



Ottawa, Thursday, September 12, 1996

**Review No.: RR-96-001**

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on September 5, 1991, in Inquiry No. NQ-91-001, concerning:

**CERTAIN STAINLESS STEEL WELDED PIPE ORIGINATING IN OR  
EXPORTED FROM TAIWAN**

**ORDER**

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of its finding of material injury made on September 5, 1991, in Inquiry No. NQ-91-001.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the above-mentioned finding, without amendment.

Lyle M. Russell  
Lyle M. Russell  
Presiding Member

Anthony T. Eyton  
Anthony T. Eyton  
Member

Raynald Guay  
Raynald Guay  
Member

Susanne Grimes  
Susanne Grimes  
Acting Secretary

Ottawa, Thursday, September 12, 1996

Review No.: RR-96-001

**CERTAIN STAINLESS STEEL WELDED PIPE ORIGINATING IN OR  
EXPORTED FROM TAIWAN**

*Special Import Measures Act* - Whether to rescind or continue, with or without amendment, the finding made by the Canadian International Trade Tribunal on September 5, 1991, in Inquiry No. NQ-91-001.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: July 29 to 31, 1996  
Date of Order and Reasons: September 12, 1996

Tribunal Members: Lyle M. Russell, Presiding Member  
Anthony T. Eyton, Member  
Raynald Guay, Member

Director of Research: Marcel J.W. Brazeau

Research Manager: Daryl Poirier

Economist: Ihn Ho Uhm

Statistical Officers: Nynon Pelland  
Lise Lacombe

Counsel for the Tribunal: John L. Syme  
Shelley Rowe

Registration and Distribution Officer: Gillian Burnett

**Participants:** Lawrence L. Herman  
for Associated Tube Industries, A Division of Samuel  
Manu-Tech Inc.  
C.E. Pipe, Division of Henderson Barwick, Inc.

**(Domestic Producers)**

Richard S. Gottlieb  
Peter E. Kirby  
Peter Collins  
for Ta Chen Stainless Pipe Co., Ltd.  
PAC PVF Trade Inc.

**(Exporter/Importer)**

**Witnesses:**

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

Hugh A. Millar  
Vice-President, Purchasing  
Marmon/Keystone Canada Inc.

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

James Chang  
Vice-President  
Ta Chen Int'l (CA) Corp.

George Martin  
General Manager  
C.E. Pipe,  
Division of Henderson Barwick, Inc.

R. Dawson Campbell  
Principal  
PAC PVF Trade Inc.

R. Brian Harvey  
Vice-President  
Engineered Products Group  
Atlas Alloys

John Gough  
President  
Pinnacle Stainless Steel Inc.

Brian Halstead  
Group Vice-President  
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Ottawa, Thursday, September 12, 1996

**Review No.: RR-96-001**

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on September 5, 1991, in Inquiry No. NQ-91-001, concerning:

**CERTAIN STAINLESS STEEL WELDED PIPE ORIGINATING IN OR  
EXPORTED FROM TAIWAN**

TRIBUNAL: LYLE M. RUSSELL, Presiding Member  
ANTHONY T. EYTON, Member  
RAYNALD GUAY, Member

**STATEMENT OF REASONS**

**BACKGROUND**

This is a review, under subsection 76(2) of the *Special Import Measures Act*<sup>1</sup> (SIMA), of the finding of material injury made by the Canadian International Trade Tribunal (the Tribunal) on September 5, 1991, in Inquiry No. NQ-91-001, concerning certain stainless steel welded pipe originating in or exported from Taiwan.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the finding and issued a notice of review<sup>2</sup> on April 26, 1996. This notice was forwarded to all known interested parties.

As part of this review, the Tribunal sent comprehensive questionnaires to Canadian manufacturers of stainless steel welded pipe and to importers and purchasers of the subject pipe. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports. The record of this review consists of all relevant documents, including the finding, the notice of review and public and confidential parts of replies to the questionnaires. All public exhibits were made available to interested parties, while protected exhibits were provided only to independent counsel who had filed a declaration and confidentiality undertaking with the Tribunal.

Public and *in camera* hearings were held in Ottawa, Ontario, from July 29 to 31, 1996.

The producers, Associated Tube Industries, A Division of Samuel Manu-Tech Inc. (ATI) and C.E. Pipe, Division of Henderson Barwick, Inc., were represented by counsel at the hearing, submitted evidence and made arguments in support of continuing the finding.

An exporter, Ta Chen Stainless Pipe Co., Ltd. (Ta Chen), and an importer, PAC PVF Trade Inc. (PAC), were represented by counsel at the hearing, submitted evidence and made arguments in support of rescinding the finding.

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1. R.S.C. 1985, c. S-15, as modified by S.C. 1994, c. 47.

2. *Canada Gazette* Part I, Vol. 130, No. 18, May 4, 1996, at 1359.

## **PRE-HEARING MOTION**

Prior to the hearing in this matter, the Tribunal heard a motion in respect of certain evidence and submissions relating to PAC and its principals which had been filed by counsel for the domestic producers and to which counsel for the exporter and importer responded. Counsel for the exporter and importer moved that the material be expunged from the record.

