of review, production capacity of certain pipe and tube products increased in Korea, Turkey and China. In this respect, the witness for Reliable Tube, a major Western Canada distributor, testified that countries like China and Korea produce to a capacity far beyond what is needed to supply their domestic markets.⁴⁰ While there was no specific evidence on the record regarding South African HSS capacity, the Tribunal observes that total South African exports of tubular goods, which include HSS, were fairly substantial over the period of review.⁴¹

61. In summary, the rationalization seen in the North American steel industry has consequences, in that supply can be more rapidly curtailed to adjust to demand. Based on the testimony of witnesses, there appeared to be no such rationalization of the general steel-making production in the subject countries. Further, there was no specific evidence of cutbacks in the production of HSS in those countries. There is an abundance of supply of pipe and tubular products (including HSS) in international markets, which is exacerbated by the current dramatic global slowdown and falling demand. These difficult market conditions are having a serious downward impact on prices around the globe. Given the sharp decline in domestic demand in the subject countries, the strong export orientation of producers located in those countries and the absence of any evidence on production cutbacks in those countries, the Tribunal is of the view that producers of HSS, including those from the subject countries, will be forced to search out other markets for their products and to price their products accordingly to retain sales and maintain plant loading.

Domestic Market Conditions

62. Since the Tribunal's finding in 2003, there have been important changes in the structure of the Canadian HSS industry. First, there have been a number of consolidations and changes in ownership in the Canadian industry. As stated earlier, Atlas purchased the tubing business of Maverick Tube and Copperweld Corporation in 2005, consolidating all its Canadian tube production at its plant in Harrow, Ontario. In 2006, Atlas was purchased by John Maneely. Following a corporate re-structuring, Novamerican Steel Canada Inc. became a subsidiary of Novamerican Steel Inc., a U.S. corporation. Changes in ownership for smaller-volume HSS producers include ArcelorMittal, formerly Dofasco Tubular Products Inc., and Evraz, which acquired the tubular facilities of IPSCO Inc. in June 2008 from SSAB Canada Inc.⁴²

63. Another important change in domestic market conditions relates to the domestic market shares held by the various suppliers of HSS since the finding. The domestic market for HSS continues to be supplied predominantly by the domestic mills, primarily from their domestic production and, to a much lesser extent, from their own imports from the United States.⁴³ However, imports of the subject goods, which held 9 percentage points of market share in the first half of 2003, have been virtually absent from the Canadian market since the finding. This is not surprising, given the specified margin of dumping of 89 percent applied to any imports of HSS from the subject countries since that time.⁴⁴ The share held by imports from the United States increased slightly since the finding. China, virtually absent from the market in 2003, was the next largest supplier of HSS, although its share of the market decreased in the first half of 2008 because of

40. *Transcript of Public Hearing*, Vol. 2, 29 October 2008, at 209-10.

41. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-001-05, Administrative Record, Vol. 1.1 at 72.

42. Manufacturer's Exhibit A-01 at 2-3, Administrative Record, Vol. 11.

43. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-001-06 (protected), Administrative Record, Vol. 2.1 at 98.

44. Tribunal Exhibit RR-2008-001-04 (protected), Administrative Record, Vol. 2 at 18, 21, 24.

product quality issues.⁴⁵ Industry witnesses referred to the “China Factor”, submitting that China was the price leader in the Canadian market and that, absent a finding, prices of dumped goods would converge at or below the selling prices of HSS from China. In this regard, the Tribunal’s data indicate that average Chinese prices were generally the lowest in 2006 and 2007.⁴⁶

64. Overall, the market for HSS in Canada has been strong since the finding. The data compiled by the Tribunal show that HSS prices and demand were strong over the last number of years, up to the end of June 2008.

65. Market conditions for the HSS industry in Canada closely mirrored global and U.S. market conditions. The comprehensive written evidence filed by the industry and the testimony of the producers and distributors highlighted the severity and rapidity with which the global financial crisis has affected the Canadian HSS industry in recent months. The manufacturing and non-residential construction sectors in Eastern Canada, typically the largest users of HSS, were hit particularly hard. The September 2008 report of the *Metals Service Center Institute* indicates that the August shipments of carbon pipe and tubing in Canada, which included HSS, were down by 8.7 percent on a seasonally adjusted basis.⁴⁷

66. The HSS industry is characterized by cyclical variations in demand. However, witnesses indicated that the present downturn is different from anything experienced in past years in terms of the magnitude of the decrease in demand.⁴⁸ In this regard, AMM’s September 22, 2008, report contains several references to the steep declines in HSS demand in the U.S. market and states that HSS prices were falling rapidly and that the U.S. economy was weakening further. These market conditions, according to the domestic industry, were fully in line with the situation in the Canadian structural tubing market.⁴⁹

