



Ottawa, Monday, September 10, 1990

Review No.: RR-89-011

IN THE MATTER OF a review, under section 76 of the *Special Import Measures Act*, of the findings of material injury of the Anti-dumping Tribunal dated December 29, 1977, as amended, and October 14, 1983, and of the findings of material injury of the Canadian Import Tribunal dated June 7, 1985, and December 18, 1987, respecting:

**WIDE FLANGE STEEL SHAPES ORIGINATING IN OR EXPORTED FROM
THE UNITED KINGDOM, FRANCE, JAPAN, THE REPUBLIC OF SOUTH AFRICA,
BELGIUM, LUXEMBOURG, THE FEDERAL REPUBLIC OF GERMANY,
THE REPUBLIC OF KOREA AND SPAIN**

ORDER

The Canadian International Trade Tribunal, under the provisions of section 76 of the *Special Import Measures Act*, has conducted a review of:

- the finding of material injury of the Anti-dumping Tribunal dated December 29, 1977, concerning the dumping in Canada of wide flange steel shapes, beams, columns or sections with a total out-to-out depth of less than 25 inches (i.e., the depth between the outside surface of the flanges), to include H-beams, H-piles, H-bearing piles, bearing piles; miscellaneous light wide flange columns, beams and H-beam shapes; parallel flange beams and columns; universal beams, columns and bearing piles; broad flange beams and shapes and wide flange stanchions, with the exception of certain sections, originating in or exported from the United Kingdom, France, Japan, the Republic of South Africa and Luxembourg in Inquiry No. ADT-12-77, amended by Order dated October 14, 1983;
- the finding of material injury of the Anti-dumping Tribunal dated October 14, 1983, concerning the dumping in Canada of wide flange steel shapes, beams, columns or sections with a total out-to-out depth of less than 25 inches (i.e., the depth between the outside surface of the flanges), to include H-beams, H-piles, H-bearing piles, bearing piles; miscellaneous light wide flange columns, beams and H-beam shapes; parallel flange beams and columns; universal beams, columns and bearing piles; broad flange beams and shapes and wide flange stanchions, with the exception of certain sections, originating in or exported from Belgium, the Federal Republic of Germany and the Republic of Korea in Inquiry No. ADT-9-83;

- the finding of material injury of the Canadian Import Tribunal dated June 7, 1985, concerning the importation into Canada of subsidized wide flange steel shapes, beams, columns or sections with a total out-to-out depth of less than 25 inches (i.e., the depth between the outside surface of the flanges), to include H-beams, H-piles, H-bearing piles, bearing piles; miscellaneous light wide flange columns, beams and H-beam shapes; parallel flange beams and columns, universal beams, columns and bearing piles; broad flange beams and shapes and wide flange stanchions, with the exception of the wide flange shape sections excluded by the Anti-dumping Tribunal from its finding of October 14, 1983, originating in or exported from Spain in Inquiry No. CIT-1-85; and
- the finding of material injury of the Canadian Import Tribunal dated December 18, 1987, concerning the dumping in Canada of wide flange steel shapes, beams, columns or sections made of carbon or alloy steel having a total out-to-out depth of less than 25 inches (i.e., the depth between the outside surface of the flanges) to include H-beams, H-piles, H-bearing piles, bearing piles; miscellaneous light wide flange columns, beams and H-beam shapes; parallel flange beams and columns; universal beams, columns and bearing piles; broad flange beams and shapes and wide flange stanchions, with the exception of sections W4 x 4 in all weights, W6 x 4 9 lbs/ft., W8 x 4 10 lbs/ft., W10 x 4 12 lbs/ft., W12 x 4 16 lbs/ft. and lighter, W12 x 13 210 lbs/ft. and heavier, W14 x 16 in all weights and W16 x 10.25 89 lbs/ft. and heavier, which exclusions apply to all the subject goods save carbon steel bearing pile and high strength low alloy bearing pile, originating in or exported from Spain in Inquiry No. CIT-7-87.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds the above-mentioned findings of December 29, 1977, October 14, 1983, June 7, 1985, and December 18, 1987.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

John C. Coleman
John C. Coleman
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert J. Martin
Robert J. Martin
Secretary



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THE REPUBLIC OF KOREA AND SPAIN**

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

DECISION: The Canadian International Trade Tribunal (the Tribunal) rescinds the above-mentioned findings. Low North American prices set by US mini-mills are preventing the domestic industry from operating at profitable levels. Consequently, the domestic industry is likely to be materially injured should imports of dumped or subsidized wide flange shapes enter Canada and depress prices even further. However, the evidence shows that subsidizing has ceased, and market conditions make it unlikely that dumping will resume. Low North American prices and strong demand in home and other export markets suggest to the Tribunal that exporters from the named countries will be unwilling to sustain losses and will continue to withdraw from the Canadian market.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: June 18 to 21, 1990
Date of Order and Reasons: September 10, 1990

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John C. Coleman, Member
Sidney A. Fraleigh, Member

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Gregory O. Somers
for The Algoma Steel Corporation, Limited
(Manufacturer)

John D. Richard, Q.C.
and David Liston
for TradeARBED Canada Inc.

Peter Clark
and Chris Hines
for British Steel Canada Inc.

Manfred F. Wirth
Chairman
Wirth Limited

(Importers)

Donald J. Goodwin
for ENSIDESA
and Stahlwerke Peine-Salzgitter AG

(Exporters)

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The Algoma Steel Corporation, Limited

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Barry L. Craig
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Aristrain International Inc.
Jose Maria Aristrain S.A. and
Jose Maria Aristrain Madrid S.A.

Herminio Blanco Piña
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TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member
JOHN C. COLEMAN, Member
SIDNEY A. FRALEIGH, Member

STATEMENT OF REASONS

SUMMARY

The Canadian International Trade Tribunal (the Tribunal) has reviewed four findings of material injury relating to the domestic production of certain wide flange steel shapes. The first finding was made in 1977 and covered imports from the United Kingdom, France, Japan, the Republic of South Africa and Luxembourg. In 1983, a second finding was made to cover imports from Belgium, the Federal Republic of Germany (Germany) and the Republic of Korea (Korea). The third and fourth findings, in 1985 and 1987, applied to imports from Spain. All the findings concerned dumping, with the exception of the 1985 Spanish finding against ENSIDESA, which related to subsidized imports. The Algoma Steel Corporation, Limited (Algoma), the sole domestic producer of the subject goods, asked the Tribunal to continue the findings. Three importers of the subject goods, namely, TradeARBED Canada Inc. (TradeARBED), Wirth Limited and British Steel Canada Inc. (British Steel), as well as two Spanish producers, ENSIDESA and Aristrain International Inc., and a German producer, Stahlwerke Peine-Salzgitter AG (Peine-Salzgitter), asked that the findings be rescinded.

