CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, June 5, 2000

Review No.: RR-99-004

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on June 5, 1995, in Review No. RR-94-004, continuing, without amendment, its order made on June 5, 1990, in Review No. RR-89-008, continuing, without amendment, the finding of the Anti-dumping Tribunal made on June 28, 1983, in Inquiry No. ADT-6-83, concerning:

CARBON STEEL WELDED PIPE IN THE NOMINAL SIZE RANGE 12.7 mm TO 406.4 mm (1/2 in. TO 16 in.) INCLUSIVE, IN VARIOUS FORMS AND FINISHES, USUALLY SUPPLIED TO MEET ASTM A53, ASTM A120, ASTM A252, ASTM A589 OR AWWA C200-80 OR EQUIVALENT SPECIFICATIONS, INCLUDING WATER WELL CASING, PILING PIPE, SPRINKLER PIPE AND FENCING PIPE, BUT EXCLUDING OIL AND GAS LINE PIPE MADE TO API SPECIFICATIONS EXCLUSIVELY, ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF KOREA

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 order made on June 5, 1995, in Review No. RR-94-004, continuing, without amendment, its order made on June 5, 1990, in Review No. RR-89-008, continuing, without amendment, the finding of the Anti-dumping Tribunal made on June 28, 1983, in Inquiry No. ADT-6-83.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the order in respect of carbon steel welded pipe in the nominal size range 12.7 mm to 406.4 mm (1/2 in. to 16 in.) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A120, ASTM A252, ASTM A589 or AWWA C200-80 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, originating in or exported from the Republic of Korea, with an amendment to exclude lightwall sprinkler pipe that meets the requirements of ASTM A135 and/or A795 with the following dimensions:

non-threadable - nominal size of 1 1/4 in. and wall thickness of 0.076 in.; nominal size of 1 1/2 in. and a wall thickness of 0.076 in.; nominal size of 2 in. and wall thickness of 0.076 in.; nominal size of 2 1/2 in. and wall thickness of 0.076 in.; nominal size of 3 in. and wall thickness of 0.076 in.; and nominal size of 4 in. and wall thickness of 0.086 in.; and

threadable - nominal size of 1 in. and wall thicknesses of 0.093 in. to 0.123 in.; nominal size of 1 1/4 in. and wall thicknesses of 0.093 in. to 0.131 in.; nominal size of 1 1/2 in. and wall thicknesses of 0.098 in. to 0.135 in.; and nominal size of 2 in. and wall thicknesses of 0.103 in. to 0.140 in.;

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and subject to the condition that the pipe be stencilled to indicate that it is approved by the Factory Mutual Research Organization and is listed by Underwriters' Laboratories, Inc. and Underwriters' Laboratories of Canada.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Patricia M. Close
Patricia M. Close
Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Michel P. Granger
Michel P. Granger
Secretary

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Special Import Measures Act — Whether to rescind or continue, with or without amendment, the order made by the Canadian International Trade Tribunal on June 5, 1995, in Review No. RR-94-004, continuing, without amendment, its order made on June 5, 1990, in Review No. RR-89-008, continuing, without amendment, the finding of the Anti-dumping Tribunal made on June 28, 1983, in Inquiry No. ADT-6-83.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	April 12 to 14, 2000
Date of Order and Reasons:	June 5, 2000
Tribunal Members:	Arthur B. Trudeau, Presiding Member Patricia M. Close, Member Peter F. Thalheimer, Member
Director of Research:	Selik Shainfarber
Research Manager:	John Gibberd
Economist:	Ihn Ho Uhm
Statistical Officer:	Joël J. Joyal
Counsel for the Tribunal:	Marie-France Dagenais
Registrar Officer:	Claudette Friesen
Participants:	Lawrence L. Herman Daniel Green for Stelco Inc./Stelpipe, a subsidiary of Stelco Inc.
	Dalton J. Albrecht James H. Warnock for IPSCO Inc.
	Ronald C. Cheng Benjamin P. Bedard Paul D. Conlin for Ispat Sidbec Inc.
	(Domestic Producers)

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Albert C. Gourley
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for Western International Forest Products

(Importer)

Witnesses:

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Stelpipe, a subsidiary of Stelco Inc.

Donald K. Belch
Director - Government Relations
Stelco Inc.

Douglas J. Jury
Financial Manager
Stelpipe, a subsidiary of Stelco Inc.

Brian Cain
Vice-President, Eastern Canadian Region
Comco Pipe & Supply Co.

Gordon Lane
Canadian Sales Manager
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IPSCO Inc.

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Normand Robitaille
Commercial Director, Tubes
Ispat Sidbec Inc.

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, June 5, 2000

Review No.: RR-99-004

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TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
PATRICIA M. CLOSE, Member
PETER F. THALHEIMER, Member

STATEMENT OF REASONS

BACKGROUND

This is a review, under subsection 76(2) of the *Special Import Measures Act*,[1] of the order made by the Canadian International Trade Tribunal (the Tribunal) on June 5, 1995, in Review No. RR-94-004, continuing, without amendment, its order made on June 5, 1990, in Review No. RR-89-008, continuing, without amendment, the finding of the Anti-dumping Tribunal made on June 28, 1983, in Inquiry No. ADT-6-83, concerning carbon steel welded pipe in the nominal size range 12.7 mm to 406.4 mm (1/2 in. to 16 in.) inclusive, in various forms and finishes, usually supplied to meet ASTM[2] A53, ASTM A120, ASTM A252, ASTM A589 or AWWA[3] C200-80 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API[4] specifications exclusively, originating in or exported from the Republic of Korea (Korea).

1. R.S.C. 1985, c. S-15 [hereinafter SIMA].
2. American Society for Testing and Materials.
3. American Water Works Association.
4. American Petroleum Institute.

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Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the order and issued a notice of review[5] on October 15, 1999. A notice of change of date of public hearing was issued on January 25, 2000. These notices were forwarded to all known interested parties. As part of this review, the Tribunal sent questionnaires to Canadian producers, importers, purchasers and foreign manufacturers of carbon steel welded pipe.

The record of this review consists of all relevant documents, including the previous order, the notice of review and the public and confidential replies to the questionnaires. All public exhibits were made available to interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of the use, disclosure, reproduction, protection and storage of confidential information on the record of the proceedings, as well as the disposal of such confidential information at the end of the proceedings or in the event of a change of counsel.