67. Industry witnesses indicated that demand for HSS products in Canada had declined even further in October 2008. According to the witness for Atlas, demand for HSS at the time of the hearing had dropped “... right off the table ...”.⁵⁰ The witness for Welded Tube stated that there were days where the company did not book any business at all,⁵¹ while the witness for Novamerican testified that there were no “true orders”, with customers holding off on taking delivery.⁵² Industry witnesses also noted that various committed construction projects in Eastern Canada that use HSS were being delayed and cancelled.⁵³ The witness for Reliable Tube submitted that 2008 should have been a banner year in Western Canada, with major expansions taking place in the oil and gas sector, but recent problems in obtaining financing had led to the cancellation of some projects in that part of Canada.⁵⁴ Faced with declining demand, Canadian producers have reduced their production of HSS by laying off employees, reducing hours worked or reducing shifts.⁵⁵

45. Supplement to the *Protected Pre-hearing Staff Report* from Inquiry No. NQ-2003-001, Tribunal Exhibit RR-2008-001-11A (protected), Administrative Record, Vol. 2.3 at 225; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-001-06 (protected), Administrative Record, Vol. 2.1 at 30.

46. Revised *Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-001-05A, Administrative Record, Vol. 1.1 at 178.

47. Manufacturer’s Exhibit A-10 at 9-11, Administrative Record, Vol. 11.

48. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 109-11.

49. Manufacturer’s Exhibit A-10 at 4, Administrative Record, Vol. 11.

50. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 73.

51. *Ibid.* at 87-88.

52. *Ibid.* at 89.

53. *Ibid.* at 12, 98, 100-101.

54. *Transcript of Public Hearing*, Vol. 2, 29 October 2008, at 226-27.

55. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 49-51.

68. Industry witnesses submitted that HSS prices at the end of October 2008 were in a freefall and that the end was not in sight.⁵⁶ Customers were afraid to buy, feeling that price would be lower the next week or the next month.⁵⁷ According to the witness for Russel Metals, prices in Eastern Canada dropped from US\$1,400 per ton to between US\$1,200 and US\$1,250 per ton over the 6 to 8 weeks preceding the hearing.⁵⁸ Prices in Western Canada also dropped by US\$200 to US\$300 per ton since August 2008, representing a drop of some 20 percent.⁵⁹

69. Turning to likely domestic market conditions in the near to medium term, prices are expected to continue to decrease for the balance of 2008. With regard to the market for non-residential construction, which is a primary driver of HSS demand according to the largest Canadian producer of HSS, a recent forecast estimates a 14 percent decline for 2009 over 2008.⁶⁰ Industry witnesses generally agreed that HSS prices and demand would not begin to improve before the second or third quarter of 2009⁶¹ and would probably return to levels that existed in 2007 and earlier.⁶²

Likely Volumes of Dumped Goods

70. The Tribunal's assessment of the likely volumes of dumped imports⁶³ encompasses the likely performance of the foreign industry,⁶⁴ potential for the foreign producers to produce goods in facilities that are currently used to produce other goods,⁶⁵ evidence of the imposition of anti-dumping measures on HSS or similar goods in other jurisdictions⁶⁶ and the likelihood of trade diversion.⁶⁷

Position of Parties Supporting the Continuation of the Finding

71. The Coalition testified that, given the dramatic changes in global market conditions, many countries, including the subject countries, are experiencing a slowing of their economies. This in turn has had an impact on the demand for various steel products around the world, including HSS. The Coalition argued that, given these circumstances, producers of HSS in the subject countries would turn to other markets in order to continue to produce and sell their products. In this respect, exports of foreign producers are likely to grow, as the global economic slowdown and financial crisis continue.

72. The capacity of foreign producers is said to be extensive. The Coalition submitted that foreign producers of HSS will not cut back their production, but rather try to cover their fixed costs.⁶⁸ The Coalition argued that foreign producers, including those in Korea and Turkey, are export-oriented because their economies cannot absorb all their production capacity;⁶⁹ as a result, export markets are very important in

56. *Ibid.* at 13, 18-20.

57. *Ibid.* at 20.

58. *Ibid.* at 126-29.

59. *Transcript of Public Hearing*, Vol. 2, 29 October 2008, at 182.

60. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 98-99.

61. *Ibid.* at 122-23; *Transcript of Public Hearing*, Vol. 2, 29 October 2008, at 182-83, 208-209.

62. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 81-83.

63. Paragraph 37.2(2)(a) of the *Regulations*.

64. Paragraph 37.2(2)(d) of the *Regulations*.

65. Paragraph 37.2(2)(f) of the *Regulations*.

66. Paragraph 37.2(2)(h) of the *Regulations*.

67. Paragraph 37.2(2)(i) of the *Regulations*.

68. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 62.

