

Ottawa, Monday, June 10, 1991

Review No.: RR-90-005

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the review finding made by the Canadian Import Tribunal on November 6, 1986, in Review No. R-7-86, continuing, with amendment, the finding of material injury made by the Canadian Import Tribunal on April 17, 1986, in Inquiry No. CIT-15-85, respecting:

**CERTAIN OIL AND GAS WELL CASING MADE OF CARBON  
STEEL ORIGINATING IN OR EXPORTED FROM ARGENTINA,  
THE FEDERAL REPUBLIC OF GERMANY, THE REPUBLIC OF  
KOREA AND THE UNITED STATES OF AMERICA**

**ORDER**

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of the review finding made by the Canadian Import Tribunal on November 6, 1986, in Review No. R-7-86, continuing, with amendment, the finding of material injury made by the Canadian Import Tribunal on April 17, 1986, in Inquiry No. CIT-15-85.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the above-mentioned finding with respect to the subject goods originating in or exported from the Republic of Korea and rescinds the said finding with respect to the subject goods originating in or exported from Argentina and the Federal Republic of Germany.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the above-mentioned finding with respect to the subject goods originating in or exported from the United States of America.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

John C. Coleman

John C. Coleman  
Member

Michèle Blouin

Michèle Blouin  
Member

Robert J. Martin

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Secretary

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*Special Import Measures Act* - Whether to rescind or continue, with or without amendment, the review finding made by the Canadian Import Tribunal on November 6, 1986, in Review No. R-7-86, continuing, with amendment, the finding of material injury made by the Canadian Import Tribunal on April 17, 1986, in Inquiry No. CIT-15-85.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: April 3 to 5, 1991

Date of Order and Reasons: June 10, 1991

Tribunal Members: Charles A. Gracey, Presiding Member  
John C. Coleman, Member  
Michèle Blouin, Member

Director of Research: Selik Shainfarber  
Research Manager: Daryl Poirier  
Statistical Officer: Sonia McEachern

Counsel of the Tribunal: Gilles B. Legault

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Distribution Clerk: Pierrette Hébert

**Participants:** John M. Coyne, Q.C.  
Ronald C. Cheng and  
Gregory O. Somers  
for Prudential Steel Ltd.,  
The Algoma Steel Corporation, Limited  
and IPSCO Inc.

**(Manufacturers)**

Peter Clark and  
Chris Hines  
for Paragon Industries, Inc.

for James A. D'Andrea  
Fedmet Tubulars, Division of Fedmet Inc.

for S.E. Gould  
Acadia Pipe & Supply (1989) Corp.

for C.J. Flavell and  
Geoffrey C. Kubrick  
Siderca Corporation

**(Importers/Exporters)**

**Witnesses:**

Carmen R. Fairman  
Vice-President, Sales  
Prudential Steel Ltd.

Bryce K. Nimmo, B. Comm.  
Manager - Marketing Support  
Prudential Steel Ltd.

R.A. (Bob) Clark  
General Supervisor  
Accounting Control  
The Algoma Steel Corporation, Limited

H. Scott Hamilton, P. Eng.  
IPSCO Inc.

Glenn A. Gilmore  
Trade Supervisor  
IPSCO Inc.

Gordon R. Schnell  
President  
LTV Energy Products Company Limited

Rogelio I. Nores  
Marketing Manager  
Siderca

Russell A. Weidner  
Executive Vice-President  
Paragon Industries, Inc.

D.A. (Dave) Sim  
Managing Director  
Acadia Pipe & Supply (1989) Corp.

Randy Calmusky  
Manager - OCTG Sales  
Prudential Steel Ltd.

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**CERTAIN OIL AND GAS WELL CASING MADE OF CARBON  
STEEL ORIGINATING IN OR EXPORTED FROM ARGENTINA,  
THE FEDERAL REPUBLIC OF GERMANY, THE REPUBLIC OF  
KOREA AND THE UNITED STATES OF AMERICA**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
JOHN C. COLEMAN, Member  
MICHÈLE BLOUIN, Member

**STATEMENT OF REASONS**

**BACKGROUND**

This is a review under subsection 76(2) of the *Special Import Measures Act* (SIMA) of the review finding made by the Canadian Import Tribunal (CIT) on November 6, 1986, in Review No. R-7-86, continuing, with amendment, its finding of material injury made on April 17, 1986, in Inquiry No. CIT-15-85, concerning certain oil and gas well casing made of carbon steel originating in or exported from Argentina, the Federal Republic of Germany (Germany), the Republic of Korea (Korea) and the United States of America (United States).

In Notice of Expiry No. LE-90-007, dated August 20, 1990, the Canadian International Trade Tribunal (the Tribunal) informed interested parties of the finding's scheduled expiry date, and asked for submissions from interested parties requesting or opposing the initiation of a review.

The Tribunal initiated a review of the finding by issuing a notice of review on December 24, 1990. The notice was forwarded to all known interested parties and was published in Part I of the Canada Gazette on January 5, 1991.<sup>1</sup>

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1. A notice of change of date of public hearing was issued on January 30, 1991, and published in Part I of the Canada Gazette on February 9, 1991.