There are two questions that the Tribunal must address. First, if the importation of dumped or subsidized goods recurs, is there likely to be material injury to the domestic production of the subject goods? Second, does the evidence establish that the importation of dumped or subsidized goods is likely to recur in the foreseeable future?

The Tribunal finds that a resumption of importation of dumped or subsidized goods would likely cause material injury to Algoma. The company's financial results show persistent losses in the production of wide flange steel shapes throughout most of the past decade. A principal cause of these poor results in the recent past has been competition from US mini-mills whose prices Algoma has had to follow or lose market share. Other factors have also contributed to Algoma's present difficulties, including the lack of investment, since 1979, in upgrading the production facilities for the subject goods. As a result, the production of the subject goods in Canada is in a highly depressed state and is unlikely to improve in the foreseeable future.

Turning to the second question, the evidence shows that the Spanish producer, ENSIDESA, is not now receiving subsidies and that the conditions that caused the subsidies to be granted are no longer present. The Tribunal also finds no persuasive evidence that dumping is likely to recur in the foreseeable future. The low North American prices set by US mini-mills have caused offshore producers to reduce substantially and, in some cases, to discontinue shipments to Canada and the United States. Moreover, importer and exporter witnesses testified that, under buoyant demand in Europe, Asia and elsewhere, offshore producers are operating, and will continue to operate, at much higher capacity levels than when the findings were made. They have little interest in shipping to unprofitable markets such as Canada or the United States. The fact that offshore producers have left substantial amounts of their 1989 and 1990 (to date) US voluntary export restraints (VER) quota entitlements unfilled support this position.

The Tribunal notes that industry counsel submitted evidence to show that offshore producers are currently exporting to the United States at prices below their Canadian export prices. According to counsel, this showed that the offshore producers would likely drop their Canadian prices to what would be dumped level if the findings were rescinded. The Tribunal is not persuaded that this would happen. The evidence shows that prices in Canada are higher than prices in the United States by an amount roughly equal to the cost of the duty and freight required to import mini-mill products from the United States. This cost difference would allow offshore producers to set export prices somewhat higher for Canada than for the United States, even if the findings were rescinded.

In conclusion, although the industry is susceptible to material injury should the importation of dumped or subsidized goods resume, the evidence does not establish to the satisfaction of the Tribunal that dumping by the subject exporters is likely to resume or that a return of subsidized imports is imminent.

BACKGROUND

This is a review, under section 76 of the *Special Import Measures Act* (SIMA), of the four findings of material injury respecting wide flange steel shapes. The particulars of these four findings are as follows:

- the finding of the Anti-dumping Tribunal (ADT) dated December 29, 1977, concerning the dumping in Canada of wide flange steel shapes, beams, columns or sections with a total out-to-out depth of less than 25 inches (i.e., the depth between the outside surface of the flanges), to include H-beams, H-piles, H-bearing piles, bearing piles; miscellaneous light wide

flange columns, beams and H-beams shapes; parallel flange beams and columns; universal beams, columns and bearing piles; broad flange beams and shapes and wide flange stanchions, with the exception of certain sections, originating in or exported from the United Kingdom, France, Japan, the Republic of South Africa and Luxembourg in Inquiry No. ADT-12-77, amended by Order dated October 14, 1983;

- the finding of the ADT dated October 14, 1983, concerning the dumping in Canada of wide flange steel shapes, beams, columns or sections with a total out-to-out depth of less than 25 inches (i.e., the depth between the outside surface of the flanges), to include H-beams, H-piles, H-bearing piles, bearing piles; miscellaneous light wide flange columns, beams and H-beam shapes; parallel flange beams and columns; universal beams, columns and bearing piles; broad flange beams and shapes and wide flange stanchions, with the exception of certain sections, originating in or exported from Belgium, the Federal Republic of Germany and the Republic of Korea in Inquiry No. ADT-9-83;
- the finding of the Canadian Import Tribunal (CIT) dated June 7, 1985, concerning the importation into Canada of subsidized wide flange steel shapes, beams, columns or sections with a total out-to-out depth of less than 25 inches (i.e., the depth between the outside surface of the flanges), to include H-beams, H-piles, H-bearing piles, bearing piles; miscellaneous light wide flange columns, beams, and H-beam shapes; parallel flange beams and columns; universal beams, columns and bearing piles; broad flange beams and shapes and wide flange stanchions, with the exception of the wide flange shape sections excluded by the ADT from its finding of October 14, 1983, originating in or exported from Spain in Inquiry No. CIT-1-85; and
- the finding of the CIT dated December 18, 1987, concerning the dumping in Canada of wide flange steel shapes, beams, columns or sections made of carbon or low alloy steel having a total out-to-out depth of less than 25 inches (i.e., the depth between the outside of the flanges) to include H-beams, H-piles, H-bearing piles, bearing piles; miscellaneous light wide flange columns, beams and H-beam shapes; parallel flange beams and columns; universal beams, columns and bearing piles; broad flange beams and shapes and wide flange stanchions, with the exception of sections W4 x 4 in all weights, W6 x 4 9 lbs/ft., W8 x 4 10 lbs/ft., W10 x 4 12 lbs/ft., W12 x 4 16 lbs/ft. and lighter, W12 x 13 210 lbs/ft. and heavier, W14 x 16 in all weights and W16 x 10.25 89 lbs/ft. and heavier, which exclusions apply to all the subject goods save carbon steel bearing pile and high strength low alloy bearing pile, originating in or exported from Spain in Inquiry No. CIT-7-87.

Pursuant to section 76 of SIMA, the Tribunal initiated a review of the findings and issued a notice of review on November 27, 1989. This notice was forwarded to all known interested parties and was published in Part I of the December 9, 1989, edition of the Canada Gazette.