69. *Ibid.* at 53-54.

their overall operations. The Coalition referred to the USITC decisions where it reported that Korea and Turkey exported at least 20 percent of their LWR pipe and tube production during the USITC's period of investigation.⁷⁰

73. In another example that demonstrates the export dependence of foreign producers, the Coalition noted that, although China is forecast to have a 9 percent growth rate, it continues to be in a position where its internal demand for HSS is decreasing, which, in turn, puts increased pressure on its sales and leaves it with excess supply.⁷¹ The evidence indicates that this excess supply of HSS in China would complicate matters for Korean exports, which would normally be shipped to China. The Coalition argued that the Koreans would be forced to ship their HSS to whatever countries had an open door and would permit them entry, which, in this case, would include Canada if the finding were rescinded.⁷²

74. In support of this argument that in the current context, subject countries will be forced to ship wherever they can at low prices, the Coalition submitted evidence of a recent offer made in October. The offer was at a price that was substantially below the then current average Canadian market prices of \$US1,350 per tonne.⁷³ The Turkish HSS comprised goods that were just outside the size range of the goods covered by the USITC decisions which encompass LWR pipe and tube. The Coalition argued that this clearly illustrates the interest of foreign producers to sell HSS in the North American market. The Coalition further testified that low price offers such as the one noted above are very effective in creating the demand for the imported product. Even though HSS prices in North America are dropping, they continue to be relatively strong compared to other markets; as a result, if the finding is rescinded, the Coalition argued that exporters will seek to exploit the Canadian market and ship increased volumes of HSS to Canada.

75. Turning to the potential of the foreign producers to produce goods in facilities that are currently used to produce other goods, the Coalition argued that the USITC decisions with respect to LWR pipe and tube were very relevant to the case currently before the Tribunal. The Coalition noted that the USITC reported that there exists the potential for Korean and Turkish producers of HSS to increase their production of the subject goods through product shifting, for example, by decreasing the production of other tubular production, such as circular mechanical tubing, in favour of LWR pipe and tube.⁷⁴

76. Finally, regarding the imposition of anti-dumping or countervailing measures by other jurisdictions, the Coalition submitted that, in its recent decisions concerning LWR pipe and tube, the USITC was of the opinion that goods subject to those investigations were a subset of the HSS subject to this expiry review. Thus, the USITC decisions are very relevant to the present review, due to the overlap of products and similarity of product characteristics and uses.⁷⁵ In this respect, if the Tribunal rescinded its finding, the diversion to Canada of the exports originally destined for the United States would be very likely.

70. Tribunal Exhibit RR-2008-001-12.11, Administrative Record, Vol. 1.4 at 81.

71. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 159-60; Manufacturer's Exhibit A-08 at Tab 4, Administrative Record, Vol. 11. Based on a Reuters news article dated August 27, 2008, "China is likely to cut many of its remaining tax rebates on steel product exports in the near future. . . . Carbon steel products that now enjoy 5 percent rebates would lose them completely, while the rebate on stainless steel would be increased to 10 percent from 5 percent"

72. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 156-57.

73. *Ibid.* at 38-41, 126-29; Manufacturer's Exhibit A-12, Administrative Record, Vol. 11.

74. Tribunal Exhibit RR-2008-001-12.09 (single copy exhibit), Administrative Record, Tab 9.

75. Manufacturer's Exhibit A-01 at 7-8, Administrative Record, Vol. 11.

Tribunal's Analysis

77. Concerning the likely performance of the foreign industry, the Tribunal notes that market conditions around the world, including in each of the subject countries, have deteriorated significantly in the last few months and that a recovery is not expected before some time late in 2009.⁷⁶ As these countries experience a slowing of their economies, the demand for steel products, including HSS, is declining. The evidence shows that this has already been the case in the Asian, North American and European markets.⁷⁷

78. The Tribunal questioned whether the recent downturn in global demand for HSS products would have an impact on HSS production in the subject countries and the possibility of excess HSS being shipped to Canada. In this regard, the Tribunal observes that, in reaction to shrinking downstream demand, the U.S. flat-rolled steel industry and the Chinese steel mills have implemented production cutbacks.⁷⁸ The Tribunal notes that the rationalization which took place in the U.S. flat-rolled steel industry appears to have led to an improved capability to adjust production to demand. The Canadian HSS industry has also reduced its production volume, by eliminating production shifts and reducing person-hours worked.⁷⁹ Given the downturn in global demand, reducing HSS production would seem to be a rational business decision; however, there is no evidence that indicates that HSS producers in the subject countries have any intention of implementing such a strategy.