In deciding to remove the material from the record, the Tribunal noted that, in its review, it would consider: (1) whether there was a likelihood of resumed dumping in the event of rescission; and (2) if dumping did resume, whether there was a likelihood of material injury to the domestic industry. The Tribunal found that, as the material in dispute related to pipe which was imported from Japan more than 15 years ago and there was no indication that those importing activities formed part of an ongoing pattern of conduct, the evidence and submissions were of little or no relevance to this review. The Tribunal indicated that, as a general rule, evidence should be expunged from the record prior to its consideration at a hearing only where exceptional circumstances exist. In the Tribunal's view, such circumstances existed in this review, since the evidence at issue was of little or no relevance and could have significantly prejudiced a witness in his appearance in this proceeding.

## **PRODUCT**

The product that is the subject of this review is stainless steel welded pipe originating in or exported from Taiwan, in nominal pipe sizes ranging from 1/8 in. to 6 in. inclusive and with wall thicknesses varying from 0.060 in. to 0.315 in. (1.525 mm to 8.000 mm) inclusive, manufactured to specification A-312 prescribed by the American Society for Testing and Materials, specification SA-312 prescribed by the American Society of Mechanical Engineers, or equivalent specifications.

Stainless steel welded pipe is produced from a variety of grades of stainless steel, which are corrosion- and/or heat-resistant steels. The most common grades of stainless steel used in the manufacture of welded pipe in Canada are 304, 304L, 316 and 316L, with grades 304L and 316L being low-carbon versions of 304 and 316 respectively. Much of the stainless steel welded pipe produced in Canada and internationally is dual-certified, that is, both the chemical and mechanical properties of 304 pipe are satisfied by a 304L analysis, and similarly for 316 and 316L pipe.

The A-312 standard sets out in four schedules (schedules 5, 10, 40 and 80), by nominal pipe size, the wall thicknesses and corresponding outside diameters which complying pipe must meet. Most of the pipe consumed in Canada is either schedule 10 or schedule 40 pipe.

Welded pipe is manufactured from hot- or cold-rolled stainless steel strip or sheet, which is roll-formed either in cut lengths or on a continuous basis and then welded. The pipe is then heat treated by passing it through an annealing furnace. Pipe is "pickled" by immersion in an acid solution to restore the corrosion-resistant properties of stainless steel that were stressed by the rolling and welding processes.

The A-312 pipe is used in the pulp and paper, petrochemical, mining and other manufacturing industries, where raw materials are processed under caustic, high-temperature conditions.

## **DOMESTIC INDUSTRY**

There are three known domestic producers of stainless steel welded pipe, all located in the province of Ontario.

ATI, located in Markham, Ontario, is responsible for the vast majority of A-312 pipe manufactured in Canada. Although A-312 pipe is ATI's most important product, the company also manufactures mechanical and pressure tubing in stainless steel and nickel alloys, as well as heating element tubing and instrumentation tubing at its Markham plant. In addition, ATI has a fabricated tubular parts division which transforms pipe or tube into finished parts or subassemblies.

At the time of the finding in 1991, there were two other small volume manufacturers of A-312 pipe in the subject size ranges in Canada. These were: Canadian Erectors Pipe, located in Kingston, Ontario, which had only begun to manufacture A-312 pipe in 1990; and Henderson Barwick Inc., of Brockville, Ontario.

Canadian Erectors Pipe, now known as C.E. Pipe, is a division of Henderson Barwick Inc. C.E. Pipe is the only other Canadian producer to participate in the Tribunal's review of the finding. The pipe produced by Henderson Barwick Inc. consists of A-312 pipe in nominal sizes from 8 in. to 20 in. and of pipe other than A-312 (e.g. A-778). Therefore, ATI and C.E. Pipe constitute the entire domestic industry for the stainless steel welded pipe that is the subject of this review.

In the domestic market, ATI sells stainless steel welded pipe exclusively to six steel distributors as authorized stainless steel welded pipe distributors. Three of those distributors are "national" distributors, with branch locations across Canada. The remaining three are "regional" distributors with branches in one or two locations. In addition, ATI has one authorized master distributor which specializes in selling product exclusively to steel service centres (including both authorized ATI distributors and non-authorized distributors) and not to original equipment manufacturers. In total, ATI's stainless steel welded pipe is stocked at upwards of 31 warehouse locations across Canada.

C.E. Pipe also sells A-312 pipe to distributors, but, because of its smaller production capacity, has a somewhat more limited number of clients. However, in addition to selling through distributors, C.E. Pipe sells directly to industrial end users.

## **SUMMARY OF FINDING**

In its finding of September 5, 1991, the Tribunal determined that, following several years of relatively stable financial performance in the domestic stainless steel welded pipe industry, revenues, gross margins and profits all deteriorated substantially in 1990. Other indicators of injury, including market share, production, employment and capacity utilization, showed similar decreases.

At the same time, imports of the subject pipe increased thirtyfold from 1987 to 1990, with almost all of the increase in import share of the domestic market coming at the expense of the domestic industry.