As part of this review, the Tribunal sent questionnaires to known manufacturers and importers of the subject goods. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports relative to the review. In addition, 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 confidential exhibits were provided to independent counsel only.

Public and *in camera* sessions were held in Ottawa, Ontario, from April 3 to 5, 1991.

Prudential Steel Ltd. (Prudential), The Algoma Steel Corporation, Limited (Algoma), and IPSCO Inc. (IPSCO), the major Canadian manufacturers of the subject goods, were represented by counsel at the hearing, submitted evidence and made argument in support of continuing the finding. Fedmet Tubulars, Division of Fedmet Inc. (Fedmet) and Acadia Pipe & Supply (1989) Corp. (Acadia), both importers of the subject goods, were each represented by counsel at the hearing. They submitted evidence and made argument also in support of continuing the finding.

Paragon Industries, Inc. (Paragon) of the United States and Siderca Corporation (Siderca) of Argentina, both exporters of the subject goods, were each represented by counsel at the hearing. Counsel for Paragon submitted evidence and argument in support of the position that it should be excluded from any continuation of the finding against the United States. Counsel for Siderca submitted evidence and argument that the finding should be rescinded against Argentina or, alternatively, against Siderca.

## **THE PRODUCT**

The products under consideration in this review are described in the CIT finding of April 17, 1986, as oil and gas well casing made of carbon steel, having an outside diameter in the size range 114.3 mm to 273.0 mm (4.5 in. to 10¾ in.) inclusive, seamless or welded, plain end or threaded and coupled, supplied to meet American Petroleum Institute (API) specification 5A, grades H40, J55 and K55, or proprietary grades manufactured as substitutes for these specifications, originating in or exported from Argentina, Germany, Korea and the United States.

Oil and gas well casing is a category of products commonly referred to as Oil Country Tubular Goods (OCTG). Drill pipe, casing and tubing are used in the drilling of a well and conveying the oil/gas products to the surface. The subject oil and gas well casing is used in a well to protect the walls of the bored hole from collapsing, both during drilling and subsequent to completion of the well. Casing must be able to withstand outside pressure and internal yield pressures within the well. It must have sufficient joint strength to hold its own weight and must be equipped with threads sufficiently tight to contain the well pressure where lengths are joined.

Casing may be produced by either of two methods: the seamless process or electric resistance welded (ERW) process. Seamless casing is produced by first forming a central cavity in a solid steel billet. Subsequent rolling or extrusion operations shape and size the billet into a tubular product with the desired diameter and wall thickness. ERW casing is manufactured by passing flat-rolled steel (skelp) through a series of rolls

that form it into a cylindrical shape. The skelp edges are then heated to a high temperature by electrical resistance and pressed together to form a closed tube. Subsequently, the weld is heat-treated to make its molecular structure identical to that of the parent metal.

Within the subject goods range, the H40 specification is generally made through the ERW process; the J55 specification is made in either seamless or welded configuration; the K55 specification, which has higher tensile strength than the J55, is generally of the seamless variety, although one of the domestic producers, IPSCO, offers a welded product to compete with this specification.

The specifications covered by the injury finding are generally found in shallow wells, which typically measure less than 3,800 ft. in depth. The vast majority of wells drilled in Canada are of the shallow variety and are found mainly in Western Canada.

In these shallow wells, surface casing, usually ERW grade H40, is used in the upper 10 percent of the depth. From the end of the surface casing to the bottom of the well, the casing usually comprises grades J55 and K55, welded or seamless. In "sweet" environments (i.e., with relatively low percentages of sulphur), J55 ERW casing can be used in the well. However, in "sour" environments (where corrosive conditions exist because of higher sulphur content), the stronger K55 casing, most commonly of the seamless variety, is increasingly used in place of J55.

### **THE DOMESTIC INDUSTRY**

In 1986, four domestic producers of the subject oil and gas well casing responded to the manufacturer's questionnaire in the CIT inquiry: IPSCO, Algoma, Prudential and Sonco Steel Tube, a Division of Ferrum Inc. The participants in the present review are IPSCO, Prudential and Algoma, whose combined output comprises the vast majority of domestic production, and who are therefore considered the domestic industry, i.e., the production in Canada of like goods, for the purposes of this review.

IPSCO, of Regina, Saskatchewan, is a major producer of ERW subject goods, with the capacity to produce all subject grades. IPSCO does not produce seamless subject goods. IPSCO manufactures ERW OCTG to API specifications at plants in Edmonton, Calgary, Red Deer and Regina. In addition to OCTG, IPSCO's pipe mills produce a number of different grades of structural, standard and line pipe using the ERW method and the submerged arc weld method. IPSCO also produces skelp and other flat-rolled steel products in various grades, widths and thicknesses.

Prudential is a wholly owned subsidiary of Dofasco Inc. (Dofasco). Product lines include a wide range of OCTG that are manufactured at Prudential's production facility in Calgary, Alberta. In terms of the subject goods, Prudential produces ERW oil and gas well casing in API grades H40 and J55 only.

In August 1988, Dofasco took over ownership of Algoma, which is the sole domestic producer of seamless subject goods. It has the capacity to produce all grades and sizes of seamless oil and gas well casing under review, as well as non-subject casing and other OCTG. At its pipe plant in Sault Ste. Marie, Algoma produces, in addition to subject and non-subject casing, tubing, line pipe, standard pipe and other such products. Algoma also makes a wide range of steel products at its other mills, primarily for

Canada's construction, transportation and energy industries. These products include flat-rolled sheet and plate, structural shapes, rails and rail accessories and various semi-finished products.