79. As discussed earlier, the USITC, in its recent decisions concerning LWR pipe and tube, found that several producers in Korea and Turkey increased their production capacity for pipe and tubular products⁸⁰ and that this production capacity relative to the size of the Canadian market is substantial.⁸¹ Furthermore, the Tribunal notes that the evidence illustrates that producers in Korea and Turkey have the ability to switch production from circular mechanical tubing to LWR pipe and tube.⁸²

80. Given the strong export orientation of producers located in the subject countries, the fact that they are faced with declining demand in their own local markets and the apparent absence of any production cutbacks, the Tribunal is of the view that there is every expectation that these producers will make attempts to penetrate export markets, including Canada. Furthermore, as a result of the USITC decisions concerning similar goods, the opportunity to export to the United States is now constrained. The Tribunal is persuaded that, if the finding is rescinded, the combined impact of these two important events will likely result in significant volumes of HSS being diverted to Canada.

81. The Tribunal notes that, although producers in the subject countries only shipped minimal volumes of the subject HSS to Canada during the period of review, they have maintained a notable commercial presence in Canada. For example, the evidence indicates that brokers and traders in Canada have made offers to buyers concerning various pipe and tubular goods from Korean mills. In fact, Korean tubular products have landed at the Vancouver port, which primarily services British Columbia, Alberta and Saskatchewan.⁸³

76. *Transcript of Public Hearing*, Vol. 2, 29 October 2008, at 208-209.

77. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 53, 157.

78. Manufacturer's Exhibit A-01 at 15-16, Administrative Record, Vol. 11; Manufacturer's Exhibit A-10, Tab 8, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 22.

79. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 50-51.

80. Tribunal Exhibit RR-2008-001-12.11, Administrative Record, Vol. 1.4 at 180, 182.

81. Manufacturer's Exhibit A-01 at 23-31, Administrative Record, Vol. 11; Tribunal Exhibit RR-2008-001-23.01, Administrative Record, Vol. 7 at 14-21.

82. Tribunal Exhibit RR-2008-001-12.11, Administrative Record, Vol. 1.4 at 180, 183.

83. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 146-47.

82. Russel Metals testified that it received offers from trading companies for imported HSS from Korea.⁸⁴ The Tribunal notes that these global trading companies are well established in North America and have access to steel mills around the world. Given their established contacts with distributors and brokers in Canada and established channels of importation and distribution, these trading companies have ready access to the Canadian market.⁸⁵ In support of this, the Tribunal observes that there were relatively high volumes of pipe and tubular products from the subject countries, which encompass more than the subject goods, entering Canada during the period of review.⁸⁶

83. Given the above, the Tribunal is of the opinion that the evidence on the record demonstrates the interest and capacity of producers of HSS in the subject countries to ship HSS to Canada.

84. In terms of likely volumes of dumped imports entering Canada in the near to medium term, the evidence shows that more frequent offers of HSS from the subject countries are being made.⁸⁷ The Tribunal is of the view that, given the historic volume of imports of HSS from the subject countries, the current volumes of imports of various pipe and tubular goods, together with the current USITC decisions in place concerning LWR pipe and tube from Korea and Turkey, it is very likely that significant volumes of the subject goods will be exported to Canada.

85. Based on the foregoing, the Tribunal is convinced that, if the finding is rescinded, there will likely be significant volumes of imports of the subject goods to Canada.

Likely Prices of Dumped Goods and Effects on Prices of Like Goods

86. In assessing the effects that the likely prices of dumped goods would have on prices of like goods, the Tribunal will examine whether the dumped goods are likely to significantly undercut, depress or suppress the prices of like goods.⁸⁸

Position of Parties Supporting the Continuation of the Finding

87. The Coalition argued that, given the commodity nature of HSS, price is the most important factor in the purchasing decision.

88. The Coalition noted that, during the period of review, HSS imported from China had the lowest prices in the Canadian market. It argued that, if the finding is rescinded, imports from the subject countries will target the Chinese price. The Coalition referred to previous Tribunal findings that showed that, when dealing with commodity products, prices tend to converge toward the lowest point in the market. This is particularly true for HSS because it is highly price sensitive and even a small volume of dumped goods from the subject countries will set off a series of price declines in the market. In this regard, Les Aciers Transbec (1997) Ltée (Transbec) submitted that it would have no choice but to request a price concession from the domestic producers, if the finding were rescinded, in order to compete with the dumped import prices.

84. *Ibid.* at 147.

85. Tribunal Exhibit RR-2008-A-01, Administrative Record, Vol. 11 at 44.

86. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-001-05, Administrative Record, Vol. 1.1 at 71-73.

87. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 23, 34.

88. Paragraph 37.2(2)(b) of the *Regulations*.

89. The Coalition submitted that the domestic producers are highly exposed to price pressure. It argued that, due to the combined effects of the global economic slowdown in general and the slowdown of non-residential construction in Canada in particular, domestic producers have been forced to lower their prices dramatically, which has left the industry vulnerable to renewed dumping.