In addition to revising its prices downwards in the face of this increased import competition, ATI, the principal domestic producer, made several changes to its purchaser discount policy. In January 1990, the

company increased the level of its quantity discounts to distributors. Then, beginning with the May 1991 price list, the policy of granting discounts based on volume of annual purchases was eliminated and replaced with a policy of a flat discount rate for all purchasers.

The Tribunal found a causal link to exist between the injury incurred by the domestic manufacturer of stainless steel welded pipe and the dumped imports. Not only did the subject pipe make significant inroads on the Canadian market at the same time as domestic production registered substantial declines, witnesses at the hearing confirmed the link between these two events. These witnesses acknowledged that A-312 pipe was a commodity for which price was the most important purchase criterion and that, by 1990, the subject pipe had become the price leader in the Canadian market.

In considering the likelihood of future injury, the Tribunal noted the relative production capacities of ATI and the three Taiwanese exporters at 6,000 tonnes and 54,000 tonnes respectively. It also considered the fact that the subject pipe continued to enter Canada in substantial volumes in the first quarter of 1991, even after the initiation of the dumping investigation by the Department of National Revenue (Revenue Canada).

The Tribunal, therefore, concluded that the dumping of certain stainless steel welded pipe originating in or exported from Taiwan had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

## **POSITION OF PARTIES**

### **Domestic Producers**

By way of introduction, counsel for the domestic producers submitted that the purpose of a review is to determine whether anti-dumping duties continue to serve their purpose and that, in this case, they do. In a review, the domestic industry typically presents much evidence, while exporters and importers operate largely hidden from view. He argued that the Tribunal should, therefore, make reasonable inferences from what is on the record, based on past patterns of behaviour and the existing production capacity of exporters.

Counsel for the domestic producers then reviewed the "macroeconomic" picture and noted that, since the issuance of the finding in 1991: (1) C.E. Pipe has established itself as a Canadian producer; (2) the industry reestablished profitable price levels; (3) there was significant expansion of demand in 1995, followed by a very fast contraction to date in 1996; (4) there was a US finding against Taiwan; and (5) the "huge capacity" of the Taiwanese exporters is still in place. He noted that the review is concerned with all exports from Taiwan, not just exports by Ta Chen, and that the subject pipe is a fully interchangeable, price-sensitive, commodity-type product.

Counsel for the domestic producers argued that the market is in a cyclical downturn and that the last two quarters of 1995 were unusual. It is open to speculation as to when the market will turn around. Taiwan is back in the Canadian market, and imports from all sources are exerting pressure on the domestic industry and impacting on its financial performance.

Counsel for the domestic producers then argued that continuation of the finding is justified on the basis of the history of dumping in Canada by Taiwan and the degree of dumping in terms of margins and

percentage of goods dumped. Resumption of dumping is likely in the absence of anti-dumping duties. In his view, two of the “crucial factors” in this case are Taiwanese production and export capacities. He noted that Ta Chen exports mostly to the United States, but that this company represents only 28 percent of Taiwanese exports.

Finally, counsel for the domestic producers argued that the vulnerability of the industry is evidenced by the financial information supplied by ATI, showing declining price levels and pressures from offshore and US prices. In light of prevailing market conditions and the evidence on the record, continuation of the finding is warranted. Ta Chen should not be granted an exclusion, as there is no evidence on the record or in precedents established by the Tribunal that would justify such an exclusion.

### **Exporter/Importer**

Counsel for the exporter and importer argued that the evidence on the record supports a rescission of the finding, but, in the event that the Tribunal decides not to rescind the finding, it should exclude Ta Chen from the finding. The test before the Tribunal is whether or not the finding continues to serve its purpose.

Counsel for the exporter and importer argued that, in its review of the facts before it, the Tribunal should, in looking at the indices, exclude 1995 because it was a very “distinctive year” in terms of profits, prices and sales for the industry. Moreover, the price of the subject pipe clearly tracks coil prices, and what is important is not the nominal price of pipe, but the spread between the prices of pipe and coil.

Counsel for the exporter and importer urged the Tribunal to consider the presence of US imports in the Canadian market and the fact that the industry does not consider those imports to be a problem. There were, according to counsel, allusions made to pricing pressures from offshore imports, but, according to their review of the activities of major importers, many either are ATI distributors or import from sources other than Taiwan. This left PAC as an importer of Ta Chen product, and PAC is profit-driven, not driven by prices or volumes.

Counsel for the exporter and importer then reiterated that the test is propensity to dump and vulnerability to injury. They contended that Ta Chen has gone through a learning curve and is no longer dumping either in Canada or in the United States, where it is a major offshore source of supply, nor does it have any intention to dump in the future. In that connection, Ta Chen’s position vis-à-vis Canada and the United States is similar to the position of the domestic industry with respect to the United States.

Counsel for the exporter and importer then referred to the production capacity of Taiwanese exporters and, more specifically, to that of Ta Chen, which is on the record. While Ta Chen has increased its production capacity, it is also moving to single-shift production, given the difficulty in obtaining labour that is willing to work a second shift. Moreover, Ta Chen’s production capacity is not aimed at the Canadian market. It sells in 50 countries around the world.