In December 1989, Dofasco announced the merger of the pipe and tube operations of Prudential and Algoma. Although the two production facilities remain separate, Prudential has responsibility for the marketing and sales of the two companies' pipe and tube products. The merged operation is the only one in Canada that can offer both seamless and ERW products in the subject goods range.

The vast majority of sales by the three major producers are made to oil field supply distributors, who supply a variety of products to the drilling trade in addition to casing, such as tubing, pump jacks, drill pipe, rods, pumping equipment and other drilling supplies. Following the Dofasco takeover of Algoma, distributors generally carry and sell either IPSCO products or products of the Dofasco group (i.e., Prudential/Algoma) in an exclusive distribution arrangement.

#### **SUMMARY OF THE 1986 FINDING, IN INQUIRY NO. CIT-15-85**

On April 17, 1986, in Inquiry No. CIT-15-85, the CIT found that the dumping of the subject goods from Argentina, Germany, Korea and the United States had not caused, was not causing, but was likely to cause material injury to the production in Canada of like goods.

The CIT noted the historically high world price levels for oil at the beginning of the 1980s and the widespread expectation, at that time, that this price would continue to rise. In both Canada and the United States, the two largest markets for casing in the free world, the year 1981 was one of very high levels of drilling activity and was a record year up to that time for Canadian producers of the subject goods. The only significant import presence in the Canadian market was from Japan, and demand for casing, together with demand for other pipe and tube products produced by the same equipment, pressed upon domestic capacity.

Following a market decline in 1982, the casing market grew steadily and peaked in 1985, at a level that was nearly 65 percent higher than that of 1981. Nevertheless, as 1985 wore on, a significant portion of the domestic industry's record 1985 sales began to be made at discounted prices, as competition intensified and as drilling plans were curtailed in light of the softening (and subsequent collapse) of world oil prices. In the CIT's view, the price competition was caused not so much by the presence of low-priced imports as by intra-industry competition between IPSCO and Prudential, who had been caught with large inventories as demand declined.

However, the CIT concluded that, in the future, the continued dumping in Canada of the subject goods would cause material injury. All three major domestic producers had, in earlier years, made decisions regarding expansion of capacity in light of the circumstances of the time. The resulting excess capacity, the collapse in world oil prices that had taken place since the inquiry began, the phasing out of governmental oil exploration incentive programs and the decline in market demand for the subject goods combined to produce abnormal economic conditions. In addition, restrictions on imports of the subject goods into the United States made it probable, in the CIT's estimation, that

exports from third countries excluded from the United States market might be diverted into the Canadian market.

In November 1986, further to a request from the domestic industry, the CIT excluded from the injury finding oil and gas well casing that has been manufactured in Canada and is re-imported into Canada from the United States by the manufacturer thereof in the condition as exported from Canada or after having been threaded and/or coupled in the United States, but otherwise continued the said finding.

## **POSITION OF PARTIES**

### **The Industry**

According to counsel for the domestic industry, there were two questions that the Tribunal needed to address. First, whether the domestic industry was vulnerable to a resumption of dumping. Second, whether it was likely that dumping would recur if the finding were rescinded. Counsel submitted the following arguments and evidence in connection with each of those questions.

### **Likelihood of Material Injury**

Counsel submitted that the domestic industry was presently vulnerable to a resumption of dumping. The domestic market had contracted to the point where, in 1990, it was just over one-third the size it had been in 1985. Moreover, market prospects were poor in Canada, the United States and elsewhere, as drilling activity remained relatively low in the face of soft and uncertain oil prices and recessionary economic conditions. These weak demand conditions exacerbated the domestic industry's massive overcapacity to produce subject goods. This excess capacity was, in large part, attributable to Algoma's number two tube mill in Sault Ste. Marie, which had been planned in the early 1980s amid market expectations that have not been realized since the plant came on stream in 1987.

In support of their contention that the industry was vulnerable, counsel noted that current conditions are as poor as, and, in some respects (such as excess capacity and the decline in government drilling support programs), even worse than those that existed in 1986. In evaluating the industry's prospects at that time, the then CIT concluded that the industry was, indeed, vulnerable. Furthermore, the same conclusion concerning the industry's vulnerability was reached in a recent review of another finding concerning standard pipe that involved both IPSCO and Prudential.<sup>2</sup>

Counsel argued that the industry was actually more vulnerable than certain of the financial results indicated. More particularly, counsel submitted that IPSCO's 1990 financial results had been inflated by the effects of certain cost savings and certain write downs that would not recur in subsequent years. Hence, the longer term prospects for IPSCO and the consolidated industry picture were even bleaker than the results indicated.

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2. Carbon Steel Welded Pipe, Review No. RR-89-008, June 5, 1990.



Finally, counsel noted that, while the industry's vulnerability stemmed from a variety of factors, the issue to be decided was not why the industry was vulnerable. Rather, the issue to be resolved was simply whether the industry was vulnerable and this, in their view, had been established.