90. The Coalition submitted that the recent low-priced offers for offshore HSS received from various brokers are prime examples that imported HSS from the subject countries are readily available in North America at very low prices; if the finding were rescinded, these low-priced imports would enter the Canadian market.⁸⁹

91. The Coalition noted that, even though South Africa is considered to be a small player worldwide, it still tends to be one of the lowest price leaders.⁹⁰

Tribunal's Analysis

92. The evidence is clear that HSS is a commodity product and that price is the primary factor driving the purchasing decision.⁹¹ The evidence indicates that imports from the subject countries are interchangeable with domestically produced goods.⁹² The Tribunal, however, heard testimony of an exception for goods from China that entered both the U.S. and Canadian markets in the last quarter of 2007 and the first quarter of 2008. In this respect, certain goods from China did not meet the stated specifications in terms of tensile and yield strength.⁹³

93. In August 2008, Commercial Metals Company, a U.S.-based trader, offered HSS from Turkey to be delivered to the United States or Canada in October or November 2008. At that time, the price offered was competitive with prevailing North American prices.⁹⁴ There is evidence that another offer for offshore HSS was made in October 2008 to Canadian customers by American Steel Industries, a U.S. trader. This offer was at a price well below Canadian prices.⁹⁵ According to the testimony of witnesses, the HSS offer was believed to be of Turkish origin. The witnesses noted that, due to the configuration of the product and their extensive knowledge of the HSS market, they could distinguish between product offers from various countries.⁹⁶ In the Tribunal's view, these offers show that exporters have a continued interest in selling HSS to Canada from any source and demonstrate the ability of traders to obtain and move product. It is also a strong indicator of the aggressive pricing that can be expected if the finding is rescinded.

94. Although imports of the subject goods during the period of review were close to zero, the evidence that domestic producers and distributors recently received low-priced offers of HSS from Turkey indicates to the Tribunal that foreign exporters and suppliers have a definite interest to sell HSS to Canada.

89. Manufacturer's Exhibit A-03(A), Administrative Record, Vol. 11; Manufacturer's Exhibit A-12, Administrative Record, Vol. 11.

90. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 55.

91. *Ibid.* at 11, 40, 67; Manufacturer's Exhibit A-01 at 33, Administrative Record, Vol. 11.

92. Manufacturer's Exhibit A-01 at 6, Administrative Record, Vol. 11.

93. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 66-67, 134.

94. Manufacturer's Exhibit A-03(A), Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 25-28.

95. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 38-41; Manufacturer's Exhibit A-12, Administrative Record, Vol. 11.

96. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 48-49.

95. In previous cases that dealt with commodity products, the Tribunal observed that pricing typically converges toward the lowest price. The evidence on the record for this expiry review continues to support this observation. For example, it appears that the forecasted prices for pipe and tubular products tend to gravitate towards the lower Asian prices.⁹⁷

96. The import data compiled by the Tribunal indicate that the prices for HSS from China in the Canadian market during the period of review were generally the lowest in Canada.⁹⁸ Given the quality issues that were raised with regard to the Chinese product, the Tribunal is not convinced that import offerings from the subject countries will necessarily converge to the lowest Chinese prices available in the domestic market in the near term. However, the Tribunal notes that there exists the possibility of low-priced HSS from China being diverted to Canada, given the recent LWR pipe and tube decisions of the USITC concerning China, Korea, Turkey and Mexico. Given that Turkey and Korea are subject to the current Tribunal finding concerning HSS, if the finding were rescinded, low-priced HSS from Turkey and Korea could enter the Canadian market. The HSS from Turkey and Korea would be priced low, in order to compete with the low-priced HSS from China. Based on the evidence, the Tribunal is of the view that there will be intense pressure on the part of producers located in the subject countries to move product at almost any price that contributes to fixed manufacturing costs, given their depressed local market conditions and strong export orientation.

97. Hot-rolled coil, the major input material for HSS, represents approximately 75 percent of its manufacturing cost. During the period from December 2007 to July 2008, hot-rolled coil prices increased dramatically.⁹⁹ This was in response to significant increases in the global price of iron ore since 2005.¹⁰⁰ The Tribunal reviewed the evidence regarding the relationship between hot-rolled coil prices and HSS prices. The evidence clearly demonstrates that the price of HSS closely tracks the price of hot-rolled coil and that the average spread between these two prices varies between countries and regions.¹⁰¹

98. In October 2008, average hot-rolled coil prices were the following: \$US720 per tonne for the Black Sea region (Turkey), \$US1,049 per tonne for Europe and \$US1,058 per tonne for the United States. For the same time period, the average HSS prices were the following: \$US875 per tonne for Turkey, \$US1,225 per tonne for Europe and \$US1,350 per tonne for the United States. This evidence shows that the spread between hot-rolled coil prices and HSS prices was the lowest for Turkey at \$US155 per tonne compared to \$US176 per tonne for Europe and \$US292 per tonne for the United States.¹⁰²

99. The domestic industry testified that the spread for Canadian producers, which is similar to that in the United States, has historically been higher than the spread noted for Turkey¹⁰³ and that they would not be able to convert their hot-rolled coil to HSS with such small spreads.¹⁰⁴ In the Tribunal's opinion, exports from Turkey, absent a finding, would clearly undercut the domestic producers' prices.