As part of this review, Tribunal members and staff visited Algoma steel facilities in Sault Ste. Marie, Ontario. In addition, the Tribunal sent detailed questionnaires to the Canadian manufacturer and known importers of the subject goods. From the replies to

the questionnaires and other sources, the Tribunal's research staff prepared protected and public pre-hearing staff reports relative to the review. The record of this review consists of all relevant documents, including the original findings, the notice of review and public and protected/confidential sections of the replies to the questionnaires. All public exhibits were made available to interested parties and protected exhibits, to independent counsel only.

The Tribunal also invited the President of Marshall Steel Limited and the President of Ennisteel Service Centre to answer questions put to them by members of the Tribunal and by counsel for each side. Moreover, at the request of counsel for TradeARBED, the President of Dofasco Inc. (Dofasco) was invited by counsel for Algoma to provide details of Dofasco's acquisition of Algoma.

Algoma, a manufacturer, was represented by counsel at the hearing, submitted evidence and made argument in support of continuing the findings.

TradeARBED, British Steel, ENSIDESA, Peine-Salzgitter and Jose Maria Aristrain Madrid S.A., importers and exporters of the subject goods, were all represented by counsel at the hearing. In addition, the Chairman of Wirth Limited took part in the hearing. They all submitted evidence and made argument in support of rescinding the findings.

THE PRODUCT

The steel products covered by this review are commonly known in the marketplace as wide flange steel shapes and bearing piles. The products are covered by two formal product definitions. The basic difference in these definitions is the number of products excluded in each case. The general product definition, common to all findings, and the two lists of exclusions are as follows.

Product Definition

Wide flange steel shapes, beams, columns or sections with a total out-to-out depth of less than 25 inches (i.e., the depth between the outside surface of the flanges), to include H-beams, H-piles, H-bearing piles, bearing piles; miscellaneous light wide flange columns, beams and H-beams shapes; parallel flange beams and columns; universal beams, columns and bearing piles; broad flange beams and shapes and wide flange stanchions, with the exception of certain sections.

Exclusions

1977, 1983 and 1985 Findings

1987 Finding

W4 x 4	in all weights	Idem	W4 x 4	in all weights
W6 x 4	12 lbs/ft. and lighter		W6 x 4	9 lbs/ft.
W8 x 4	13 lbs/ft. and lighter		W8 x 4	10 lbs/ft.
W10 x 4	17 lbs/ft. and lighter		W10 x 4	12 lbs/ft.
W12 x 4	16 lbs/ft. and lighter	Idem	W12 x 4	16 lbs/ft. and lighter
W12 x 13	210 lbs/ft. and heavier	Idem	W12 x 13	210 lbs/ft. and heavier
W14 x 10	61 lbs/ft. and heavier			
W14 x 14½	90 lbs/ft. and heavier			
W14 x 16	in all weights	Idem	W14 x 16	in all weights
W16 x 10¼	67 lbs/ft. and heavier		W16 x 10¼	89 lbs/ft. and heavier
W18 x 11	76 lbs/ft. and heavier			
W21 x 12¼	101 lbs/ft. and heavier			

These products are mainly used to form the frames of industrial and commercial buildings and bridges. Wide flange steel shapes are also used to a more limited degree in the fabrication of heavy machinery and equipment, off-highway vehicles and railway cars. Lighter wide flange steel shapes are used as supports for tunnel liners in underground mining and in residential construction. Wide flange steel shapes undergo some fabrication such as painting, drilling or hole punching before they are erected. Bearing piles are usually driven into the ground and serve as foundations supports.

The subject goods are defined by a series of numerical designations that identify the out-to-out depth of flanges, as well as the width of flanges. For example, in terms of imperial measure, W16 is the proper designation for a-16 inch WF (wide flange). A family of weights per linear foot with varying cross-sectional properties is available with each basic size. The size and weight range required by a customer is determined by the engineering specifications established for a construction project.

As a vertically integrated, primary iron and steel producer, Algoma manufactures raw steel in the form of blooms (rectangular steel blocks) from its blooming mill or blanks (semi-finished shapes) from its continuous casting facilities. The blooms or blanks are reheated and rolled through a breakdown mill, at which point the steel is destined for the wide flange mill or the rail mill.

In the wide flange mill, the semi-finished steel is hot-rolled through a series of contoured rolls that progressively elongate and shape the steel to the required dimensional tolerances. The wide flange steel shape is then hot cut to length, water cooled and finally straightened.

There are other methods of producing the subject goods. Various producers in the United States (i.e., Nucor, Chaparral and Northwestern) have introduced mini-mills. Mini-mills manufacture steel products from scrap materials on new rolling facilities. They utilize the latest steel-making technologies, including electric furnaces.

THE DOMESTIC INDUSTRY

Algoma is the only producer of the subject goods in Canada, and, for purposes of the four inquiries, it was considered the domestic industry. In the present review, Algoma is also considered to constitute the domestic industry.

Dofasco acquired Algoma on August 19, 1988. Dofasco presently holds 100 percent of Algoma's common shares. Algoma has a present capacity to produce and process approximately 3 million tonnes of raw steel or 2.5 million tonnes of finished steel annually. Of the total plant output, wide flange steel shapes represent a minor proportion. Algoma operates a major steelworks at Sault Ste. Marie and an iron ore mine and auxiliary facilities at Wawa, Ontario. In addition, through subsidiaries, Algoma owns coal mines and has an equity interest in an iron ore mine and pelletizing facility located in the United States.

Algoma manufactures a broad range of steel products that includes flat-rolled sheet and plate, structural shapes (including wide flange steel shapes), seamless tubular products, rails and rail accessories, and various semi-finished products.

Algoma supplies the market for wide flange steel shapes directly through sales to structural steel fabricators in mill quantities and indirectly through sales to steel service centres (distributors) that maintain local inventories and supply fabricators and others in smaller quantities. These sales are made by personnel located at Algoma's sales offices in Mississauga, Ontario, and Calgary, Alberta. In a few cases, sales are made directly to end users (e.g., Ontario Hydro).

SUMMARY OF PAST FINDINGS

The four findings in force covering wide flange steel shapes are summarized below.