Counsel for the exporter and importer pointed out that Ta Chen sells directly to Canada. It does not sell to agents that resell to Canada, but maintains direct control over its presence in the Canadian market. As Ta Chen intends to avoid dumping, this will prevent third parties from obtaining product from Ta Chen and reselling to Canada at dumped prices.



Counsel for the exporter and importer noted that the issue of character had been raised because of a grand jury investigation in the United States. They suggested that this investigation may have been instigated by the US industry in an effort to disrupt the activities of Ta Chen in that market, since it could not get at Ta Chen through the dumping statute. This action, according to counsel, is totally irrelevant, as it has no bearing on any fact at issue before the Tribunal. Counsel suggested that, instead of a propensity to dump on the part of Ta Chen, its past actions and the testimony of the witness for Ta Chen demonstrate that its intention is to trade fairly and profitably in Canada by avoiding dumping.

As regards the state of the domestic industry, counsel for the exporter and importer suggested that it is not vulnerable to a resumption of dumping. C.E. Pipe's testimony and financial information do not demonstrate vulnerability, and the industry has just completed its best year ever. The sudden downturn in prices in 1996 is due to the lower cost of coil, and any comparison of 1995 and 1996 prices is fraught with difficulties. Gross margins are a more appropriate measure of financial well-being. As to market outlook, the Tribunal was directed to evidence relating to forecast investments in various sectors which indicate that an upturn is expected in 1997. Counsel then suggested that offshore imports had nothing to do with the timing of investments by the two Canadian producers and that inventory buildup had not been a problem for the industry.

Finally, counsel for the exporter and importer argued that, all in all, the industry has been doing pretty well and that the time has come to rescind the finding, as there is not sufficient evidence on the record to justify continuation of the finding.

### **ECONOMIC INDICATORS**

The demand for stainless steel welded pipe in the Canadian market has been fairly constant over the past eight years, averaging approximately 3,000 tonnes per year from 1987 to 1994 inclusive. In 1995, demand increased significantly, reaching a volume well in excess of 4,000 tonnes. Estimates for 1996 place demand somewhat lower than historical levels, at between 2,000 and 2,500 tonnes. An upturn in demand is not anticipated until the latter part of 1997.

Domestic shipments increased slightly in each of 1992 and 1993, before falling marginally in 1994. In 1995, both the volume and the value of domestic shipments reached record highs. Volume was up by 30 percent, and value by 34 percent, over their levels in 1994. In the first half of 1996, domestic shipments by both producers declined as sharply, and as abruptly, as they had risen one year earlier.

Import volumes over the period under review fluctuated considerably from year to year. From a level of about 452 tonnes in 1991, imports more than doubled to almost 1,000 tonnes in 1992, before falling back to less than 500 tonnes in 1993. In 1994, imports increased again, to almost 800 tonnes, before jumping to almost 2,100 tonnes in the strong market that existed in 1995. While most of those increased imports in 1995 originated in the United States, imports from Taiwan also reappeared on the scene in more substantial volumes in that year, as did imports from Malaysia. Taiwan's reemergence as a supplier to the Canadian market followed the issuance of normal values to Ta Chen by Revenue Canada in late 1994.

The sudden surge in demand in 1995 for stainless steel welded pipe was not exclusive to the Canadian market. Worldwide demand for this pipe appeared to follow the same pattern of a sudden, aberrational increase in 1995 from historical demand levels, followed by an equally abrupt fall-off in 1996.

Domestic production of stainless steel welded pipe was relatively unchanged in 1992 as compared to 1991. However, production increased substantially in 1993 and 1994 and then rose even more dramatically in 1995. A considerable portion of that increased production over the period from 1991 to 1995 was attributable to gains in exports to the US market. Export sales then fell off considerably in the first half of 1996, in line with the decrease in domestic shipments during the same period.

The domestic industry's share of the Canadian market remained strong from the time of the injury finding in late 1991 to the end of 1994. In 1995, despite significantly increased domestic shipments by Canadian producers, their market share decreased substantially, reaching its lowest level since 1990. At the same time, however, capacity utilization rates for domestic producers in 1995 were at their highest levels in five years.

While import data are not available for 1996, domestic shipments by the largest domestic producer fell off steeply in the first half of the year, as compared to the first half of 1995. Information provided by the smaller domestic producer, which covered only the first quarter of 1996, also showed a significant decline in domestic shipment levels over the first quarter of 1995. As well, testimony by the witness for Ta Chen indicated that sales from the company's production facilities in Taiwan were down in 1996, as compared to 1995, and that the market in North America was worse than other markets to which Ta Chen exports the subject pipe.<sup>3</sup>

Gross margins for the two domestic producers increased over the period from 1991 to 1995, as a result of higher capacity utilization rates and substantially reduced cost of goods sold. The reduction in cost of goods sold was partly attributable to decreased prices for stainless steel coil and strip from 1992 to 1994. Coil and strip prices then increased in 1995 when demand was at high levels, although those prices had already started to trend downward by mid-1995.<sup>4</sup> However, profit levels remained strong in 1995, as market demand continued to allow those higher input costs to be passed on in the form of higher prices.