Public and in camera hearings were held in Ottawa, Ontario, from April 12 to 14, 2000.

The domestic producers, Stelco Inc. (Stelco)/Stelpipe, a subsidiary of Stelco Inc. (Stelpipe), IPSCO Inc. (IPSCO) and Ispat Sidbec Inc. (Ispat), were represented by counsel at the hearing. Evidence was submitted and arguments were made in support of a continuation of the order.

One importer, Western International Forest Products (Western), was represented by counsel at the hearing. Evidence was submitted and arguments were made in support of a rescission of the order. In the alternative, Western requested an exclusion for certain specified goods.

The Tribunal also heard evidence from a witness from EMCO Limited (EMCO), a national pipe distributor, who appeared at the hearing at the Tribunal's request.

PRODUCT

Steel pipe can be identified according to whether the pipe is welded or seamless, the grade of steel used in the pipe and the end uses of the pipe. The American Iron and Steel Institute classifies steel pipe into the following groups according to its end uses: standard pipe, pressure pipe, line pipe, structural pipe, mechanical pipe and oil country tubular goods. Standard pipe is generally intended for the low-pressure conveyance of steam, water, natural gas, air and other liquids and gases in plumbing and heating applications.

The product under review is carbon steel welded pipe, commonly identified as standard pipe. More specifically, the order covers carbon steel welded pipe in the nominal size range 12.7 mm to 406.4 mm (1/2 in. to 16 in.) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A120,[6] ASTM A252, ASTM A589 or AWWA C200-80 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively.

5. C. Gaz. 1999.I.3136.
6. The ASTM A120 specification has been withdrawn and is no longer used in Canada or the United States. One of the submissions indicated that ASTM A120 had been "superseded" by ASTM A795. However, according to information put out by the ASTM, ASTM A120 has been replaced by ASTM A53.

Standard pipe is generally produced in mills using either the continuous weld (CW or butt weld) or the electric resistance weld (ERW) process. Both processes begin with strips of steel sheet that have been slit from coils of flat steel sheet. The width of the strips is equal to the circumference of the pipe to be manufactured. In the CW process, the strips of sheet are heated to a welding temperature of approximately 2,600ºF in a gas-fired furnace. The hot strips are then passed through a series of rollers to form a tubular shape, with the edges finally being butted together under pressure to form a weld to which no filler metal is added. The CW process can be used to manufacture pipe with a diameter of up to 4.5 in.

In the ERW process, cold strips of sheet are passed through a series of rollers to form a tubular shape, and the edges of the strip are heated electrically and welded together under heat and pressure. As in the CW process, no filler metal is added to the weld. This welding process produces a bead of "flash" which is generally trimmed from both sides of the weld. The ERW process can be used to produce pipe with a diameter of up to 24 in.

Standard pipe can also be produced using a combination of the ERW process and a hot stretch reduction mill. Pipe shells are produced using the ERW process. These shells are heated in a furnace and are then passed through a stretch reduction mill. The mill reduces the outside diameter of the pipe and can be used to thicken, maintain or reduce the thickness of the pipe walls.

Once the basic pipe is formed using either one of the processes, it is cut to length, straightened and tested, and the pipe ends are processed, i.e. cropped, faced and reamed. The surface of the pipe is finished, if required, with such finishes as lacquer or zinc (galvanizing). Other operations include stencilling and bundling of the pipe.

Standard pipe is produced to the ASTM specifications, which prescribe chemical and mechanical properties. Most standard pipe is used in plumbing and heating applications and is produced to meet the ASTM A53 specification in standard black and galvanized finishes. The ASTM A53 specification is considered to be of the highest quality and is suitable for welding, coiling, bending and flanging. Other uses for standard pipe include piling pipe (ASTM A252), water well casing (ASTM A589 or AWWA C200-80) and sprinkler pipe (ASTM A795).[7]

Generally, the domestic producers sell their carbon steel welded pipe to major distributors that, in turn, sell the pipe to end users or other distributors in Canada. Canadian distributors of standard pipe may purchase pipe domestically from producers, importers or other distributors and may import standard pipe directly.[8]

DOMESTIC INDUSTRY

Stelpipe, Ispat and IPSCO account for almost all of the domestic production of standard pipe. These companies have mills in several Canadian locations. Camrose Pipe Company (Camrose) also produced a small amount of standard pipe during the review period.[9]

7. Pipe made to the ASTM A53 and ASTM A135 specifications may also be used as sprinkler pipe.
8. In 1999, the estimated value of the Canadian market for standard pipe was $137 million.
9. Camrose is primarily a line pipe producer. However, the company was sent a manufacturer's questionnaire by the Tribunal, and the company's response indicated that it produced small amounts of standard pipe in 1997 and 1998.

Stelco is a publicly traded company that was incorporated in 1910. Stelco purchased pipe-making facilities in 1962, and standard pipe was produced and sold under the "Stelco" brand until 1984. That year, the pipe- and tube-making facilities, comprising Page-Hersey Works, Welland Tube Works and Camrose Pipe, were grouped together and managed as Stelpipe. In 1992, Stelpipe sold 60 percent ownership of its Camrose Pipe facility to Oregon Steel Mills, leaving Stelco with a minority interest. In 1994, Stelpipe and Welland Pipe became separate legal entities within the Stelco group of businesses.

Stelpipe produces standard pipe on two mills located in Welland, Ontario. One of those mills is an ERW hot stretch reduction mill that commenced operations in 1992. The mills manufacture standard pipe ranging from 1/2 in. to 8 in. in nominal size.[10] Stelpipe's products are marketed nationally, and 90 percent of its sales are made through pipe distributors. The company also exports a significant proportion of its production.

Ispat, formerly Sidbec-Dosco Inc., became a wholly owned subsidiary of Ispat International NV of the Netherlands in 1994. Ispat produces carbon steel welded pipe at its facility in Montréal, Quebec, using a CW mill to produce standard pipe ranging from 1/2 in. to 4 in. in nominal size. In addition, Delta Tube, which is 40 percent owned by Ispat, supplies Ispat with standard pipe ranging from 2 in. to 6 in. in nominal size. Delta Tube produces the pipe at its facility in Montréal using the ERW process, and the pipe is shipped to Ispat's Montréal facility for finishing. Ispat's pipe products are marketed nationally, and the company also exports a significant proportion of its production.