The 1977 Finding (ADT-12-77)

On December 29, 1977, the ADT found that the dumping of wide flange steel shapes, with the exception of certain sections, originating in or exported from the United Kingdom, France, Japan, the Republic of South Africa and Luxembourg had caused, was causing and was likely to cause material injury to the production in Canada of like goods. Belgium was excluded from this finding.

Algoma submitted evidence and argument that the material injury caused by the dumped imports was in the form of loss of market share and sales volume, reduced production and capacity utilization, price suppression and price erosion, reduced profitability and loss of employment. In answer to Algoma's allegations, the importers and other interested parties suggested that other factors, unrelated to dumping, were the cause of the domestic industry's troubles.

The ADT found that, over the period of 1974 through 1977, Algoma was squeezed between escalating costs of production and falling prices of imports from the subject countries. By choosing not to compete with these imports on the basis of price, it suffered loss of volume and market share. If Algoma had been able to increase its

volume of sales while holding prices, then its profitability, employment and utilization of capacity would have increased accordingly, as many cost elements would have been amortized over a larger volume.

Counsel for the importers and exporters alleged that Algoma's marketing policy was partly responsible for its loss of sales to the dumped imports. A majority of the ADT held the view that the complainant's marketing policy ensured effective national coverage and was not a contributing factor to the loss of sales to dumped imports. With respect to the claim of importers/exporters that a substantial proportion of the dumped imports were in sizes not made by the domestic producer, a majority of the ADT felt that there was a high degree of substitutability of sizes, which was greatly influenced by price.

The 1983 Finding (ADT-9-83)

On October 14, 1983, the ADT found that the dumping in Canada of wide flange steel shapes, with the exception of certain sections, originating in or exported from Belgium, Germany and Korea had caused, was causing and was likely to cause material injury to the production in Canada of like goods, but exports from Spain were excluded from this finding.

A major issue was Algoma's inability to satisfy all of the market requirements for the subject goods. Algoma admitted that its range of wide flange steel shapes satisfied about 80 percent of the range required, but that, with product substitutability, it could supply the subject goods to meet in excess of 90 percent of Canadian requirements. The complainant proposed the exclusion of a number of sections from any injury finding that the ADT might make. The proposed exclusions were subsequently accepted by the ADT. The ADT also amended Inquiry No. ADT-12-77 to provide for the same exclusions.

During 1982 and 1983, the share of imports from the countries being restrained from dumping under the 1977 finding fell sharply, while imports from the new dumping countries (Belgium, Germany and Korea) gained a dominant position. In the ADT's opinion, this increase in market share was achieved by dumping.

While recognizing the impact of the prevailing recession, the ADT was of the view that the dumping contributed greatly to the extremely poor performance of Algoma in 1982 and 1983. The injury suffered by Algoma consisted mainly of price suppression and, more particularly, of price concessions that it was forced to make. The ADT was satisfied that, had it not been for the presence of the dumped imports and the prices at which they were being offered, a considerable volume of sales in excess of those made could have been achieved by Algoma. Moreover, in the ADT's opinion, there was a likelihood of material injury occurring in the future if dumped imports from Belgium, Germany and Korea continued to enter Canada.

The 1985 Finding (CIT-1-85)

On June 7, 1985, the CIT found that the importation into Canada of subsidized wide flange steel shapes, with the exception of certain sections, originating in or exported from Spain had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

Algoma alleged that, after the exclusion of Spain from the ADT's injury finding of October 1983, there was an enormous surge in imports from that country, which effectively displaced imports originating in Belgium, Germany and Korea, the countries covered by the ADT's 1983-finding. Algoma claimed that increases in Spanish market share were made at the expense of its own production. As a result, Algoma lost sales and suffered price erosion and price suppression with resultant severe financial losses.

The CIT noted that, following the exclusion of Spain from the 1983 finding, Spanish imports surged in the fourth quarter of 1983 and continued to increase throughout 1984. For the full year of 1984, Spanish shipments approached 50,000 tonnes, a volume close to that reached in 1981 when the total apparent market was more than 40 percent larger.

In the CIT's view, the large gains in market share by Spanish imports were largely achieved because of the subsidized prices at which the product was offered on the Canadian market. The CIT was satisfied that Algoma had suffered, and was continuing to suffer, material injury in the form of price suppression and lost market share and that the company had lost significant sales to subsidized Spanish imports.

With respect to the future, the CIT believed that, unless measures were taken to restrict the effect of the subsidies, these would continue to cause material injury. The CIT was satisfied that the Spanish manufacturers had ample capacity to supply significant tonnage to the Canadian market in the immediate future.

The 1987 Finding (CIT-7-87)

On December 18, 1987, the CIT found that the dumping in Canada of wide flange steel shapes, with the exception of certain sections, originating in or exported from Spain had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

Following the affirmative finding by the CIT on June 7, 1985, against subsidized imports from Spain, imports from this source again surged, but this time from a different supplier, Jose Maria Aristrain S.A. (Aristrain). ENSIDESA had been the largest exporter of Spanish goods up until that time. By the first half of 1986, Aristrain had more than taken the market share vacated by ENSIDESA, as Spanish imports reached 50 percent of total imports. In the CIT's view, the large gains of import share and market share from the second half of 1985 through the end of 1986 were largely attributable to low prices made possible by the dumping. The CIT concluded that the price suppression resulting from the dumping of Spanish wide flange steel shapes and its effect on the Canadian producer's financial performance had caused material injury to Canadian production.

During the first half of 1987, imports from Spain receded as Algoma made it known that it was lodging an anti-dumping complaint against alleged dumped imports from Spain. Algoma was able to reduce its discounts and, at the same time, reduce its financial losses at a significant degree. During the second half of that year, Algoma was recovering at a faster rate because market demand was further strengthening and prices

were increasing. However, the CIT was not satisfied that the improvements in volumes and prices for the Canadian product would be sustained in the absence of anti-dumping measures.