### **Likelihood of Resumption of Dumping**

Counsel representing the domestic industry noted that when, as in the present case, a finding is in place, it can be difficult for the industry to produce meaningful evidence of dumping of the subject goods in Canada by the named countries. This is because a finding ordinarily serves to eliminate or discourage dumping of the subject goods. However, the propensity to dump can still be established by examining the behavior of named countries in surrogate goods, such as, in the present case, other OCTG. Moreover, the standard of evidence that had to be met, in counsel's view, was whether the "balance of commercial probabilities" revealed a likelihood of resumed dumping. According to counsel, the application of this standard to the evidence would indicate that each of the named countries had the propensity to dump and would do so if the finding were rescinded. Within this context, they described the specific situation of each subject country, as follows.

#### **United States**

Counsel pointed to considerable overcapacity in the United States where market conditions are chaotic. Several witnesses attested to this, including Mr. Weidner of Paragon and Mr. Fairman of Prudential/Algoma. According to these witnesses, in many instances prices in the United States bore no relation to costs, as speculators and traders drove prices down by liquidating contracts at distress prices. If the finding were rescinded, there was a real possibility that these chaotic conditions would spread into Canada and cause dumping by U.S. exporters.

The propensity of U.S. exporters to dump into Canada is also evident in the increase, since 1986, in exports from the United States of low-priced surrogate goods, such as high-strength casing and low-strength tubing. In this connection, counsel drew particular attention to the information contained in Confidential Exhibit A-3, which described an offer by a major U.S. producer to supply high-strength casing in Canada at prices that appeared to be below costs of production. This aggressive pricing by U.S. producers was forcing down domestic prices both in non-subject goods as well as in subject goods, since all these goods naturally maintain a certain price relationship.

#### **Korea**

Counsel contended that Korea has "gross overcapacity." The Korean industry is entirely export-oriented as it has virtually no domestic OCTG demand requirements. The resulting propensity to dump was reflected in Korea's aggressive pricing behavior in the U.S. market. More particularly, counsel filed evidence (Exhibit B-2, at p.12), which showed that, in 1989, Korean producers had sold subject goods in the United States at prices that were considerably below the prices charged for similar subject goods exported to Canada in the same year. This aggressive pricing behavior in the United States was corroborated by the testimony of Mr. Weidner who stated that, in the U.S. market, "the biggest problem is Korea."

Counsel noted that Korea had not exported to Canada in 1990. They argued that this reflected a pattern of behavior whereby Korea absented itself from the Canadian market just prior to an upcoming review of the finding. This pattern of behavior was also noted by the Tribunal in the recent carbon steel welded pipe review.<sup>3</sup> In that review, the Tribunal also noted Korea's aggressive U.S. pricing and overcapacity in concluding that there was a propensity to dump by Korean producers.

### **Argentina**

Counsel submitted that Argentina's capacity to produce OCTG, including subject goods (as indicated in Exhibit B-6) greatly exceeds its domestic demand requirements (as shown in Exhibit B-5). This domestic overcapacity creates an obvious need to export on the part of Argentinean producers and, thereby, encourages a propensity to dump on their part. In this connection, Confidential Exhibit A-5 showed sales of both subject and non-subject casing in international markets at prices that were below Argentinean producers' costs of production.

Counsel further argued that Argentina is clearly interested in North American markets. Counsel referred to Exhibit A-8, which showed that, since 1986, Argentina's exports to the United States of subject and non-subject OCTG had increased substantially. Counsel also noted that Siderca had recently purchased a U.S. threading facility. This would allow it to increase its North American shipments by overcoming finishing bottlenecks related to a lack of threading capacity in Argentina.

Finally, in support of the contention that Argentinean producers had a propensity to dump, counsel noted a 1986 injury finding in the United States covering OCTG. In establishing normal values in that case, the U.S. Department of Commerce had looked at sales made by Argentina to Canada in 1985, and found that such sales had been made at prices below the cost of production.<sup>4</sup>

### **Germany**

Counsel submitted that German OCTG production was also export-oriented, with little domestic demand and large domestic capacity being underutilized. This manifested itself in low-priced sales in international markets by German producers. For example, import statistics contained in Exhibit B-12 showed that German seamless standard pipe was being sold in the United States at prices that were considerably below German prices for seamless standard pipe sold in Canada. Exhibit A-5 (at page 2) also described a lost sale of tubing in Canada to a German producer at prices that were below Canadian and, presumably, German production costs.

### **Importers/Exporters**

#### **Paragon (U.S. Exporter)**

Counsel argued that Paragon should be excluded from any continuation of the finding. The President of Paragon, Mr. Weidner, testified that Paragon was committed

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3. Ibid, p. 5.

4. U.S. Department of Commerce, International Trade Administration, [A-357-501].

to the Canadian market over the long term, that it was not his company's policy to dump and that Paragon's competitive advantage was its low cost of production. Moreover, counsel submitted that Paragon's responsible behavior was demonstrated by the evidence, which showed that the U.S. producer had, in fact, competed in the Canadian market, since 1986, at undumped prices that were still lower than Canadian prices. Given the above, there was no reason to impose on Paragon the cost and burden of complying with the annual normal value reviews required by Revenue Canada. Counsel noted that, in the past, exclusions had been granted to specific producers and they cited a number of cases in support of this point.