Financial information provided by ATI shows that its net income before taxes in the first six months of 1996, when expressed as a percentage of net domestic sales, fell by more than 35 percent from the full year 1995, by more than 25 percent from the full year 1994 and by more than 10 percent from the full year 1993. Since January 1996 was still a month of strong sales and profit levels, the deterioration in net income in 1996 was considerably worse than suggested by the foregoing numbers. When expressed in absolute dollars, ATI's net income on domestic sales for the five-month period from February to June 1996 was less than one half the net income earned in January 1996 alone.

### **REASONS FOR DECISION**

Section 76 of SIMA provides that, on completion of a review, the Tribunal shall rescind an order or finding, or continue it with or without amendment. Before the Tribunal continues a finding, it must be satisfied that, in the absence of the injury finding, dumping by the subject country is likely to resume and that such resumed dumping is likely to cause material injury to the domestic industry.

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3. *Transcript of Public Hearing*, July 30, 1996, at 287.

4. *Ibid.* July 29, 1996, at 90.

### **Likelihood of Resumed Dumping**

The pulp and paper industry is the major market for stainless steel welded pipe in Canada and the United States.<sup>5</sup> Recent Statistics Canada data show that forecast investment intentions by producers in the domestic pulp and paper industry are high, which would indicate that a healthy recovery is in store for market demand for stainless steel welded pipe. Other public data show that substantial financial losses have been incurred recently in the pulp and paper industry and, for that reason, the forecast investments might not materialize to the extent earlier envisaged by that industry.<sup>6</sup>

The Tribunal does not doubt that the forecast investments in the pulp and paper industry will ultimately take place. The economic facts of life dictate that plant facilities must be renewed and upgraded on a regular basis, if companies are going to stay in business.<sup>7</sup> However, the Tribunal is also persuaded by the evidence that, given the recent losses in the pulp and paper industry, there is considerable uncertainty as to exactly when those forecast investments will materialize.

ATI contended, supported by the evidence of other witnesses, that the market would not see renewed demand until the third quarter of 1997.<sup>8</sup> In that connection, the Tribunal noted that the witness for PAC acknowledged that he was a little less optimistic than he had been as to when the market would start to rise again.<sup>9</sup> Furthermore, one of the witnesses for Marmon/Keystone Canada Inc. testified that he did not see the recovery happening much before 1998.<sup>10</sup>

The evidence is clear that Taiwanese capacity to produce the subject pipe far exceeds Taiwanese demand and that producers of the subject pipe depend heavily on exports to fill their mills. Ta Chen, in particular, testified that 88 percent of its total sales are to the export market, and only 12 percent to the Taiwanese market.<sup>11</sup> Evidence presented at the hearing indicated that excess inventories,<sup>12</sup> both domestic and foreign, are overhanging the market. Evidence was also presented to show that, in 1996, Ta Chen added considerable capacity to produce the subject pipe.

The evidence is also clear that Taiwanese producers have a history of dumping the subject pipe and related products. The Tribunal noted that, subsequent to having been found to be dumping the subject pipe in Canada in 1991, a number of Taiwanese producers, including Ta Chen, were found to be dumping similar pipe in the United States in 1992.<sup>13</sup> The evidence also shows that Ta Chen exports to the United States under normal value rulings that are still in place today.

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5. *Ibid.* at 14.

6. *Ibid.* at 15.

7. *Ibid.* at 134.

8. *Ibid.* at 13.

9. *Ibid.* July 30, 1996, at 402.

10. *Ibid.* July 29, 1996, at 229.

11. *Ibid.* July 30, 1996, at 301.

12. *Ibid.* at 361.

13. *Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan*, Determinations of the Commission in Investigations Nos. 731-TA-540-541 (Final), USITC Publication 2585, December 1992.

The evidence also shows that the margin of dumping attributable to Ta Chen was substantially lower than that attributable to other Taiwanese producers and suggests that Ta Chen had made an effort to ensure that it was no longer dumping in Canada and other export markets. Nevertheless, there was no evidence adduced to suggest that the remaining Taiwanese producers of the subject pipe took an equivalent approach in their export marketing. In fact, the lack of participation in the domestic market and the failure of other Taiwanese producers to establish normal values for their exports to Canada and the United States could be construed as an inability to compete at undumped prices.

Given the fact that all the Taiwanese producers other than Ta Chen have been excluded from the US market and will, thus, likely be looking for other available markets, the fact that those exporters have been unable or unwilling to enter the Canadian market while the finding has been in place and the very substantial level of production capacity possessed by the Taiwanese industry, the Tribunal is of the view that, if the finding were rescinded, those producers in Taiwan would likely resume dumping activities in Canada.

Although Ta Chen indicated that its policy is not to dump product in its export markets, the Tribunal is persuaded that, if the finding were rescinded, Ta Chen would be under considerable pressure to lower its prices in order to compete with its Taiwanese counterparts in the Canadian market. The competitive environment would be such that, ultimately, Ta Chen would have to choose between relinquishing its hard-won market share in Canada or resorting to dumping in order to maintain its Canadian presence and its Canadian customer base.