POSITION OF PARTIES

The Industry

Turning to the present review, counsel for Algoma noted that, as far as Algoma's vulnerability was concerned, the facts of the case were, by and large, not in dispute. Algoma's wide flange steel shape operation was at a critical stage. The operation was simply not competitive with US mini-mills, such as Nucor, Chaparral and, to a lesser extent, Northwestern, which could operate profitably at below Algoma's fully absorbed cost of operations. Although these mini-mills produced subject goods that covered 75 percent of Algoma's product range, they were gearing up to compete, over the next few years, against the full size range produced by Algoma.

Counsel acknowledged that the difficulties facing Algoma arising from US mini-mill competition did not relate to dumping. However, in counsel's view, this was irrelevant. What mattered was that this competition had lowered prices in Canada and had forced Algoma to incur significant losses in order to maintain its share of the market. This weakened Algoma and rendered it highly vulnerable to material injury from any resumption of dumping.

Counsel noted that Algoma was considering various short- and long-term options on how to meet the competitive threat posed by the mini-mills. One of the short-term options included upgrading certain rail production facilities that operate in tandem with the wide flange steel shape mill. This investment, if made, would give Algoma time to assess long-term options for the wide flange steel shape operation. By buying time, Algoma could better assess the long-term direction of scrap prices, an important raw material cost for mini-mills. If scrap prices rose, the mini-mills' cost advantage over Algoma would narrow, possibly affecting the type of long-term investment Algoma might choose to make.

In sum, Algoma was not prepared to leave the industry and lay off the 1,300 employees involved in the wide flange beam and rail complex. Rescinding the findings, however, might exacerbate Algoma's difficulties if this resulted in renewed dumping, which could well foreclose certain options for continuing the wide flange steel shape operations.

As far as the likelihood of renewed dumping was concerned, counsel noted that imports of the subject goods from the countries covered by the findings had been declining rapidly in the face of US mini-mill competition and, in some cases, had virtually ceased. Counsel also noted that witnesses for exporter and importer interests claimed that this decline in imports was not likely to reverse itself in the foreseeable future. In counsel's view, these claims had to be discounted. The market for the subject goods was a cyclical market. Circumstances were bound to change and, when they did, exporters from subject countries would seek to recapture their past share of the Canadian market, in all likelihood by dumping.

In support of this contention, counsel for the industry noted that the countries covered by the findings have enormous unused steel production capacity, which the Tribunal and its counterparts in other countries have often recognized in the past as one of the basic causes of unfair trade practices and dumping. The magnitude of this excess capacity was documented in a report prepared by the Organization for Economic Cooperation and Development (OECD) Steel Committee by its working party (distributed on March 28, 1990), which counsel introduced into evidence (Attachment 4 to Exhibit A-4).

Although the information in that report did not deal specifically with the subject goods, counsel argued that it could be inferred from the OECD document that the problem of excess crude steel capacity was, if anything, greater in the case of wide flange steel shapes. This was because demand, over the past several years, had fallen more sharply, and production over-capacity had increased more rapidly for structural shapes than for crude steel. Counsel also noted that a document filed in evidence (Exhibit D-4) by an importer (Wirth Limited), which dealt specifically with wide flange steel shape capacity and local levels in several of the subject countries, tended to confirm the industry's position regarding the existence of substantial excess capacity in wide flange steel shapes.

Counsel argued further that the pricing behavior of the subject countries in the United States demonstrated that these countries would sell at dumped prices in Canada if the discipline imposed by the findings were removed. In this connection, counsel introduced as evidence Exhibit A-5, which compared the average declared values for duty for wide flange steel shapes exported from eight of the nine subject countries to Canada and to the United States during the last quarter of 1989 and the first quarter of 1990. Although this comparison was admittedly imprecise, it showed, in counsel's view, a consistent pattern of lower prices to the United States for five of the seven exporting countries active in both Canadian and US markets: Luxembourg, Germany, the United Kingdom, France and Japan. The low prices at which foreign producers were prepared to offer the subject goods in the United States was further evidenced, according to counsel, by a document (introduced as Exhibit A-9) that described an exceptionally low-priced offering in the United States of structural beams made in March 1990 by a Spanish producer (Aristrain) covered by the findings. In counsel's estimation, it was reasonable to infer that these prices, which were below Canadian normal values, would be made available in Canada if the findings were rescinded.

Finally, counsel argued that past behavior of producers in two of the countries covered by the findings showed that, if given the chance, they would repeat their past dumping practices in Canada. Specifically, counsel noted that, soon after a 1977 dumping action against Belgium was terminated, Belgian imports to Canada surged. These Belgian imports were subsequently found to be dumped in the 1983 anti-dumping action. Similarly, Spanish producers increased their shipments to Canada after termination of a dumping case against them in 1983. This was followed by successful subsidization and anti-dumping actions against Spanish producers in 1985 and 1987, respectively.

Importers/Exporters

The three importers and the three exporters who were represented at the Tribunal hearing argued that the findings had outlived their usefulness and should be rescinded. These parties advanced a number of points in support of their position, some of which were, more or less, commonly held. These common points may be summarized as follows.

According to counsel for the exporters and importers, Algoma's difficulties in the recent past and in the foreseeable future were not caused by dumping. Its problems were attributable directly and exclusively to its inability to compete at profitable levels with US mini-mills, which were the undisputed price leaders in the US and Canadian markets for the sizes of wide flange steel shapes that they produced. These low prices, which showed every sign of continuing in view of the major wide flange steel shape mini-mill capacity expansions coming on stream in the near future, were also quite unattractive to foreign producers, whose shipments to Canada and the United States had declined and would continue to decline sharply as a consequence. Indeed, foreign producers had no interest in meeting US mini-mill competition head on, even though, in the United States, this would mean foregoing the use of some or all of their US VER quota entitlements. Instead, their interest would be focused on markets outside North America, including Europe and the Pacific region, where demand and prices were strong. The industry's contention that foreign producers would attempt to compete with US mini-mills, at what would have to be dumped prices, was based on nothing more than conjecture, which did not reflect a realistic assessment of the situation.

Furthermore, Algoma's response to the onset of this competitive threat from the United States had been very tentative. It was clear from the evidence adduced by Algoma at the hearing that it had adopted no long-term plans, nor had it approved certain short-term "bridging" proposals. Indeed, the last major investment made by Algoma in the production of the subject goods dated back to 1979. This situation undermined Algoma's request for continuation of the findings so that it might have more time to decide on an appropriate course of action.