IPSCO, which is a publicly traded company, was incorporated as the Prairie Pipe Manufacturing Co. Ltd. in 1956. IPSCO commenced the production of pipe in 1957 in Regina, Saskatchewan, upon the completion of an ERW mill. In 1959, the company acquired the assets of Inter-provincial Steel and Pipe Corp. The company assumed its current name, IPSCO Inc., in 1984 and now operates ERW mills located in Regina, Red Deer, Alberta, and Calgary, Alberta. These mills produce standard pipe with an outside diameter of 2 in. to 16 in. IPSCO markets carbon steel welded pipe throughout Canada using distributors. The company also exports a small percentage of its production.

ENFORCEMENT

The Department of National Revenue (Revenue Canada) and the Canada Customs and Revenue Agency (CCRA) concluded normal value reviews on carbon steel welded pipe originating in or exported from Korea in 1994, 1998 and 2000.[11]

In the 1994 normal value review, only Pusan Steel Pipe Corp., now SeAH Steel Corporation (SeAH), provided sufficient information for specific normal values to be determined. Normal values for all other Korean exporters were determined by ministerial specification based on the highest margin of dumping found at the final determination in 1983. As a result, the amount of anti-dumping duty payable was calculated by advancing the export price by 19 percent.[12] In the 1998 normal value review, no exporter provided sufficient information for specific normal values to be determined. Thus, normal values for all

10. Nominal size specifies inside diameter.
11. The CCRA replaced Revenue Canada on November 1, 1999.
12. Customs Notice N-903 (14 October 1994).

exporters, including SeAH, were determined by ministerial specification, again based on the highest margin of dumping found at the final determination, resulting in an anti-dumping duty of 19 percent.[13]

In the most recent normal value review completed in April 2000, with the exception again of SeAH, Korean exporters did not respond to the CCRA's request for information. Once again normal values for non-responding Korean exporters will be determined by ministerial specification, with the amount of anti-dumping duty payable equal to 19 percent of the export price of the goods. In the case of SeAH, while it responded, it did so after the specified due date and, therefore, it too will be subject to the 19 percent anti-dumping duty until such time as the CCRA is able to determine a specific normal value for the company.[14]

Enforcement statistics show that, in each of the years 1997, 1998 and 1999, tens of thousands of dollars in anti-dumping duties were paid on imports of carbon steel welded pipe from Korea.[15]

SUMMARY OF THE ORDER IN REVIEW NO. RR-94-004

Review No. RR-94-004, the second one in this case, was a review of the order made on June 5, 1990, which continued the 1983 finding, without amendment. In that review, neither Korean exporters nor their Canadian importers made representations.

In assessing the likelihood of dumping, the Tribunal placed considerable weight on the past actions of the Korean exporters in the North American market, noting the large number of injury findings on a diverse range of Korean steel products in both Canada and the United States. The Tribunal also noted that, in 1992, the U.S. International Trade Commission (ITC) found that the same Korean exporters that were dumping standard pipe in Canada were injuriously dumping the same goods in the United States. In finding that there was a propensity to dump by Korea, the Tribunal cited a number of additional factors, including: a preliminary determination of dumping made by the U.S. Department of Commerce (DOC) on Korean oil country tubular goods; the continued presence of Korean imports in the Canadian market; the likelihood that Canadian importers, that had switched to imports from the Philippines, would return to Korean imports with a rescission of the order; the large volume of Korean pipe available for export and the continuing reliance of Korean exporters on western North American markets; and allegations of circumvention of the order in Canada and the finding in the United States. The Tribunal also noted that, in spite of the order, Korean pipe continued to be dumped. The amount of anti-dumping duties, while not large relative to the value of Korean imports, showed year-over-year increases such that the amount assessed in 1994 as a percentage of the value for duty was some three times larger than it had been in 1990.

In addressing the likelihood of material injury from a resumption of dumping, the Tribunal noted the continuing weak market demand for pipe and the intense competition between suppliers for market share. Although material injury findings on the same goods were issued in 1991 and 1992 against seven other countries, it was clear to the Tribunal that the industry had little respite from unfair trading practices throughout the early 1990s. Intense competition continued, as importers switched to new suppliers, including the Philippines, the Republic of Turkey and the Republic of South Africa. The Tribunal noted that standard

13. Customs Notice N-255 (24 November 1998).
14. Customs Notice N-316 (3 April 2000).
15. *Protected Pre-hearing Staff Report*, 18 February 2000, Tribunal Exhibit RR-99-004-24 (protected), Administrative Record, Vol. 2 at 32.

pipe is a commodity product for which purchasing decisions are based on the best available price and that importers have thus continued to search out the lowest-cost product.

The domestic producers incurred substantial losses throughout the review period. While some of the losses were due to start-up problems with Stelpipe's new mill, the evidence indicated that the financial results of Sidbec-Dosco Inc. and IPSCO were also less than satisfactory. Finally, the Tribunal noted the continuing efforts of the domestic producers to rationalize production in order to remain competitive. However, the Tribunal concluded that, in spite of their efforts, the industry remained highly vulnerable to a resumption of dumping.

For the foregoing reasons, the Tribunal concluded that Canadian production of carbon steel welded pipe was likely to be materially injured by a resumption of dumping by Korea, which was likely to arise from a rescission of the order. Therefore, the Tribunal continued the order, without amendment.

OTHER CARBON STEEL WELDED PIPE DECISIONS

In Inquiry No. NQ-90-005,[16] the Tribunal found that the dumping of carbon steel welded pipe originating in or exported from Argentina, India, Romania, Taiwan, Thailand and Venezuela had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

In Inquiry No. NQ-91-003,[17] the Tribunal found that the dumping of carbon steel welded pipe originating in or exported from Brazil had caused, was causing and was likely to cause material injury to the Canadian production of like goods. The Tribunal also found that the dumping of carbon steel welded pipe originating in or exported from Luxembourg, Poland, the Republic of Turkey and Yugoslavia had caused, but was not causing and was not likely to cause, material injury to the Canadian production of like goods. Accordingly, no finding was put in place with respect to imports from the four countries.