In sum, the Tribunal concludes that resumed dumping from Taiwan is a likely outcome of a rescission of the finding currently in place, given the combination of continued weak demand for stainless steel welded pipe, the uncertainty regarding the timing of new investment in Canada by the major consumers of stainless steel welded pipe, the presence of excess inventories of stainless steel welded pipe, the high production capacity that exists in Taiwan, the worldwide overcapacity to produce stainless steel welded pipe, the high degree of Taiwanese dependence on export markets and the extremely high margins of dumping applicable to exporters in Taiwan other than Ta Chen.<sup>14</sup>

### **Likelihood of Material Injury to the Domestic Industry**

Although the finding has been in place for five years, the Tribunal finds that the domestic industry remains vulnerable today to a resumption of dumping of the subject pipe. In its view, price pressures by Taiwanese exporters would effectively impact on the prices at which all other imports and domestic shipments of stainless steel welded pipe are sold. That impact would be negative, as dumped Taiwanese product would force prices in the Canadian market downward, effectively devaluing the considerable inventories held by pipe distributors in Canada<sup>15</sup> and forcing domestic producers to lower prices accordingly.

The Tribunal noted, in particular, the steep fall-off in demand for stainless steel welded pipe that has already occurred in 1996 and the sharply reduced profit margins that have ensued. Those 1996 margins are not only low in comparison to the high margins that existed in 1995 but also the lowest margins achieved by domestic producers since the finding in 1991. The Tribunal saw no evidence to suggest that those low profit levels would recover in the immediate future.

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14. *Supra* note 3 at 362.

15. *Ibid.* July 29, 1996, at 214.

ATI noted that the market in Canada for stainless steel welded pipe varied between 2,500 and 3,000 tonnes from 1990 to 1994, before surging to a level of 4,000 tonnes in 1995. ATI believes that the market in 1996 will reach 2,500 tonnes at best and perhaps be as low as 2,000 tonnes, precisely half the level in 1995.<sup>16</sup> Given that scenario, the presence of even a relatively small volume of dumped product in the comparatively small Canadian market would exacerbate an already weak demand situation and inevitably lead to further decreases in production volumes, rising production costs and even lower profit margins for domestic producers.

At the time of the injury finding in 1991, the domestic industry's revenues, gross margins and profits had all deteriorated substantially as compared to 1990. In the first half of 1996, the domestic industry's revenues, gross margins and profits have all deteriorated substantially as compared to 1995 and as compared to the more normal demand period from 1992 to 1994. As was the case in 1991, other indicators of injury, including production and capacity utilization, also showed significant decreases in the first half of 1996.

Imports of the subject pipe had increased thirtyfold from 1987 to 1990, with almost all of the increase in import share of the domestic market coming at the expense of the domestic industry. Following the injury finding in 1991, imports of the subject pipe dropped significantly, as was to be expected. The finding effectively precluded participation in the Canadian market by Taiwanese producers, unless such participation was at normal values established by Revenue Canada. Only Ta Chen elected to seek those normal values, and that was late in 1994 when demand for stainless steel welded pipe was beginning its rise to record levels in 1995. It was probably partly due to the establishment of normal values just prior to the strong increase in market demand for stainless steel welded pipe, when price was no object if product was available, that Ta Chen was able to compete successfully in the Canadian market again in 1995. In fact, testimony by the witness for PAC confirmed that the market was so strong in 1995 that Ta Chen was able to compete at prices that were higher than the normal values calculated by Revenue Canada.<sup>17</sup>

In the first five months of 1996, imports of the subject pipe from Taiwan into Canada ranked second in volume only to imports from the United States.<sup>18</sup> However, now that prices for the subject pipe have fallen so steeply in 1996, Ta Chen has found its competitive position considerably weakened in the Canadian market. The normal values established late in 1994 are at such levels as to make Ta Chen's exports to Canada increasingly uncompetitive at a time of weak market demand and at a time when coil and strip prices have fallen in concert with the reduced demand for stainless steel welded pipe.<sup>19</sup> Indeed, the witness for PAC stated that it is precisely for that reason that Ta Chen is seeking to have new normal values established that would reflect the lower costs of the steel input that forms such a large part of the production costs of stainless steel welded pipe.

In the Tribunal's opinion, this move by Ta Chen to seek new normal values only serves to support the domestic industry's contention regarding the extent to which the market for stainless steel welded pipe has deteriorated in 1996. The normal values under which Ta Chen is currently operating were established late in 1994 and, therefore, were likely based on data pertaining to the summer or fall of 1994. If Ta Chen

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16. *Ibid.* at 13.

17. *Ibid.* July 30, 1996, at 407.

18. *Ibid.* July 29, 1996, at 20.

19. *Ibid.* July 30, 1996, at 407.

cannot compete effectively in today's market, using values based on 1994 conditions and costs, the implication is that the market today is even less buoyant than it was in 1994, which was a relatively normal year in terms of demand for stainless steel welded pipe.