Mr. Weidner also provided information relating to the chaotic conditions prevailing in the U.S. market that, in his opinion, might induce other U.S. exporters to dump in Canada. According to Mr. Weidner, current U.S. market conditions are almost as bad as the conditions in 1986, when business failures were widespread and creditors were seizing and selling, at fire sale prices, assets such as OCTG inventories of insolvent producers and distributors. He noted that, despite the shrinking market, new capacity had come on stream since 1986 and, in many instances, pricing bore no relation to cost. Mr. Weidner described competition in the U.S. market as a "rat's nest," with the worst conditions prevailing in the Northeast United States.

#### **Fedmet (Canadian Importer of U.S. Goods)**

Counsel for Fedmet argued that the finding should be continued without exclusions. Current conditions in the United States are chaotic, as Mr. Weidner testified. In contrast, the Canadian market is orderly. This does not mean that trade is restricted since anyone can enter the Canadian market simply by requesting a normal value ruling from Revenue Canada. However, if the finding were rescinded, the stability that characterizes the Canadian market would disappear, and the same situation that prevails in the United States could take its place, resulting in dumping.

Counsel noted that Fedmet imports from a U.S. producer, Maverick Tube Corporation (Maverick), which has had normal values for a longer period of time than has Paragon. Maverick was in the same situation as Paragon in having complied with Revenue Canada's requirements. In the circumstances, it would be inequitable to exempt Paragon alone from the finding as this would give Paragon an advantage over Maverick in the Canadian market.

#### **Acadia (Canadian Importer of U.S. Goods)**

Counsel for Acadia also contended that the finding should be continued without any exclusions. He noted, as several witnesses had, the chaotic conditions in the U.S. market. In his view, those conditions had created a situation where U.S. distributors would look to Canada to unload excess inventories, at dumped prices, if the finding were rescinded. This contention was supported by the testimony of Mr. Sim (Managing Director of Acadia), who testified that he had, in recent months, received several inquiries from U.S. distributors seeking to sell OCTG in Canada at very low prices.

#### **Siderca (Argentinean Exporter)**

Counsel for Siderca contended that the finding should be rescinded against Argentina or, alternatively, against Siderca. According to counsel, Argentina had not had

a significant presence in the Canadian market for the past 10 years and had not exported subject goods to Canada since the 1986 finding. In short, Argentina was simply not interested in the Canadian market. Mr. Nores, Siderca's International Sales Manager, gave testimony in support of this contention.

According to Mr. Nores, Siderca was, for all practical purposes, the only producer in Argentina capable of exporting subject goods, and its production facilities were operating at, or close to, full capacity in order to serve its existing domestic and foreign customers. Siderca's interest in North America lay exclusively in the U.S. market to which it had made substantial commitments. It was out of concern for its international trading reputation in the United States and elsewhere that it was participating in the Tribunal's inquiry and seeking removal of the "stigma" that was associated with the finding and its continuation.

Counsel for Siderca noted that, in Exhibit A-5, industry counsel had alleged that certain international OCTG sales by Argentinean exporters had been made below the Argentinean producers' cost of production. This allegation was based on the assumption that those producers' costs of production of seamless goods were comparable to Algoma's. To show that this assumption was incorrect, counsel adduced evidence indicating that Siderca's average raw material and labor costs were both substantially below Algoma's.

As for the point raised by the domestic industry concerning the reference to Argentina's Canadian sales in the 1986 U.S. Department of Commerce decision, counsel pointed out that Argentina was excluded from the U.S. finding by reason of *de minimus* margins of dumping.

In considering the issue of the industry's vulnerability, counsel argued that an industry, which was vulnerable by reason of its own acts, was not entitled to continued protection under SIMA. In counsel's view, in order to continue a finding, there had to be at least some causal linkage between dumping and injury, and such a linkage was absent in this case. The industry's vulnerability was really Algoma's vulnerability, as IPSCO and, to a lesser extent, Prudential, were doing well. Algoma's principal problem was obviously of its own making. It had to do with the huge debt incurred to finance the number two tube mill, which was simply a poor investment decision. As a result, Algoma, for reasons having nothing to do with dumping, is worse off today than it had been when the finding was put in place, despite five years of protection.

### **ECONOMIC INDICATORS**

Against a backdrop of sharp year-to-year fluctuations, overall market demand for the subject goods declined in the second half of the 1980s compared to the first half of the decade. The first year of the period under review in this case, 1986, was an extremely poor year, with demand declining by some 59 percent from the decade high level recorded in 1985. Demand climbed from 1986 to 1988, before falling sharply again in 1989. By the end of 1990, market demand for the subject goods stood just above the depressed levels recorded in 1986.

Domestic production volumes and import levels followed the same general trends as the overall market, rising from lows recorded in 1986 to a higher level in 1988, before falling in 1989. Although production volumes and import levels in 1990 were somewhat higher than in 1986, they were sharply below the levels recorded in 1985. More

particularly, 1990 production was at only 45 percent of the level in 1985, and imports were down to 24 percent of the 1985 level.