Points raised specifically by each party may be summarized as follows.

TradeARBED Canada Inc.

Counsel representing TradeARBED, an importer of the subject goods from Luxembourg and Belgium, noted that there was no evidence that producers in these countries had excess capacity in wide flange steel shapes. As far as Exhibit A-5 was concerned, which purported to show underpricing by foreign producers in the United States, counsel noted that the discrepancies could be accounted for by a number of factors, including the effect of US VERs on prices, product mix, exchange rates and distortions, caused by company values at different trade levels. Moreover, the figures for Belgium showed substantially higher US values compared to Canadian values. In short, no conclusions could be drawn from this document, nor could any general conclusions be drawn from Exhibit A-9 concerning an allegedly low-priced US offering of the subject goods from Aristrain. This appeared to be no more significant than an isolated transaction from one supplier.

Counsel noted that TradeARBED had been doing business in Canada for 30 years and was a reputable, profit-motivated supplier of numerous steel products, including the subject goods. The witness testifying for TradeARBED indicated that the company had cut back its imports to Canada and the United States in all size ranges produced by the mini-mills and moved into higher size ranges. It was clearly TradeARBED's intention to find niches where it could compete profitably at undumped prices.

British Steel Canada Inc.

Counsel for British Steel argued that, if this case were an original injury inquiry, it would not be possible to conclude that dumping was the cause, or was likely to be the cause, of material injury to Algoma. It was evident that Algoma's difficulties were caused and would continue to be caused by factors other than dumping. To survive in the face of the mini-mill onslaught, Algoma, by its own admission, needed to undergo dramatic restructuring in terms of its wide flange steel shape operations. The provisions of article 6 of the General Agreement on Tariffs and Trade (GATT) did not provide for the imposition or continuation of anti-dumping duties to facilitate structural adjustment. The appropriate remedy for such a problem lay in the use of the "safeguard" provisions of the GATT and the corresponding provisions of the *Canadian International Trade Tribunal Act*.

Counsel stated that British Steel had substantially reduced its capacity since the time of the last finding, and counsel introduced as evidence Exhibit C-5 to support this assertion. As far as Exhibit A-5 on US/Canadian pricing was concerned, counsel pointed to the evidence of the witness representing British Steel who testified that the UK figures reported in this exhibit did not reflect British Steel exports to Canada or the United States. Indeed, over the period indicated, British Steel, the sole UK manufacturer of the subject goods, did not export any steel to Canada or the United States. It was clear, according to counsel, that this exhibit was so imprecise as to be valueless.

ENSIDESA (Spain) and Stalwerke Peine-Salzgitter A (Germany)

Counsel for these two foreign producers introduced evidence in the form of Exhibits E-1 and F-1 and testimony from company officials to show that both producers did not have excess wide flange steel shape production capacity. According to this evidence, rising demand for the subject goods in both the Spanish and German home markets, as well as in Europe generally and Asia, left little spare capacity or need to compete in the unprofitable North American market. Conditions in these markets had allowed both of these producers to operate at increasingly profitable levels over the past several years. Indeed, as a condition of Spanish entry to the European Economic Community (EEC), ENSIDESA was required to achieve certain profit objectives, which has also led to elimination of the subsidies that resulted in the 1987 finding against ENSIDESA.

Counsel noted that ENSIDESA had not shipped any of the subject goods to Canada since 1989 and that German imports had also declined sharply. Moreover, both producers had left their US VER quota allocations unfilled, confirming their lack of interest in the North American market under prevailing circumstances. In addition, since ENSIDESA had not shipped in 1989 or 1990, it was clear that Exhibit A-5 was inapplicable to it. In terms of German exports, although Exhibit A-5 revealed a modest

difference in US and Canadian f.o.b. export prices, this was likely attributable, as attested by a witness representing Peine-Salzgitter, to differences in terms of credit arrangements in the two markets.

**Jose Maria Aristrain S.A., Jose Maria Aristrain Madrid S.A.
and Aristrain International Inc.**

The representative of Aristrain, an exporter of wide flange steel shapes from Spain, testified that the construction boom in Spain (the Olympic Games and World Exhibition in 1992), a strong demand for the subject goods in the EEC and the Pacific region and prevailing low price levels in Canada and the United States had caused a sharp reduction in Aristrain's exports to North American since October 1989. He stated that Aristrain would only seek out markets where it could achieve a profitable return on its sales. This was not the case in North America.

The witness also replied to questions by industry counsel concerning Exhibit A-9, evidence of a low-price offering of Aristrain steel to the US market. According to the witness, the prices indicated in the exhibit were established by INSTCO, the trading company, and not by Aristrain. Aristrain had no control over, and could not be held accountable for, the prices at which its goods were resold after purchased by trading houses and speculators.

Wirth Limited

The Chairman of Wirth Limited, Mr. M. Wirth, submitted evidence in the form of Exhibit D-4, which showed that, between 1978 and 1990, the production capacity of structural steel in Belgium, Germany, France, Luxembourg, Spain and the United Kingdom had dropped by 29 percent. This exhibit also indicated that, from 1986 through 1989, the EEC's exports to the United States fell 17 percent, while the EEC's deliveries to its own market increased 46 percent. He noted that, in interpreting this document, the domestic industry had subtracted only North American and European shipments from the total production capacity level indicated. This produced a figure that appeared to show substantial excess European capacity in the subject goods. However, Mr. Wirth argued that Algoma was misinterpreting the document since the indicated shipment figures did not include exports to the rest of the world, including the robust Asian-Pacific market, Africa, the Middle East and other destinations.

In Mr. Wirth's view, the 1989 US pricing information contained in Exhibit A-5 was distorted by the US VER renegotiations because foreign producers believed that, to maintain their quota entitlements, they had to maintain their export levels at whatever cost. This was a one-time phenomenon that was not about to be repeated. As far as Exhibit A-9 was concerned, Mr. Wirth maintained that he had received price quotations directly from Aristrain in the middle of March 1990, the same time period with which the exhibit dealt, which were considerably higher than those referenced in the exhibit. In his view, the most plausible explanation was that the trader concerned, INSTCO, was using the subject goods as a "loss leader" to attract other business. Mr. Wirth claimed that this was not an uncommon business practice, one that he had employed on occasion.