The evidence shows that the volume of the subject pipe available for export to Canada is enormous, in comparison to the size of the Canadian market for stainless steel welded pipe. Uncontested testimony by ATI put the annual production capacity of the Taiwanese industry at 72,000 tonnes,<sup>20</sup> approximately 24 times the size of the domestic market. Clearly, when only 4 percent of total Taiwanese production can supply virtually the entire Canadian market, there is enormous potential for Taiwan to wreak havoc on the Canadian market.

The Tribunal notes that both domestic producers have made, or are in the process of making, considerable investments to expand their production capacities in order to better serve the domestic and export markets for stainless steel welded pipe. In one instance, the expansion will allow the producer to provide a broader range of stainless steel welded pipe to its customer base. In the other, the expansion will not only allow the production of stainless steel welded pipe in non-subject sizes but will also serve as backup production for a certain range of stainless steel welded pipe. The Tribunal is satisfied that, given the opportunity to bring those projects to full fruition, the domestic industry's competitive position in the domestic market will be considerably enhanced.

The resumption of dumping would threaten not only that new investment but also the viability of the production facilities that are already in place. The evidence is clear that the industry's success in 1995 was not only short-lived but also an exception to normal market conditions. The evidence strongly indicates that conditions in 1996 will be the least profitable for domestic producers since the finding in 1991. On the basis of all of the evidence noted above, the Tribunal is convinced that the domestic industry remains vulnerable to resumed dumping.

### **REQUEST FOR EXCLUSION**

At the hearing, counsel for the exporter and importer requested that Ta Chen be granted an exclusion from the Tribunal's order if, as a result of the review, the Tribunal decided to continue the finding. Counsel submitted, as reasons for the request, that there has been a pattern of compliance with dumping legislation by Ta Chen in both Canada and the United States, that there is no evidence that Ta Chen will dump the subject pipe in the Canadian market in the future and that Ta Chen, not agents or trading houses, controls its presence in the Canadian market. Counsel for the domestic producers opposed the request for exclusion. He submitted that only in the most unusual and exceptional case should the Tribunal grant such an exclusion and that there was no basis on which Ta Chen could be excluded in this case. In particular, he submitted that there is no direct evidence, from a principal of Ta Chen in Taiwan, as to how Ta Chen intends to operate in the event it is granted an exclusion.

The Tribunal's power to exclude an exporter or importer from an order continuing a finding comes from subsection 76(4) of SIMA, which provides that, on completion of a review, the Tribunal is required to make "an order rescinding the order or finding or continuing it with or without amendment, as the circumstances require." The decision to grant or deny an exclusion in the context of a review under

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20. *Ibid.* July 29, 1996, at 138.

section 76 of SIMA is within the Tribunal's discretion and is fact-specific in nature.<sup>21</sup> Moreover, the Tribunal has stated that an exclusion will only be granted in exceptional circumstances<sup>22</sup> and that the circumstances in which it would exclude one or more exporters or importers must be adequately demonstrated.<sup>23</sup> In considering whether to grant such an exclusion, the Tribunal and its predecessors have considered several factors to be relevant, including: (1) whether the sales of the exporter or importer represent only a small proportion of subject goods from the country in question;<sup>24</sup> (2) whether the exporter's or importer's sales are of non-subject goods;<sup>25</sup> (3) whether the exporter or importer sells into a segment of the market not normally

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21. *Hitachi Limited v. The Anti-dumping Tribunal*, [1979] 1 S.C.R. 93; *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (F.C.A.); *Sacilor Acières v. The Anti-dumping Tribunal* (1985), 9 C.E.R. 210 (F.C.A.), Court File No. A-1806-83, June 27, 1985; and Article 1904 Binational Panel, *Certain Dumped Integral Horsepower Induction Motors, One Horsepower (1 HP) to Two Hundred Horsepower (200 HP) Inclusive, with Exceptions, Originating in or Exported from the United States of America*, 4 T.C.T. 7065, September 11, 1991.

22. See, for example, *Certain Oil and Gas Well Casing Made of Carbon Steel Originating in or Exported from the Republic of Korea and the United States of America*, Canadian International Trade Tribunal, Review No. RR-95-001, *Order and Statement of Reasons*, July 5, 1996; and *Certain Flat Hot-Rolled Carbon Steel Sheet Products Originating in or Exported from the United States of America*, CDA-93-1904-07, *Decision and Reasons of the Panel*, May 18, 1994.

23. See, for example, *Aluminum Coil Stock and Steel Head and Bottom Rails, for Use in the Production of Horizontal Venetian Blinds, Originating in or Exported from Sweden*, Inquiry No. NQ-91-004, *Finding*, February 7, 1992, *Statement of Reasons*, February 24, 1992.