The substantial decline in imports affected both subject and non-subject countries alike, with the exception of the United States, whose share of total imports grew dramatically between 1985 and 1990, going from 14 percent of imports to 96 percent over this period. Despite an increasing U.S. presence in the Canadian market, the overall decline in imports allowed the domestic industry to increase its market share from 74 percent in 1985 to 80 percent in 1990. None of the named countries, other than the United States, exported subject goods to Canada in 1990.

Following a sharp reduction in absolute terms in net income before taxes in 1986 compared to 1985, the consolidated industry net income before taxes for the subject goods improved in 1987, and again in 1988, before falling off sharply in 1989. Net income before taxes in 1990 continued to decline in absolute terms, and was only about half what it had been in 1985. On a disaggregated basis, from 1986 to 1990, the financial results were better for IPSCO, and, to a lesser extent, for Prudential, than for Algoma. More particularly, IPSCO and Prudential operated profitably over the period and maintained good unit margins on sales of subject goods, while Algoma was consistently unable to operate at profitable levels.

Despite the decline in overall market demand between 1985 and 1990, average prices for domestic subject goods have remained relatively stable and firm, at about \$1,020/tonne for ERW casing and \$1,070/tonne for seamless, although some softening in average prices was apparent in 1990. As noted above, imports in 1989 and 1990 have largely been from the United States and have essentially comprised ERW casing. The prices of these goods, sold in Canada, averaged about 4 percent below the price of domestically produced goods over the review period, although sales by low-cost U.S. producers such as Paragon were at a greater differential. Moreover, the f.o.b. prices currently received by U.S. producers for goods sold in Canada are about 10 to 15 percent higher than the prices received for the same goods sold by them in the United States.

### **Reasons for Decision**

A finding, which is scheduled to expire pursuant to the provisions of subsection 76(5) of SIMA, may be continued on review if two criteria are met. First, the evidence must satisfy the Tribunal that there is likely to be a resumption of dumped imports if the finding is rescinded. Second, the Tribunal must be able to conclude from the evidence that the resumption of dumping is likely to cause material injury to domestic production of like goods. As there are four countries covered by the finding in this case, the Tribunal has examined the foregoing criteria on a country-by-country basis.

### **United States**

The Tribunal notes that, ordinarily, in SIMA cases, exporters and importers take opposite positions from the domestic industry on the basic issues. In this case, the three parties representing U.S. interests in these proceedings, the U.S. producer Paragon and two Canadian importers of U.S. subject goods, Fedmet and Acadia, have essentially aligned themselves with the domestic industry in seeking continuation of the finding

against the United States (subject to a request for exclusion by Paragon that will be discussed later).

These parties have taken this position, according to the testimony of witnesses representing them, because they believe that the finding is necessary to maintain what they described as the "orderly" market conditions prevailing in Canada. They stated that these Canadian conditions contrast sharply with the disorderly conditions in the U.S. market - a market afflicted by soft demand, overcapacity, inventory build-up and low prices that, in many instances, bear no relation to costs. In their view, these U.S. conditions would quickly spread to Canada if the finding were rescinded, and would lead to dumping.

The position taken by Paragon, Fedmet and Acadia naturally reflects their economic interests. In Confidential Exhibits F-4 and F-5, Paragon has submitted evidence showing that the margins it obtains on its Canadian sales of subject goods are substantially higher than the margins it obtains on its U.S. sales. This same situation appears to be true for Fedmet's U.S. supplier, Maverick, based in Missouri, and Acadia's U.S. supplier, Newport Steel Corporation (Newport), located in Kentucky. Moreover, they are able to achieve these higher margins in Canada while still selling below the average prices of goods produced in Canada. Under these conditions, Paragon, Fedmet and Acadia (which together account for virtually all U.S. shipments to Canada since 1986) have been able to do well and gain substantial market share since the original finding. Therefore, it is understandable they would be concerned that the rescission of the finding against the United States could result in the same chaotic conditions in Canada as now plague the U.S. market.

All witnesses heard by the Tribunal on this topic described, more or less, the same chaotic situation in the U.S. market, including witnesses from the domestic industry as well as the Tribunal's own witness, Mr. Schnell, a Canadian distributor of the subject goods. Given U.S. market conditions as well as the proximity and ease of access to the Canadian market, the Tribunal concludes that removal of the United States from the finding could well lead to a precipitous decline in the prices offered by U.S. exporters in Canada, resulting in dumping.

The question that remains to be decided is whether the anticipated dumping from the United States is likely to cause material injury to the domestic industry. In addressing this point, counsel for the industry has contended that the industry is in a weakened condition and hence is vulnerable to a resumption of dumping. However, the Tribunal finds the evidence on this to be inconclusive. On a consolidated basis, the industry has consistently operated at profitable levels since 1986, as a result of relatively high average prices and good unit margins. IPSCO and, to a lesser extent, Prudential have led the way in achieving these positive returns. Moreover, the industry's overall performance would be much better were it not for Algoma's ongoing difficulties that, generally, stem from factors unrelated to dumping.