Mr. Wirth added that, if the findings were rescinded, Algoma would still be able to benefit from certain forms of protection, including the 6.5 percent Most-Favoured-Nation Tariff, as well as the stated preference of major domestic distributors to buy North American products. Moreover, domestic distributors currently perceived a significant risk associated with buying imports for delivery some six months hence, given the prevailing uncertainties related to price discounting by US mini-mills. This forward buying risk gave domestic producers a significant advantage over imports under present market conditions, which showed no signs of abating.

ECONOMIC INDICATORS

The Tribunal has examined market developments dating back 13 years to 1977. Over this span, peaks in domestic consumption occurred in 1981 and in 1988. The low point occurred in 1982, in the midst of the economic recession, when consumption stood at 119 percentage points below the 1981 peak. Algoma's share of the market has been inversely related to the growth in the market, reaching a 13-year low during the peak year of 1981 and rising only a few points above this low level in 1988. Nevertheless, the market share that Algoma held throughout the review period represents the major proportion of domestic consumption.

During 5 of the 13 years under review, the market share held by the subject countries represented over one quarter of total market demand for the subject goods. The high point was reached during the banner year of 1988, but fell sharply in 1989. The significant decline in 1989 appears to be largely attributable to the fall in Spanish imports, which has, over the past several years, been the single largest source of imports from countries covered by the findings.

The market share held by imports from non-subject countries, which fluctuated in the range of 3-8 percent before 1986, more than quadrupled in 1987 over 1986. The shift in market share was sustained through 1989, mainly at the expense of imports from the countries subject to the findings. Imports from the United States were particularly strong in 1987 and 1989, establishing it as the single largest source of imports among subject and non-subject countries alike.

According to Algoma's allocated income statement, annual net sales of wide flange steel shapes reached historical 13-year highs in 1988 and 1989. However, in neither of these peak years, nor in any year since 1982 (with the exception of 1987 when nominal profitability was achieved), has the company reported any profits. Similarly, during the past three years (1987-89), Algoma's rather small export sales were unprofitable. The losses incurred on sales of the subject goods over the past four years have depressed Algoma's overall company profitability and turned what would otherwise have been a modestly profitable year in 1989 into a substantial loss.

REASONS FOR DECISION

In reviewing an anti-dumping or countervailing duty finding, the Tribunal must answer two basic questions. One is whether the Canadian industry would be materially injured if importation of dumped or subsidized goods were to resume. The other is whether it is likely that the importation of dumped or subsidized goods would resume

if the finding were rescinded. If this condition is not met, no causal link can be established between dumping and subsidization and any injury suffered by domestic producers. In that event, the finding cannot be continued.

LIKELIHOOD OF MATERIAL INJURY

Algoma's difficult situation was not a matter of dispute at the hearing. Financial results showed persistent losses in the production of the subject goods throughout the review period. Losses occurred even in 1988 when demand was strong and prices reasonably good. Financial performance for the subject goods has lagged behind other areas of Algoma's operations and shows little sign of promise for the future. Other indicators, such as employment, show a similar pattern of decline.

Many factors are at the root of Algoma's situation. In recent years, competition from US mini-mills has forced Algoma to reduce prices in order to maintain market share. Mini-mill producers, which are expanding their capacity and product range to include most sizes of structural steel, enjoy a cost advantage of as much as 30 percent over integrated steel producers. Another factor is Algoma's large debt burden that has hindered capital improvements in some areas of the business. For example, no investments were made in the wide flange steel shape mill after 1979. Bad luck also played a role. A blast furnace relining in 1988 did not allow Algoma to take full advantage of the good prices prevailing that year and, in fact, forced the company to pay high prices to obtain raw steel to fulfil its own requirements. The construction slump since 1989 has also reduced demand for wide flange steel shapes, further depressing prices.

Algoma has not taken advantage of the findings to implement improvements in its wide flange steel shape mill. Neither Algoma nor Dofasco, the new owner, appear to have developed long-range plans to ensure the continued viability of the operation. Algoma discussed, *in camera*, a "bridging plan" that would reduce wide flange steel shape production costs marginally through modest capital investments. Given the wide gap between Algoma's costs and those of the US mini-mills, it is evident that the bridging plan, if implemented, will not stop continued financial losses in wide flange steel shape mill operations.

The Tribunal considers that, even if the findings were continued, Algoma's situation would remain very difficult because of the many adversities affecting the industry. In the Tribunal's view, however, the presence of dumped or subsidized imports would aggravate the downward price pressures already rampant in the marketplace. This would cause even more harm to the industry in its current weak state. Consequently, the Tribunal concludes that it is likely that the domestic industry would be materially injured if importation of dumped or subsidized products were to resume. It remains for the Tribunal to determine whether a resumption of importation of dumped or subsidized goods is likely to occur.

LIKELIHOOD OF DUMPING

In determining whether there is a likelihood of resumed dumping by exporters covered by the findings, the Tribunal examined import patterns, prices, demand for the subject goods, the production capacity of exporters covered by the findings and their recent behavior in the North American market.

Witnesses from Algoma, steel service centres and importers agreed that Canadian prices for the subject goods were established by US mini-mills and by one mini-mill in particular, Nucor. Algoma argued that, faced with this market dominance by the mini-mills, foreign producers would be forced into dumping to maintain market share in Canada. In essence, Algoma witnesses argued that the exporters covered by the findings would follow mini-mill prices down, or even engage in a price war with mini-mills, to the point that they would once again be dumping in Canada.

The Tribunal agrees that this scenario is possible, but doubts, on the basis of the evidence available, that it is likely to occur in the foreseeable future.

Import data and the testimony of steel service centre, importer and exporter witnesses do not support Algoma's view of the market. Imports from the subject countries and other offshore producers decreased sharply in 1989. This withdrawal has continued into 1990. There has also been a shift by some of the same producers to larger shapes not yet produced by mini-mills. This respite will be short-lived, however, as mini-mill production programs in these larger size ranges will soon be implemented.