97. Revised *Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-001-05B, Administrative Record, Vol. 1.1 at 194.

98. Revised *Protected Pre-Hearing Staff Report*, Tribunal Exhibit RR-2008-001-06A (protected), Administrative Record, Vol. 2.1 at 178.

99. Tribunal Exhibit RR-2008-001-31.01 (single copy exhibit), Administrative Record, Vol. 1.01 at 25, 37, 49, 61, 73, 85, 97.

100. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 83.

101. *Ibid.* at 19-20.

102. Tribunal Exhibit RR-2008-001-31.04 (single copy exhibit), Administrative Record, Vol. 1.01 at 153.

103. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 91-96.

104. *Ibid.* at 91-92.

100. The evidence on the record clearly indicates that, since mid-2008, HSS selling prices are in a downward spiral and that the demand for HSS has plummeted.¹⁰⁵ The Tribunal acknowledges that this has put pressure on the domestic industry's prices. Evidence indicates that customers are afraid to commit to ordering and purchasing HSS because they think that the price will be lower the next week or next month. This, of course, further exacerbates the situation and drives prices down even further.¹⁰⁶ Forecasts indicate that a recovery is not anticipated before the second or third quarter of 2009. While these developments are not related to dumping, they leave the domestic industry vulnerable to renewed dumping. In light of the evidence regarding spreads between the prices of hot-rolled coil and the selling prices of HSS for various countries and regions around the world, the Tribunal is of the view that resumed imports of dumped HSS will further suppress and erode market prices and reduce the slim margins between costs and HSS selling prices already foreseen for the near to medium term.

101. Based on the foregoing, the Tribunal is persuaded that, if the finding were rescinded, dumped imports of the subject goods would be sold at prices that would likely significantly undercut, erode and suppress the prices of domestic producers.

Likely Performance of the Domestic Industry and Likely Impact of Dumped Goods on the Domestic Industry

102. The Tribunal will now consider the likely impact that the above volumes and prices would have on the domestic industry if the finding were rescinded, taking into consideration the domestic industry's likely performance.¹⁰⁷

Position of Parties Supporting the Continuation of the Finding

103. The Coalition submitted that, during the period of review, Canadian HSS producers performed well. Prices and sales of HSS were very strong over the last number of years. This trend continued up to the end of June 2008. The Coalition, together with various distributors of HSS in Canada, testified that, even as prices moved to unprecedented high levels, there was stability in the domestic market because the finding had kept dumped goods out of the market.

104. The Coalition argued that domestic producers of HSS are currently faced with an unprecedented financial and credit crisis and that this crisis has had dramatic effects on the HSS sector in Canada. Since mid-2008, the demand for steel and manufactured steel products has fallen off dramatically, and prices have plummeted. The Coalition noted that the market conditions have also declined considerably in major world markets, including the domestic conditions in each of the subject countries. It argued that the financial crisis, which began in the United States, has spread to other regions, including Canada, and has left Canadian producers of HSS in a vulnerable position.

105. The Coalition submitted that injury will result if the finding is rescinded and that this injury will be material. Absent the finding, material injury will take the form of price erosion and suppression, which will frustrate efforts by the industry to recover costs and remain profitable in an increasingly difficult market. Imports of dumped HSS will also take sales away from domestic producers, thereby lowering revenues, margins, net income and return on investment.

105. *Ibid.* at 13, 18-20, 73, 87-89.

106. *Ibid.* at 20.

107. Paragraphs 37.2(2)(c) and (e) of the *Regulations*.

106. The Coalition testified that even a small quantity of 5,000 to 10,000 tonnes of low-priced imported HSS can have a huge impact on the Canadian market and that these lower-priced imports can and do drag down all HSS prices.¹⁰⁸ The Coalition further testified that, typically, a boatload would contain about 20,000 tonnes of HSS. When this volume lands at the port in Montréal or Vancouver, for example, it is not distributed across Canada; it remains in the region where it was imported. In the Canadian market, this volume represents an entire month's supply for a region and would dominate the market.¹⁰⁹

107. Evraz argued that, if the finding is rescinded, the dumped imports will lead to price suppression in the Canadian market and that, in order for the Canadian producers to maintain market share, they would be forced to lower their prices, which would, in turn, result in lower profit margins.