However, the Tribunal considers that, even if the industry as a whole were considered to be relatively strong, this would not negate the possibility of material injury occurring. If the effects of resumed dumping, which could ensue if the finding were rescinded, are potentially substantial, they could well be materially injurious to either a strong or a weak industry. In estimating these potential effects, the evidence shows that the average price of subject goods sold in the United States by the lowest cost

U.S. producers is as much as 15 to 20 percent below the average selling price in Canada of domestically produced subject goods (adjusted for exchange rates, duty, transportation and handling costs). If the finding were rescinded, it is likely that market forces would drive Canadian prices down to levels prevailing in the United States, which, according to Mr. Weidner, are in many cases too low to allow certain important U.S. producers of subject goods to cover their costs. Moreover, there exists a real risk that Canadian prices could decline below U.S. levels if, as witnesses have suggested, U.S. exporters take advantage of the rescission of the finding to unload their excess inventories in Canada. These potential price declines and implied dumping margins are clearly significant.

Canadian producers, of course, would be obliged to match these lower prices or suffer lost sales and market share. From the financial data submitted by the industry, it is evident to the Tribunal that even the financially strongest Canadian producer would be unable to operate profitably if Canadian prices fell to parity with, let alone below, current U.S. prices. In view of the foregoing, the Tribunal concludes that the effects of dumping would be substantial in magnitude and would constitute injury of a material nature, regardless of whether they affected a strong or a weak industry.

### **Korea**

No Korean exporters participated in this case. However, on the basis of the information available, the Tribunal has concluded that there exists a likelihood of resumed dumping from Korean producers should the finding against Korea be rescinded. The domestic industry has submitted evidence in the form of U.S. and Canadian import statistics (Exhibit B-2), which show that, in 1989, Korean producers were exporting welded casing to the United States at average prices that were some 24 percent below the average prices of Korean exports to Canada at the same time. Moreover, the data also show that the 1989 Korean prices in the United States were about 13 percent below U.S. average import prices for welded casing. In contrast, Korean average prices in Canada were slightly higher than average Canadian import prices.

In the opinion of the Tribunal, it is reasonable to infer from this data that the price of Korean goods in Canada, in 1989, was being held up by the price constraints established by their normal value rulings. If Korean producers had not been so constrained, they would likely have lowered their prices by substantial amounts to undersell their competition, just as they did in the United States. It is evident that such price reductions could only be achieved by dumping. The evidence further suggests that the aggressive pricing of Korean producers is still present, judging by their activities in the U.S. market. In this connection, the Tribunal notes the testimony of Mr. Weidner who said that currently "the biggest problem" in the U.S. market is Korea.

The Tribunal further notes that exports of subject goods from Korea declined sharply in 1989 and disappeared entirely in 1990. Industry counsel have stated that this reflects a deliberate pattern of behavior associated with Korean producers, whereby shipments decline in anticipation of an upcoming review of a finding. Whatever the motivation for the decline in exports, the Tribunal does not interpret this as reflecting any long-term disinterest by Korean producers in the Canadian market. In coming to this conclusion, the Tribunal notes that, in the period leading up to the 1986 finding, Korean firms were among the largest exporters of subject goods to Canada, both from subject and non-subject countries, and held a sizeable share of the Canadian market. In addition, the evidence shows that the disappearance of Korean subject goods from the

Canadian market coincides with a strong growth in exports from the United States from 1986 onwards, suggesting that Korean goods were displaced by U.S. goods because of market conditions, which could become favorable again to Korea in the future. Finally, the Tribunal notes that Korean producers are driven by an export imperative and are faced with large domestic production capacity, little or no domestic demand for subject goods, and generally soft world market.

In view of these considerations, the Tribunal believes that Korean producers will return to the Canadian market at the first available opportunity, quite likely at dumped prices. The Tribunal notes that in the 1990 review of the carbon steel welded pipe original finding against Korea, the Tribunal in that case came to the same conclusions about the likelihood of dumping by Korean producers, given their high production capacity, strong export orientation and aggressive U.S. pricing, even though they had withdrawn from the Canadian market shortly before that finding was reviewed.

Furthermore, the Tribunal considers that a resumption of dumping by Korea would be materially injurious to the domestic industry. As noted above, Korean exporters have the capacity to ship subject goods to Canada in considerable volumes in the future, as they have done in the past. Moreover, the Korean dumping margins implied in the above-discussed Canada/U.S. price comparisons are substantial. There is no doubt in the mind of the Tribunal that subject goods entering Canada from Korea at these potential volumes and margins of dumping would disrupt the domestic market and cause material injury to the domestic industry.

### **Argentina**

Counsel for the domestic industry have argued that dumping is likely to resume from Argentina because there exists excess capacity in that country and because Argentinean producers of subject goods have recently made international sales of both subject goods and OCTG at dumped prices. As far as the argument relating to excess capacity is concerned, the Tribunal notes that the supporting evidence provided by the industry is of a general nature, drawn from industry trade publications. It does not establish that Siderca, the principal, if not the sole, exporter of subject goods from Argentina, has excess capacity. Furthermore, this general evidence was contradicted by the specific information received from Mr. Nores, Siderca's International Sales Manager, who testified that Siderca is currently operating at, or close to, full capacity.

As to the second argument relating to allegedly dumped international sales, the Tribunal notes that this allegation is premised on the assumption by the industry that these sales were made below Argentinean producers' costs of production. Mr. Nores denied that the sales cited by the industry were made below production costs. Moreover, he submitted evidence on Siderca's raw material and labor costs that suggests to the Tribunal that Siderca's costs of production are well below industry estimates, undermining the validity of the industry's assumptions.