In Review No. RR-95-002,[18] the Tribunal issued an order continuing the above-mentioned findings, without amendment. This order is due to expire on July 24, 2001.

POSITION OF PARTIES

Domestic Producers

In preliminary comments, the domestic producers noted the absence of the Korean exporters and their lack of interest in the Tribunal's proceedings. They also claimed that there is no question that the industry remains vulnerable to resumed dumping in different ways, depending on geographical location, cost structure and other factors bearing on its operations. In the domestic producers' view, the order should be continued, without amendment.

In addressing the domestic industry's vulnerability to resumed dumping, the domestic producers noted their reduced net sales, their reduced gross margins, the consolidated industry loss, the price suppression, the significant underutilization of production capacity and the continuing decline in average selling prices of carbon steel welded pipe. The domestic producers also argued that they have been subjected

16. *Finding* (26 July 1991), *Statement of Reasons* (12 August 1991).
17. *Finding* (23 January 1992), *Statement of Reasons* (7 February 1992).
18. *Order* and *Statement of Reasons* (25 July 1996).

to price pressures in the market, largely as a result of imports from several countries and, more specifically, Korea. They noted that import volumes of Korean product have been significant over the past few years, according to Statistics Canada data. This situation has tended to push Stelpipe and Ispat out of the market in British Columbia and Western Canada and has forced IPSCO to limit its production of standard pipe.

The domestic producers noted the commodity nature of standard pipe, where price is paramount in purchasing decisions and product is completely substitutable, whether it is produced domestically or imported. As such, a relatively small volume of dumped product can quickly and negatively affect prices in a local market such as Vancouver, British Columbia, and then gradually in Canada as a whole. They also noted the disruptive activities of certain importers that make minimal investments in the pipe business while undercutting the domestic industry's prices.

Regarding the question of likelihood of resumed dumping if the order is rescinded, the domestic producers noted the large production and export capacity of the Korean producers. They also claimed that the Korean product has maintained an active presence in the Canadian market, even with the order in place. They argued that the circumvention behaviour of the Korean exporters and importers in both Canada and the United States is clear evidence of a propensity to dump. In addition, they noted the dumping of a wide range of steel products in Canada by the same exporters and the existence of an injury finding relating to the subject goods in the United States, as well as findings on other steel products in the United States and in other markets. Moreover, a recent safeguard action on line pipe in the United States has restricted line pipe imports from Korea into the U.S. market, thereby adding to the surplus of Korean pipe production capacity that could be used for the production of the subject goods for the Canadian market.

Given the foregoing, and in light of the volume of subject imports from Korea at prices below domestic prices, as well as ongoing weak demand in worldwide steel markets, the domestic producers argued that the Korean exporters represent a clear dumping threat to the domestic industry.

Importer

Western argued in favour of a rescission of the order. In the event that the Tribunal decided to continue the order, Western requested a product exclusion for "Fireline" carbon steel welded pipe for use in sprinkler applications. The exclusion request, which was opposed by Ispat, is discussed under "Exclusion" at the end of these reasons.

Western submitted that the economic environment has completely changed since the original finding and its continuation in the 1990s and that the factors that led to the continuation of the injury finding against Korea, i.e. declining prices, increasing imports, excess capacity and weak demand conditions, are no longer present. Indeed, in Western's view, the Canadian producers are now operating successfully in the North American environment.

On the issue of likelihood of resumed dumping, Western submitted that, according to the Tribunal's statistics, imports of carbon steel welded pipe from Korea remained at minimal levels during the period covered by the review. Western argued that the Korean industry is largely oriented to serving its domestic market and that, in 1999, only one third of Korean capacity was devoted to exports. According to Western, Korean capacity allocated to carbon steel welded pipe is comparatively small, and the current trend in Korea is to reduce capacity and move it from the low-value standard pipe sector to higher value-added products. Moreover, with the current recovery of the Korean and other Asian economies, Korean producers of the

subject goods were concentrating their efforts on their domestic and other Asian markets rather than the Canadian market.

Western submitted that the existence of other injury findings should not be a determining factor in considering whether to continue the present order. It argued that a propensity to dump will vary greatly from product sector to product sector, depending on the specific industry, the structure of its production capacity and the condition of domestic and foreign markets at any given time. Furthermore, the lack of participation by Korean producers in the review should not be viewed as an unwillingness on their part to behave responsibly in the Canadian market. It could simply reflect the fact that the Canadian market is too small to justify the time and expense of participation and that the Korean economy is much more oriented towards Asian markets.

In addressing the question of likelihood of material injury, Western argued that there is no evidence of price erosion or price suppression as a specific consequence of Korean imports. Western further argued that the domestic producers' loss of market share over the past five years is attributable to producers in countries other than Korea. In addition, the industry's financial results were affected by its high costs of production, as a result of a number of factors, such as transfer pricing, terms of financial arrangements and onerous pension fund obligations, that had nothing to do with imports.

ANALYSIS

While SIMA does not prescribe the questions to be decided in determining whether to continue a finding or order under section 76, it has been a long-standing Tribunal practice to consider two questions. First, the Tribunal must determine whether, if a finding or order is rescinded, there is likely to be a continuation or resumption of dumped or subsidized imports.[19] Second, the Tribunal must assess whether, if there is such a continuation or resumption, it is likely to cause material injury to the domestic industry.

Likelihood of Dumping

The first question in this case, therefore, is whether it is likely that imports from Korea will be dumped, if the order is rescinded. In considering this question, the Tribunal notes that the initial finding was put in place in 1983, some 17 years ago. The current review is the third since that finding. While there are many things that have not changed since the finding, there are certain things that have changed.