108. Reliable Tube submitted that dumped goods could destroy inventory values held by the distributors and bring serious financial harm to the distribution sector in Canada.

109. Transbec submitted that the dumping would have a de-stabilizing impact on the distribution sector in the Quebec market and beyond, by destroying the price structure of the Canadian HSS market. This could happen in a very short time, just as it did in the period of the original inquiry.

Tribunal's Analysis

110. In considering the likely performance of the domestic industry and the likely impact of dumped goods, the Tribunal took into account relevant economic factors, including any potential decline in output, sales, market share, profits, productivity, return on investments or utilization of production capacity, and potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital.

111. The Tribunal first reviewed the current health of the HSS industry in Canada. It noted that the Canadian producers did well in terms of market share, sales and profits throughout the period of review until mid-2008. Despite fluctuations in prices and demand for HSS, the overall performance of the domestic industry was stable, recording high profits in the first part of 2008.¹¹⁰

112. However, the evidence filed and the testimony of witnesses made it quite clear that, since mid-2008, the recent collapse in global demand has had a dramatic negative effect on the domestic HSS market and on the current health of the domestic producers of HSS. Since July 2008, demand and prices of HSS have decreased substantially.

113. Turning to anticipated market conditions in Canada for the near to medium term, industry witnesses foresee continuing low prices and depressed market demand for HSS. Witnesses also testified that a market recovery is not foreseen before the second or third quarter of 2009, at best.¹¹¹ The Tribunal also notes that the most recent forecast for non-residential construction, the main sector that drives demand for HSS, is expected to decline by 14 percent in 2009.¹¹²

108. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 38-41.

109. *Ibid.* at 133.

110. *Transcript of In Camera Hearing*, Vol. 1, 28 October 2008, at 22.

111. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 122-23; *Transcript of Public Hearing*, Vol. 2, 29 October 2008, at 182-83, 208-209.

112. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 98-99.

114. Turning to the likely performance of the domestic industry in Canada, the Tribunal first notes that the HSS industry in Canada followed a similar consolidation to that which took place in the U.S. flat-rolled steel industry and that this consolidation led to a concentration of HSS production in the hands of only a few producers in Canada.¹¹³ This consolidation enables domestic producers to better respond to market changes, such as reduced demand, by reducing the volume of production to match such demand. However, this is not sufficient to allow producers, in the current circumstances, to maintain historic spreads between hot-rolled coil prices and HSS prices. Witnesses testified that, given the low prices and depressed market demand, they have experienced and expect that they will continue to experience a significant reduction in their average spreads for the balance of 2008 and extending into the early part of 2009.¹¹⁴

115. As indicated earlier, the Tribunal observed that the Canadian industry has significantly reduced its production volumes to match the recent drop in demand by eliminating production shifts and reducing person-hours worked.¹¹⁵ However, testimony indicated that, despite these efforts to curtail production, domestic producers are currently facing high-priced inventories that will need to be liquidated over the next few months, which will exacerbate the impact of a collapsing demand on their margins.¹¹⁶

116. In the Tribunal's view, the Canadian market will be even more competitive in the near to medium term because of the further decreases in demand which are anticipated. This, in turn, will increase the domestic industry's vulnerability to the entry of dumped imports. Given the commodity nature of the product and the situation in the global economy, the subject goods would likely enter the Canadian market at or below the lowest prevailing price. The domestic producers would have very little choice but to match these prices for fear of losing market share. Therefore, the Tribunal is convinced that exports of HSS from the subject countries are likely to suppress prices in Canada and reduce margins for Canadian producers, as they try to liquidate their high-priced inventories. The Tribunal is further convinced that, once producers' current high-valued-inventory problems are resolved, price depression caused by the dumping will hinder attempts by the domestic producers to maintain or recover the spread between hot-rolled coil prices and HSS selling prices.

117. The Tribunal is also convinced that the combined effects of the lost sales volumes, lost market share and significant price suppression are likely to have an injurious impact on the financial performance of the domestic industry over the near to medium term, by reducing revenues, margins and profits. Further, the negative impact on the producers' volumes and prices will undoubtedly result in significantly lower output, return on investments, capacity utilization, cash flow and employment. Some of these factors are discussed in more detail below. The evidence does not indicate whether an impact on productivity, growth or the ability to raise capital is also likely.

118. With respect to capacity utilization, output and employment, as previously noted, the domestic producers recently made substantial cuts to reduce their production output in reaction to reduced demand, mostly by reducing the number of shifts or person-hours worked.¹¹⁷ The Tribunal is of the view that the likely loss in sales volume that the domestic producers would suffer if the finding were rescinded would further impact negatively on their output and utilization rates and, in some cases, lead to a direct loss of employment.