24. See, for example, *Finished Artificial Graphite Electrodes and Connecting Pins Originating in or Exported from Belgium, Japan, Sweden and the United States of America*, Canadian Import Tribunal, Inquiry No. CIT-4-86, *Finding*, November 26, 1986, *Statement of Reasons*, December 11, 1986; and *Countertop Microwave Ovens in which Cooking Time, Power Level and/or Other Operating Features are Controlled by Electro-Mechanical or Solid-State Devices with Limited Control and no Memory Capability (Commonly Described as "Mechanical Control Countertop Microwave Ovens")*, and *Countertop Microwave Ovens in which Cooking Time, Power Level and/or Other Operating Features are Controlled Wholly or in Part by a Microprocessor-Based Electronic Control (Commonly Described as "Electronic Control Countertop Microwave Ovens")*, *Commonly Considered Either for Household Use Only or for Household and Commercial Use, but Excluding Mechanical Control Microwave Ovens and Electronic Control Microwave Ovens Commonly Considered for Commercial Use Only, Originating in or Exported from Japan, Singapore and the Republic of Korea*, Anti-dumping Tribunal, Inquiry No. ADT-9-81, *Finding*, March 30, 1982, *Statement of Reasons*, May 7, 1982.

25. See, for example, *Carbon Steel Plate, Including High Strength Low Alloy Plate; and Alloy Steel Plate, Both not Further Manufactured than Hot-Rolled or Heat Treated, and Whether or not Coiled or with Rolled Surface Pattern, but Excluding Wheel Rim Base Sections, Carbon and Alloy Tool Steel, Stainless Steel, Mold Steel, Flanged or Dished Plate, Fabricated or Coated Plate, High Speed Steel, Plate for Saws and Plate Clad with Stainless Steel, Originating in or Exported from Belgium, Brazil, Czechoslovakia, the Federal Republic of Germany, France, the Republic of South Africa, the Republic of Korea, Romania, Spain and the United Kingdom*, Anti-dumping Tribunal, Inquiry No. ADT-10-83, *Finding*, December 7, 1983, *Statement of Reasons*, December 29, 1983.

served from domestic production;<sup>26</sup> (4) the nature of the exporter's or importer's participation in the domestic market;<sup>27</sup> and (5) whether the domestic industry had consented to the exclusion.<sup>28</sup>

The Tribunal was not persuaded that Ta Chen should be granted an exclusion. The Tribunal first notes that the request relates to goods which are readily substitutable for and compete directly with goods which the domestic industry currently produces. The Tribunal also notes that Ta Chen's exports to the United States represent virtually 100 percent of exports of stainless steel welded pipe from Taiwan to the United States and that virtually all of Ta Chen's exports to Canada are of the subject pipe.

At the hearing, witnesses for the domestic industry and its distributors expressed grave concerns about the sheer size of the production capacity of Ta Chen and the other Taiwanese producers compared to the size of the Canadian market for stainless steel welded pipe. The witness for Ta Chen testified that the company has added significant production capacity in order to operate on a single shift because it had difficulty in finding labour to run on a two-shift basis. Its current capacity, even on a single-shift basis, is several times the size of the Canadian market for stainless steel welded pipe. There was no evidence as to how much of this capacity might be available to fill orders in Canada at any given time, and the Tribunal is under no illusions that it could or would be redirected overnight to swamp the Canadian market and drive the two Canadian producers out of business. Nevertheless, there was evidence as to a softening of markets for the subject pipe worldwide during the first half of 1996, and the Tribunal is concerned that even a relatively small percentage of excess capacity at Ta Chen alone would, in tonnage terms, be large enough to disrupt the small Canadian market, if offered at dumped prices.

It is evident that Ta Chen was able to compete in Canada without dumping when prices were on the rise in 1994 and 1995. Since its normal values have not yet been adjusted to take into account the price declines in early 1996, it is not clear whether it could still compete on the basis of normal values. However, the Tribunal can accept that a company which exports close to 90 percent of its production is an efficient producer and might well have a general policy of not dumping. The Tribunal is not persuaded, however, that such a company would not, for example, if faced with declining prices in the Canadian market, dump goods in order to retain market share. That being said, the Tribunal notes that, as has already happened, Ta Chen may request the Deputy Minister of National Revenue to review its normal values periodically to reflect changes to, among other things, its prices and costs. This may assist Ta Chen to continue to export the subject pipe to Canada.

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26. See, for example, *Commercial Grade Sodium Carbonate, Commonly Known as Soda Ash, Originating in or Exported from the United States of America*, Anti-dumping Tribunal, Inquiry No. ADT-7-83, *Finding and Statement of Reasons*, July 7, 1983.

27. See, for example, *Cutting and Creasing Steel Rules Originating in or Exported from the United States of America*, Anti-dumping Tribunal, Inquiry No. ADT-1-82, *Finding and Statement of Reasons*, April 8, 1982. The Anti-dumping Tribunal excluded a number of specific companies for various reasons relating to how each participated in the Canadian market, namely, that the imported products were sold at prices higher than domestic prices and that sales of imports were retained for non-price reasons, such as a long-standing business relationship.

28. See, for example, *supra* note 23.



**CONCLUSION**

For the foregoing reasons, the Tribunal concludes that Canadian production of stainless steel welded pipe is likely to be materially injured by resumed dumping by Taiwan, should the finding be rescinded. Therefore, the finding is continued without amendment.

Lyle M. Russell  
Lyle M. Russell  
Presiding Member

Anthony T. Eyton  
Anthony T. Eyton  
Member

Raynald Guay  
Raynald Guay  
Member