Looking first at the changes that have occurred, by all accounts, the Korean economy, today, is rapidly evolving and is more advanced and industrialized than it was in the early 1980s when the initial finding was put in place. As part of this evolution, the relative cost structure of the Korean economy appears to have generally increased, and, at the same time, there has been a shift to the production of higher value-added products.[20] Moreover, it seems fair to say that, over the past two decades, Korea has become more fully integrated into the international trading system and is generally more attuned to international trading rules and responsibilities. For example, a recent trade publication reported that Korea is considering eliminating a certain "two-tier" domestic pricing policy for hot-rolled coil, which is a key input in the

19. On April 15, 2000, certain amendments to SIMA came into effect that, *inter alia*, give the CCRA the jurisdiction to determine whether there is a likelihood of dumping. The new provisions apply to reviews commenced after April 15, 2000. They are, therefore, not applicable to this review, which commenced on October 15, 1999.
20. *Transcript of Public Hearing*, Vol. 2, 13 April 2000, at 327 and 352-57; and Importer's Exhibit D-5, Attachment A at 2, Administrative Record, Vol. 13.

production of other steel products, including the subject pipe. According to the report, this two-tier pricing regime had originally been put in place to provide "incentives" for Korean producers "to boost exports" as part of a policy designed "to support Korea's export-led economy 20 years ago".[21]

However, there are a number of factors that have not changed in any substantial way over the years. In this connection, the Tribunal notes that, as has been found in each of the previous reviews of this case, Korea has huge production capacity in the subject goods, which dwarfs the size of the Canadian market. Moreover, a significant proportion of Korean production is oriented to export markets, and North America is an important destination for the subject Korean pipe, especially the West Coast.[22] These factors remain an important backdrop to any analysis of the risks of dumping by Korea.

In considering these risks, the Tribunal notes first that, with one exception,[23] in recent years, Korean producers have not obtained normal values from Revenue Canada and the CCRA which would allow them to export to Canada without the imposition of anti-dumping duties.[24] In the absence of such normal values, anti-dumping duties have been prescribed on the subject Korean pipe imports in an amount equal to 19 percent of the export price. As a result, over the three-year period covered by this review, more than $200,000 in anti-dumping duties have been levied on the subject Korean pipe imports.[25]

The above amount, while not insignificant, may actually understate the total amount of dumping which has occurred. In this regard, the Tribunal notes the evidence presented in this case concerning the alleged misrepresentation of the subject goods as non-subject goods by a major importer of Korean pipe and the charges which have been laid under the *Customs Act*[26] in relation to this matter.[27] In addition, there is a practice in certain sectors of the industry known as "dual stencilling",[28] which makes it difficult, from a customs and enforcement standpoint, to classify and distinguish non-subject line pipe and the subject pipe.[29] Although this practice may have a certain business utility, the evidence suggests that, in both Canada and the

21. Manufacturer's Exhibit A-1, Annex 11, 5th press article, Administrative Record, Vol. 11.
22. Importer's Exhibit D-5, Attachment A at 4, Administrative Record, Vol. 13; Manufacturer's Exhibit A-1, Annex 9, Administrative Record, Vol. 11; and Manufacturer's Exhibit B-2A at 203, Administrative Record, Vol. 11.1.
23. See the "Enforcement" section of these reasons.
24. Provided that export prices were equal to or greater than normal values.
25. *Protected Pre-hearing Staff Report*, 18 February 2000, Tribunal Exhibit RR-99-004-24 (protected), Administrative Record, Vol. 2 at 32.
26. R.S.C. 1985 (2d Supp.), c. 1.
27. Manufacturer's Exhibit A-1 at para. 34, Administrative Record, Vol. 11; and Manufacturer's Exhibit B-4A, Administrative Record, Vol. 11.1.
28. Pipe can be stencilled to indicate that it meets more than one set of specifications. For example, line pipe manufactured to the API 5L specification could also be certified as ASTM A53 pipe, as the API 5L specification is more stringent than the ASTM A53 specification. At the time of importation, it is difficult to know whether the dual stencilled pipe is going to be used in a standard-pipe or line-pipe application. However, it is the end use that determines whether the pipe is a subject or non-subject product.
29. Standard pipe is generally intended for the low-pressure conveyance of steam, water, natural gas, air and other liquids and gases in plumbing and heating applications. Line pipe is used for conveying gas, oil or water in pipeline or utility distribution systems.

United States, in relation to Korean pipe imports, it has provided another avenue for circumventing the order and avoiding the application of anti-dumping duties.[30]

The foregoing considerations have made it difficult, in this case, for the Tribunal to get a clear and accurate fix on the actual level of Korean imports over the period reviewed. It appears likely, based on the evidence available, that the Tribunal's questionnaire survey of importers resulted in an underreporting of the subject imports from Korea. Be that as it may, it is apparent that Korean imports have continued to maintain a noticeable presence in the Canadian market over the past several years, especially on the West Coast,[31] despite the ongoing imposition of anti-dumping duties.

In looking further at Korean prices, the Tribunal notes that, according to the evidence, the average unit value (duty inclusive) of Korean standard pipe imports that were landed in the United States, in 1999, was about CAN$660/tonne.[32] This was about the same as the average value of similar Korean standard pipe that was landed in Canada in 1999.[33] This is surprising, given that Korean standard pipe is also currently subject to an injury finding in the United States[34] and that the assessed anti-dumping duties in the United States, at between 2 and 3 percent,[35] are substantially lower than the 19 percent[36] in Canada. In view of the large difference in anti-dumping duties, one would ordinarily expect to see higher Korean landed values in Canada[37] than in the United States. The fact that Korean average landed values are not higher in Canada suggests that Korean exporters set a lower export price for Canada than for the United States. This type of price differentiation between markets suggests a dumping tendency to the Tribunal.[38]

It is also surprising that, despite the application of anti-dumping duties on the subject Korean goods, Korean standard pipe is still available, especially in Western Canada, at prices that are some 15 percent