In making its case, the industry also directed the Tribunal's attention to certain extracts from a 1986 U.S. Department of Commerce decision that refers to dumping in Canada by Argentinean producers in 1985. The Tribunal notes that it is not in dispute, in this case, that Argentinean producers dumped in Canada during that period and that this resulted in the finding that is here under review. To rely on that episode now as a reason for continuing the finding, in effect, calls into question the need for the present



review and argues for automatically continuing the finding. The Tribunal does not accept this argument.

On balance, the Tribunal finds that the industry has not advanced sufficient grounds for continuing the finding against Argentina, especially in light of the fact that Argentina has not been a significant participant in the Canadian market for the past 10 years, and has shipped almost no subject goods to Canada in the last 5 years. Mr. Nores also testified that it was not Siderca's present plans to re-enter the Canadian market in the foreseeable future. The Tribunal does not interpret Mr. Nores' testimony to mean that Siderca will not re-enter the Canadian market if, and when, it is in the company's economic and strategic interests. However, the Tribunal has been given no reason to believe that, given Siderca's high capacity utilization and low production costs, its re-entry into the Canadian market will inevitably involve dumping.

### **Germany**

On the basis of the evidence submitted, the Tribunal is not persuaded that there is a likelihood of resumed dumping by German producers. The industry has presented evidence to show that German producers are selling seamless standard pipe (non-subject goods) at lower prices in the United States than in Canada and have argued that this shows a propensity to dump by Germany. The Tribunal fails to see that this conclusion must be drawn from this evidence, quite apart from the fact it does not relate to the subject goods. On the contrary, this evidence supports, just as strongly, a conclusion that Germany is not likely to dump either seamless standard pipe or subject goods. There is no injury finding in place in Canada on seamless pipe. Therefore, the Canadian prices reported for these German goods reflect the voluntary decisions of German producers to sell them in Canada at relatively high levels.

The industry has also presented evidence regarding a lost sale by Algoma to German imports of non-subject tubing at prices that were low and allegedly dumped. This industry allegation of dumping is based on assumptions about German production costs on which no direct evidence was presented. Moreover, according to the evidence, the tubing sale concerned appears to have been no more than an isolated transaction. The Tribunal, therefore, attaches little weight to this allegation.

The industry has also presented general information regarding German capacity to produce OCTG (i.e., subject as well as non-subject goods) and has argued that there is excess capacity in Germany that will lead to a resumption of dumping. Although the evidence submitted is imprecise, the Tribunal thinks it is possible that there is excess capacity to produce subject goods in Germany, given the virtual absence of domestic demand for casing in Germany and the soft demand conditions in many foreign markets, including North America. However, even if such excess capacity exists, the Tribunal is not prepared on this ground alone to conclude that dumping from Germany is likely, especially in light of import statistics that show that German subject goods have been absent from the Canadian market for the past five years.

### **REQUEST FOR EXCLUSION**

A final matter is the request by a U.S. producer, Paragon, to be excluded from any continuation of the finding against the United States. Paragon has asked for the exclusion on the grounds that it has, since 1986, complied with Revenue Canada normal

value determinations, i.e., it has not dumped in Canada since the finding. In support of this request, counsel for Paragon referred the Tribunal to a number of past cases where exclusions had been granted to specific producers.

The Tribunal has examined those cases cited and finds that they are not applicable to the present case. In none of those cases, and in no other case that the Tribunal is aware of, has a specific producer been excluded from continuation of a finding on the grounds advanced by Paragon. There are past cases where particular producers, who were included in a preliminary determination of dumping by Revenue Canada, were then excluded from a Tribunal finding because they had not caused material injury to the domestic industry. There are also past cases where specific producers were excluded from a finding or its continuation because of unique circumstances related to that company's product or its export to and import into Canada. Neither of those situations apply to Paragon, which was included in the original injury finding and which has no claims to uniqueness.

The Tribunal notes that Paragon and its two U.S. competitors, Maverick and Newport, have participated in the Canadian market without any significant dumping over the period. However, compliance with normal value rulings has been facilitated, over the period, by relatively high Canadian prices and other market circumstances, such as exchange rates, which have enhanced the cost and price competitiveness of U.S. goods. This makes it difficult for the Tribunal to draw firm conclusions about future behavior based on the past. The Tribunal concludes that the case has not been made for according Paragon treatment that is different from other U.S. producers by excluding it from the continuation of the finding against the United States.

## **CONCLUSION**

Having regard to the foregoing, the Tribunal concludes that dumping of subject goods from the United States and Korea is likely to resume if the finding under review were rescinded, and that such resumed dumping would likely materially injure the production in Canada of like goods. Accordingly, the finding is continued against producers in the United States and Korea. Furthermore, Paragon's request for exclusion from the continuation of the finding against U.S. exporters is denied. With respect to Argentina and Germany, the Tribunal concludes that resumed dumping of the subject goods is unlikely. Accordingly, the finding is rescinded with respect to producers in those countries.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

John C. Coleman

John C. Coleman  
Member

Michèle Blouin

Michèle Blouin  
Member