113. *Ibid.* at 11, 61-62; Manufacturer's Exhibit A-01 at 2, Administrative Record, Vol. 11.

114. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 122-23; *Transcript of Public Hearing*, Vol. 2, 29 October 2008, at 182-83, 208-209; *Transcript of In Camera Hearing*, Vol. 1, 28 October 2008, at 38.

115. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 49-51.

116. *Ibid.* at 18-19.

117. *Ibid.* at 49-51.

119. With respect to return on investment, the domestic producers have invested in capital improvements and leading-edge technology since the finding.¹¹⁸ The Tribunal is convinced that a rescission of the finding would likely have a negative impact on the returns that are expected on those investments.

120. The Tribunal observes that these investments relate to the industry's total production of HSS. In this regard, a significant portion of the domestic producers' total production of HSS is exported to the United States. The recent U.S. decisions on LWR tubing would assist their sales to that market. The Tribunal notes that the industry's export performance would not be directly affected by the resumption of dumping.

121. Based on the evidence, the Tribunal accepts the arguments made by the Coalition that, despite the recent drop in prices, the Canadian market will remain an attractive market for the subject goods if the finding is rescinded and that such goods will enter Canada in significant volumes. Furthermore, given the recent USITC decisions on LWR goods, the absence of a finding in Canada will likely result in a diversion of part of the HSS from Turkey and Korea normally destined for the U.S. market. As the evidence indicates, there exists considerable production capacity of pipe and tubular goods in the subject countries relative to the size of the Canadian market. Given the strong export orientation of producers located in the subject countries and the fact that they currently face declining demand in their domestic and other nearby markets, the Tribunal has no doubt that these producers will attempt to penetrate any export market, including Canada.

122. In summary, the Tribunal is convinced that, if the finding were rescinded, the domestic industry would experience material injury to its production, sales, market share, profits, return on investments, utilization of capacity and employment. The Tribunal notes that, while the portion of domestic production that is destined for export markets would not likely be injured, the injury that would be caused to production destined for domestic consumption would, in its view, be sufficient to materially injure the domestic production in its entirety.

Other Factors

123. Pursuant to paragraph 37.2(2)(k) of the *Regulations*, the Tribunal may consider any other factors relevant in the circumstances. Accordingly, the Tribunal reviewed certain factors unrelated to dumping that could adversely affect the domestic industry.

Exchange Rate Fluctuations

124. The Tribunal notes that the Canadian dollar appreciated strongly against the U.S. dollar between mid-2004 and November 2007 and then remained close to par with the U.S. currency until mid-2008.¹¹⁹ Since mid-2008, the Canadian dollar has dropped considerably and has fluctuated widely. It continued to be volatile in the days preceding the hearing.

125. The Tribunal reviewed the impact of the currency variations on the operations of the domestic producers, particularly with respect to their input costs. According to the testimony, the price of the major input material, hot-rolled coil, even when purchased domestically, is priced in U.S. funds.¹²⁰ A domestic producer always has the choice of where to buy its coil in order to obtain the best price. However, any advantage gained by purchasing from either a Canadian or a U.S. supplier, depending on the strength of the

118. Manufacturer's Exhibit A-01 at 39, Administrative Record, Vol. 11.

119. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-001-05, Administrative Record, Vol. 1.1 at 77.

120. *Transcript of Public Hearing*, Vol. 1, 28 October 2008, at 113-14.

dollar, would be of short duration and would be minimal. Moreover, it is difficult, if not impossible, under the current volatile global market conditions to forecast the fluctuations of the Canadian dollar against the U.S. currency over the near to medium term. Further, the parties presented no evidence that would indicate that exchange rates are likely to be a factor that causes injury in the near to medium term.

Transportation Costs

126. Oil prices have been extremely volatile since mid-2008. The cost of shipping HSS is directly tied to the price of oil. In this regard, the testimony indicated that the average shipping cost from Turkey increased to approximately \$200 per tonne when fuel prices peaked, but has since declined to about \$160 per tonne.¹²¹ The Tribunal recognizes that transportation costs also have an impact on the domestic industry's shipments. In this respect, transportation costs affect both imports and domestic production. While the Tribunal recognizes that transportation costs are an important factor when shipping HSS, given the recent and extreme volatility of oil prices, it does not have sufficient information to predict what will happen to the price of oil over the near to medium term.

CONCLUSION

127. In view of the above, the Tribunal finds that it is likely that the resumed or continued dumping of the subject goods will result in material injury to the domestic industry. Based on the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its finding in respect of the subject goods.

André F. Scott
André F. Scott
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Diane Vincent
Diane Vincent
Member

121. *Ibid.* at 92.