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30. There is a U.S. ITC finding covering imports of standard pipe from Korea. See *Certain Circular, Welded, Non-alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela*, Inv. Nos. 731-TA-532 through 537 (Final), USITC Pub. 2564, October 1992. See, also, Manufacturer's Exhibit A-1 at para. 59, Administrative Record, Vol. 11; Manufacturer's Exhibit A-1, Annex 10, Document Three at 195-96, Administrative Record, Vol. 11; and Manufacturer's Exhibit A-3 at paras. 23-29, Administrative Record, Vol. 11.
31. The presence has been not only in terms of sales but also in terms of offers. See Manufacturer's Exhibit A-8 (protected), Attachments, Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 1, 12 April 2000, at 140-47; and *Transcript of Public Hearing*, Vol. 1, 13 April 2000, at 440, 445 and 457-58.
32. The landed value, in addition to the purchase price, includes such things as customs and anti-dumping duties, brokerage fees and delivery costs. Manufacturer's Exhibit A-20 at 3, Administrative Record, Vol. 11. As noted earlier, standard pipe is the term commonly used in the industry to describe the subject goods and like goods.
33. *Public Pre-hearing Staff Report*, 18 February 2000, Tribunal Exhibit RR-99-004-23, Administrative Record, Vol. 1A at 21 and 87.
34. See *Certain Circular, Welded, Non-alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela*, Inv. Nos. 731-TA-532 through 537 (Final), USITC Pub. 2564, October 1992.
35. Manufacturer's Exhibit B-2A at 205, Administrative Record, Vol. 11.1.
36. Anti-dumping duties on the subject imports are equal to a 19 percent advance on the export price. See the "Enforcement" section of these reasons.
37. On a common currency and volume basis.
38. As part of the review, the Tribunal requested information directly from Korean producers. The Tribunal's analysis of export prices and landed values would have been greatly assisted if Korean producers had completed and returned the Tribunal's questionnaires. However, not one questionnaire was returned, although SeAH submitted some information through Western. Accordingly, the Tribunal has relied on the cited information sources for its analysis of these points.

below domestic industry prices.[39] This means that, before the application of the 19 percent anti-dumping duty at the point of exportation from Korea, Korean selling prices to Canada may, in some cases, be as much as 30 percent or more below domestic industry prices. Since current average domestic prices are below average industry costs,[40] Korean producers would have to have a cost advantage over Canadian producers that is well in excess of 30 percent to achieve profitable sales at these low implied export prices. While Korean producers may well have some cost advantage over Canadian producers, such a wide advantage seems unlikely, especially in light of the evidence concerning the higher costs of production in Korea today.[41] In short, this evidence suggests that Korean producers may be pricing below costs, which again raises the spectre of dumping, in the absence of the order.

The Tribunal notes that, as low as Korean import prices are in Canada, they are still far from being the lowest-priced imports, according to the evidence. More specifically, the Tribunal's witness from EMCO, one of the largest distributors of standard pipe in Canada, testified that there are numerous other sources of standard pipe from countries in Asia and elsewhere that are being offered and sold in Canada, in some cases, at prices that are 30 percent or more below domestic industry prices.[42] These sources, which include the People's Republic of China, Malaysia, the Republic of Turkey, Mexico, the Philippines and Peru, are not currently covered by injury findings on the subject pipe. According to the evidence, over the past few years, these countries, which during the hearing were collectively alluded to as "emerging countries", have captured an important share of the Canadian pipe market.[43] They have done this in conjunction with Canadian importers that have continued their past patterns of seeking out new low-priced sources of standard pipe to replace old sources that had become less competitive after being made subject to anti-dumping duties.

In the Tribunal's estimation, this historical pattern of shifting sources could again be repeated if the order against Korea is rescinded. In this regard, the Tribunal notes that Korea is considered to be a more reliable and higher-quality supplier of the subject pipe than many of the emerging countries and would be a preferred source for some importers and distributors.[44] However, before any major switch to Korean pipe occurs, the current price gap in Canada between Korean pipe and the pipe from these emerging sources, which, in some cases, is about 10 to 15 percent, would have to narrow. In the Tribunal's opinion, this would likely occur if anti-dumping duties were removed. While Korean product may have certain advantages, the fact remains that standard pipe is a commodity product and small price differences of only 2 or 3 percent are considered important.[45]

Thus, in the absence of the order, Korean landed prices are likely to fall, and the ensuing competition between Korea and these emerging countries could easily destabilize domestic prices. This competition could be rendered more intense by the fact that steel markets in Asia and elsewhere are just recovering from the effects of the 1997-98 Asian financial crisis, which resulted in global steel production overcapacity and weaknesses in most steel product prices. In this connection, the evidence shows that, although steel prices

39. *Transcript of Public Hearing*, Vol. 1, 13 April 2000, at 445.
40. *Public Pre-hearing Staff Report*, 18 February 2000, Tribunal Exhibit RR-99-004-23, Administrative Record, Vol. 1A at 35.
41. *Transcript of Public Hearing*, Vol. 2, 13 April 2000, at 327 and 352-57.
42. *Transcript of Public Hearing*, Vol. 2, 13 April 2000, at 445, 457-58 and 480-81.
43. *Public Pre-hearing Staff Report*, 18 February 2000, Tribunal Exhibit RR-99-004-23, Administrative Record, Vol. 1A at 24.
44. *Transcript of Public Hearing*, Vol. 2, 13 April 2000, at 446, 463-64, 471-72 and 481-84.
45. *Transcript of Public Hearing*, Vol. 2, 13 April 2000, at 328 and 378-79.

generally have been firming up in recent quarters, in many cases, prices still remain below the levels which prevailed prior to the crisis in Canada and elsewhere.[46]

The Tribunal also notes that the U.S. ITC recently found, following a safeguard investigation, that the U.S. pipe industry was being seriously injured by line pipe imports from a number of countries, including Korea.[47] As a result, on March 1, 2000, the U.S. Administration applied a tariff rate quota on the importation of line pipe to the United States from all offshore sources that, in effect, severely limits the ability of countries, such as Korea, to access the U.S. line pipe market.[48] The U.S. safeguard action is relevant to this case because, although line pipe is not a subject product, it is produced on the same equipment as the subject goods, and Korea has been a major source of line pipe for the United States.[49] With the U.S. market for line pipe now virtually closed to Korean producers, the possibility arises that some Korean line pipe production may be switched to standard pipe production that will be seeking export markets, including Canada, especially if the order is rescinded.

In an even more directly related case, the Tribunal also notes that Korea is currently subject to a U.S. injury finding on standard pipe.[50] The U.S finding is also currently under review, and the decision on whether to continue the finding is due in June 2000. However, as part of the U.S. review process, the DOC has already found that there is a likelihood of dumping by Korean producers, if the U.S. finding is rescinded. This finding by the DOC, together with another recent investigation relating to Korean pipe in Indonesia,[51] is indicative of ongoing current concerns over Korean pipe imports in other jurisdictions.

In sum, although the Korean situation is, in certain respects, somewhat different today from what it was in the past, the evidence presented in this case indicates that the risk of dumping by Korean producers remains significant, if the order is rescinded. The Tribunal, therefore, finds that, absent the order, there is a likelihood of dumping.