Representatives of TradeARBED, British Steel, Peine-Salzgitter, Aristrain and ENSIDESA spoke of stronger demand and firmer prices in other export markets, most notably in the Pacific region and Middle East. In addition, strong demand in the European market arising from such projects as the upcoming Hanover World Fair and 1992 Olympic Games in Barcelona made sales in Europe more attractive than in North America. The exporters' claims of little excess production capacity ran counter to the arguments of Algoma, based on an OECD study of world steel capacity. The Tribunal notes that the OECD document refers to crude steel and does not provide separate estimates for structural steel production and capacity. Furthermore, the report shows significant decreases since 1980 in raw steelmaking capacity in OECD countries, many of which are covered by these findings, and a narrowing of the gap between production and capacity. Another piece of evidence introduced by an importer (Exhibit D-4), which pertains more closely to production capacity for the subject goods, shows a substantial decline in European structural steel capacity over the past decade. This, combined with the robust markets in Europe, Asia and elsewhere, tends to support exporter claims of little excess production capacity.

Other factors suggest to the Tribunal that exporters will be reluctant to sell large amounts of structural steel in North America, given the low prices that now prevail. According to evidence entered at the hearing, the mini-mills are setting structural steel prices in North America, thanks to their substantial cost advantage over competitors due to their technology, scale, labor costs and management style. The Tribunal considers that the lower market prices for the subject goods are more than a short-lived, cyclical phenomenon. Mini-mills have changed the nature of competition in the structural steel industry. In the Tribunal's view, it is unlikely that offshore producers will willingly sustain prolonged losses on sales to Canada when better opportunities exist in other markets.

The US system of VERs with steel exporters has implications for imports to all of North America. In this case, the Tribunal finds that US VERs diminish rather than increase the likelihood that dumping will resume in Canada. Current US VER quota entitlements expire in 1992, under agreements concluded in 1989 with various steel exporting countries. In the period leading up to the 1989 agreements, foreign steel

shipments to the United States held up, despite poor price levels, because of a perception by exporting countries that high market share would improve their bargaining position in the quota negotiations and, therefore, protect their longer run position in the American market. Since the VER agreements were renewed, exporters have been unwilling to sustain losses in the US market and have allowed substantial proportions of their 1989 and 1990 VER quota entitlements to lapse. However, they would likely give priority to the US market even in the face of continued low prices if it appeared, contrary to current plans, that US VERs were to be extended beyond 1992.

The Tribunal did not view industry Exhibit A-5, comparing Canadian and US import prices for the subject goods, as evidence that countries covered by the findings would resume dumping if the findings were rescinded. Furthermore, the Tribunal does not agree that the somewhat higher average prices for Canada shown in Exhibit A-5 are necessarily due to the existence of the anti-dumping findings.

First, the Tribunal notes that Exhibit A-5 does not show that import prices in Canada are higher in every case for imports from all of the subject countries. Second, as witnesses for exporters and importers have testified, where prices in Canada were higher, they could be explained by the small sample size, the short time period examined and the failure to allow for product mix and payment terms. Finally, even if price differences do exist between Canada and the United States, they are more likely attributable to duty and transportation charges. Witnesses testified that steel prices in Canada are determined by the Nucor mini-mill prices, adjusted upwards by freight and duty charges upon entering Canada. It follows that offshore producers would meet this slightly higher price when selling in the Canadian market. Over time, as Canadian duty rates fall under the *Free Trade Agreement* and mini-mills implement planned distribution facilities in the northern United States, the difference between Canadian and US market prices should become insignificant.

There is also Algoma's evidence of a low-price offering of Spanish steel into the US market. The Tribunal finds it difficult to put much reliance on this exhibit because of the lack of accompanying information about the quantity of steel offered in the various dimensions (since the subject goods represented only a portion of the total offering), whether any transactions were made and at what terms. Without this type of information, the Tribunal is unable to tell whether INSTCO was acting on behalf of the producer or the importer of record and providing sizeable quantities of the subject goods at low prices or whether INSTCO was simply a minor intermediary that speculated on imported steel months earlier and was caught by the recent price declines. The Tribunal must also weigh this evidence against the information contained in industry Exhibit A-5 and the testimony of Spanish importers that shipments of wide flange steel shapes from Spain have fallen sharply over the past year. The Tribunal is not convinced that the evidence on what may be an isolated offering of Spanish steel into the United States indicates a likelihood that dumping will resume in Canada if the finding against Spain is rescinded.

Regarding the argument made by counsel for Algoma that the past behavior of Belgian and Spanish exporters indicates that dumping is likely to resume, the Tribunal considers, as noted above, that Canadian and foreign market conditions have changed sufficiently to make this behavior unlikely.

In summary, the Tribunal concludes that the exporters covered by the findings are unlikely to resume dumping in the Canadian market if the findings are rescinded. The Tribunal's conclusion is based on the fact that strong competition from US mini-mills has depressed subject goods prices in North America and displaced imports from other sources. Testimony from exporter and importer witnesses indicated to the Tribunal that better opportunities exist in home markets and other export markets for the producers covered by the findings. The Tribunal views the current market conditions in North America as more than a cyclical phenomenon and concludes that producers would be unwilling to sustain prolonged losses on sales to the Canadian market.

LIKELIHOOD OF SUBSIDIZED IMPORTS

In considering the likelihood of resumed shipments of the subsidized products from Spain, the Tribunal examined recent changes in Spanish steel subsidies.

The evidence showed that, as a condition of Spain's entry into the EEC, Spanish steel producers were to be deprived of subsidies, obliged to reduce capacity and operate profitably. A witness representing ENSIDESA, the Spanish producer against which the 1985 countervailing duty action was taken, indicated that the profitability target had been achieved and that ENSIDESA was no longer receiving subsidies. To enhance its profitability even further in the future, ENSIDESA was planning additional cost-cutting measures, including employment reductions above and beyond the targets set out for it by the EEC. In light of this, the Tribunal finds that importation of subsidized goods from Spain is not likely to resume in the foreseeable future.

CONCLUSION

The Tribunal finds that the renewed importation of dumped or subsidized wide flange steel shapes would materially injure the domestic producer, Algoma. However, current and foreseeable market conditions make it unlikely that the countries covered by the findings would resume dumping in the Canadian market. Moreover, subsidization of Spanish wide flange steel shape production has ceased as required by Spain's accession to the EEC. Accordingly, the findings are rescinded.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

John C. Coleman
John C. Coleman
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member