Likelihood of Material Injury

Having decided that there is a likelihood of dumping, the Tribunal must address the question of whether the dumping is likely to cause material injury. In this connection, the Tribunal notes that, throughout the 1990s, the domestic industry closed plants and rationalized production and, at the same time, made substantial investments in new, state-of-the-art production facilities. Yet, despite these steps, sales have been stagnant, and the industry's overall financial performance has been poor. According to the industry's combined income statement for standard pipe, since 1997, on a net income basis, the industry has lost over

46. *Transcript of Public Hearing*, Vol. 1, 12 April 2000, at 130-31.
47. Manufacturer's Exhibit B-2, Attachment J, Document Three, Administrative Record, Vol. 11.1.
48. The safeguard relief, which covers imports of line pipe from all countries but Canada and Mexico, is for a period of three years and one day. The relief places a quota of 9,000 tons on imports of line pipe from each country. An additional duty of 19 percent applies to imports in excess of the quota in year one, declining to 15 percent in year two and 11 percent in year three. See Manufacturer's Exhibit B-2, Attachment J, Documents One and Two, Administrative Record, Vol. 11.1.
49. Manufacturer's Exhibit B-2 at para. 23, Administrative Record, Vol. 11.1; and Manufacturer's Exhibit A-1 at para. 64, Administrative Record, Vol. 11.
50. The coverage of the U.S. ITC finding is broader. See *Certain Circular, Welded, Non-alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela*, Inv. Nos. 731-TA-532 through 537 (Final), USITC Pub. 2564, October 1992 at 6-7.
51. Manufacturer's Exhibit B-2, Attachment I, Administrative Record, Vol. 11.1; and Manufacturer's Exhibit A-22, Administrative Record, Vol. 11.

$36 million on sales of about $176 million. Moreover, during this period, the industry was unable even to achieve positive gross margins. Average unit costs declined from 1997 to 1999 and might have declined even further if sales had not been stagnant. However, average revenue fell even faster than average costs, and this is reflected in the weak financial results reported.

The Tribunal notes that, to some extent, the above numbers may overstate the weakness of the industry's financial position. In this connection, the evidence indicates that they include the losses stemming from certain accelerated large lease payments reported by one of the producers,[52] as well as losses relating to certain other large special charges.[53] They also include losses on pipe that are incurred by a subsidiary operation that, in some measure, is offset by profits on raw material inputs that are sold by the parent company to the subsidiary.[54] However, while these issues, when taken into account, would put the industry's performance in a better light, the industry would still not operate at a satisfactorily profitable level.[55]

In the absence of better returns, domestic producers have restrained production, as well as withdrawn or diminished their participation in certain geographic and product areas. For example, a witness from IPSCO testified that the company's sales of standard pipe from domestic production were at historical lows because the company preferred to idle production lines rather than sell pipe at unprofitable levels. A representative from Stelpipe testified that the company had chosen to close its large diameter pipe mill because the levels of return were inadequate to justify the investment needed to upgrade its existing facility. A witness from Ispat testified that the company had seen its sales in Western Canada dwindle in recent years as a result of its inability to compete profitably in that region. Indeed, each of the domestic producers has diminished its participation in Western Canada, especially in British Columbia, as a result of an inability to achieve profitable sales.

As a consequence, the industry is operating at low levels of capacity utilization, and its current market share has fallen to just over 50 percent from much higher levels earlier in the 1990s.[56] The other half of the market is divided among three sources of imports: imports from the United States, the single largest import source; imports from the emerging countries; and imports from Korea. Insofar as U.S. imports are concerned, while they are substantial, they are, on average, also high-priced. Moreover, they are largely comprised of products that are not the focus of Canadian production, such as galvanized pipe and lightwall sprinkler pipe. Thus, U.S. imports are not claimed to be injurious to Canadian production. In comparison, imports from the emerging countries, as well as from Korea, are very aggressively priced, as has already been noted, and they are focused on the more common standard pipe products and size ranges.[57]

It appears that, in recent quarters, steel market conditions have begun to improve somewhat and that the industry has been trying to achieve modest price increases of about 3 percent on standard pipe.[58] If the industry is to return to a state of health, it is evident that this trend will have to continue and that prices will

52. *Transcript of Public Hearing*, Vol. 1, 12 April 2000, at 64 and 93.
53. *Transcript of In Camera Hearing*, Vol. 1, 12 April 2000, at 13 and 24.
54. *Transcript of Public Hearing*, Vol. 1, 12 April 2000, at 64.
55. *Transcript of Public Hearing*, Vol. 1, 12 April 2000, at 64.
56. *Protected Pre-hearing Staff Report*, Review No. RR-94-004, 10 March 1995, Tribunal Exhibit RR-99-004-7 (protected), Administrative Record, Vol. 2.1 at 14; and *Protected Pre-hearing Staff Report*, 18 February 2000, Tribunal Exhibit RR-99-004-24 (protected), Administrative Record, Vol. 2 at 38.
57. *Transcript of Public Hearing*, Vol. 1, 12 April 2000, at 167-69; and *Transcript of Public Hearing*, Vol. 2, 13 April 2000, at 395.
58. *Transcript of Public Hearing*, Vol. 1, 12 April 2000, at 72-73 and 229.

have to be considerably higher than those which currently prevail. In the Tribunal's opinion, this is not likely to happen if the order against Korea is rescinded. On the contrary, as has already been noted, the return of Korean standard pipe to the Canadian market, without the imposition of anti-dumping duties, could be a catalyst for significant price declines or, if not price declines, at least a key factor which would inhibit industry prices from rising to meet rising costs.[59]

In the Tribunal's opinion, a distinction needs to be made between Korean imports and imports from the emerging countries. According to the evidence, producers in the emerging countries are not always reliable in terms of delivery and quality. Large Canadian distributors turn to these sources on an irregular, opportunistic basis, often in British Columbia, to take advantage of their low prices. This tends to limit their "room to grow" in the Canadian market and mitigates, to some extent, the injury that they are capable of causing to the Canadian industry.

In contrast, Korean producers are reliable, global suppliers of high-quality carbon steel welded pipe which Canadian distributors could readily and frequently buy in substantial volumes, especially if it was offered at dumped prices. Moreover, the evidence shows that Korean pipe can be landed in significant volumes on both the east and west coasts of North America and, in this way, can have effects that are national in scope.[60] Korea, therefore, given its huge steel export capacity and its reputation for quality, poses a singularly formidable threat in terms of its ability to affect Canadian industry prices and volumes.

Broadly speaking, in considering the likelihood of injury question, it appears that the standard pipe industry in Canada has had few good years over the last two decades. This poor performance has occurred despite the protection afforded by 17 years of anti-dumping duties being imposed on Korean pipe, as well as injury findings against a number of other countries being in place for about 10 years or so.[61] This suggests to the Tribunal that there are problems within the industry that go beyond what can be rectified by anti-dumping measures. These problems appear to include the fact that standard pipe is a run-of-the-mill commodity, with a proliferation of producers in many different countries that are ready to market the product at low prices to willing buyers around the globe, including importers and distributors in Canada. Indeed, low prices and thin or negative margins appear to have become so entrenched in this business that it may be difficult, under present circumstances, for the domestic industry to obtain the significant price increases that it seems to require to achieve acceptable levels of return on investment.[62]

Having regard to the foregoing, it is apparent to the Tribunal that continuing the order against Korea will not automatically improve the domestic industry's current performance. That being said, rescinding the order would almost certainly make the industry materially worse off by making a tough situation even tougher. Indeed, whatever prospects the industry has for turning around the standard pipe business over the coming years could disappear if the order against Korea is rescinded and Canadian market conditions deteriorate as a result, which the evidence suggests is a real possibility. On this basis, the Tribunal considers that, if the order is rescinded, dumping by Korean producers is likely to cause material injury to the domestic industry.

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59. *Transcript of Public Hearing*, Vol. 1, 12 April 2000, at 71-74.
60. Manufacturer's Exhibit A-1 at para. 18, Administrative Record, Vol. 11.
61. See the "Other Carbon Steel Welded Pipe Decisions" section of these reasons.
62. The industry's own strategic plans currently envisage continued losses through to 2003, although these losses may include certain special charges noted earlier. See Tribunal Exhibit RR-99-004-10.3 (protected), Administrative Record, Vol. 4A at 75.

Exclusion

The Tribunal notes that, while Western opposed the continuation of the order, it requested an exclusion for certain lightwall sprinkler pipe, in the event that the order were continued. The principal ground for the requested exclusion was that the specified sprinkler pipe was not produced in Canada. Western further indicated that the targeted market for its sprinkler pipe was Western Canada, especially British Columbia. According to Western, its principal competition in Western Canada would be lightwall sprinkler pipe imported from the United States.

Stelpipe and IPSCO both indicated that they do not produce the particular lightwall sprinkler pipe specified by Western and, therefore, did not oppose the requested exclusion.[63] However, Ispat opposed the request for exclusion. It submitted that, while it does not produce the sprinkler pipe to the dimensions specified in Western's request, it has the capability of producing lightwall sprinkler pipe to those dimensions with some limited exceptions. According to Ispat, the reason that it has not produced the specified sprinkler pipe is that it had no customer demand for it. Instead, it produces other sprinkler pipe which satisfies its customers' needs and which, in its view, is fully substitutable for Western's specified pipe.

After considering the evidence, the Tribunal considers that there is a degree of interchangeability between lightwall sprinkler pipe of the kind specified by Western and the thicker-walled sprinkler pipe[64] of the kind produced by Ispat. Indeed, the Tribunal's witness from EMCO testified that the company supplied both types of sprinkler pipe to its customers in different parts of Canada.[65] That being said, the evidence also indicates that lightwall sprinkler pipe has distinct specifications and different performance characteristics[66] than standard sprinkler pipe. Moreover, there is a demand for lightwall sprinkler pipe in Western Canada that is currently not being met by the domestic industry, but rather by imports from the United States.[67] In view of this, and given that neither Ispat nor the two other producers manufacture the specified product or have any customers for it in British Columbia or elsewhere, the Tribunal is of the view that the requested exclusion is warranted.

CONCLUSION

Having regard to the foregoing, the Tribunal has concluded that, if the order is rescinded, there is a likelihood of dumping from Korea and a likelihood of material injury to the domestic industry from such dumping. Accordingly, the Tribunal hereby continues the order, with an amendment to exclude, for the reasons given above, lightwall sprinkler pipe that meets the requirements of ASTM A135 and/or A795 with the following dimensions:

> non-threadable - nominal size of 1 1/4 in. and wall thickness of 0.076 in.; nominal size of 1 1/2 in. and a wall thickness of 0.076 in.; nominal size of 2 in. and wall thickness of 0.076 in.; nominal size of 2 1/2 in. and wall thickness of 0.076 in.; nominal size of 3 in. and wall thickness of 0.076 in.; and nominal size of 4 in. and wall thickness of 0.086 in.; and

63. However, their individual agreements to the exclusion were conditional on there being industry-wide agreement and on the ability to formulate a description for the sprinkler pipe which did not open the door to circumvention of the order.
64. Schedule 10 and Schedule 40.
65. *Transcript of Public Hearing*, Vol. 1, 13 April 2000, at 441-44.
66. For example, the rate of flow.
67. *Transcript of Public Hearing*, Vol. 2, 13 April 2000, at 316, 405, 414-15 and 441.

threadable - nominal size of 1 in. and wall thicknesses of 0.093 in. to 0.123 in.; nominal size of 1 1/4 in. and wall thicknesses of 0.093 in. to 0.131 in.; nominal size of 1 1/2 in. and wall thicknesses of 0.098 in. to 0.135 in.; and nominal size of 2 in. and wall thicknesses of 0.103 in. to 0.140 in.;

and subject to the condition that the pipe be stencilled to indicate that it is approved by the Factory Mutual Research Organization and is listed by Underwriters' Laboratories, Inc. and Underwriters' Laboratories of Canada.[68]

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Patricia M. Close
Patricia M. Close
Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

68. During the course of the hearing, it was also suggested by some counsel that Western's trademark for the specified sprinkler pipe, namely, Fireline, be used to circumscribe the exclusion, if one were granted. The Tribunal does not consider it appropriate to use Western's proprietary trademark in this way because the product's brand has nothing to do with the reasons for the exclusion.