



Ottawa, Thursday, July 25, 1996

Review No.: RR-95-002

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the findings of material injury made by the Canadian International Trade Tribunal on July 26, 1991, in Inquiry No. NQ-90-005, and on January 23, 1992, in Inquiry No. NQ-91-003, concerning:

**CERTAIN CARBON STEEL WELDED PIPE ORIGINATING IN OR
EXPORTED FROM ARGENTINA, INDIA, ROMANIA, TAIWAN, THAILAND,
VENEZUELA AND BRAZIL**

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 findings of material injury made on July 26, 1991, in Inquiry No. NQ-90-005, and on January 23, 1992, in Inquiry No. NQ-91-003.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the above-mentioned findings.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Lyle M. Russell
Lyle M. Russell
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 findings of material injury made by the Canadian International Trade Tribunal on July 26, 1991, in Inquiry No. NQ-90-005, and on January 23, 1992, in Inquiry No. NQ-91-003.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: June 3 and 4, 1996
Date of Order and Reasons: July 25, 1996

Tribunal Members: Charles A. Gracey, Presiding Member
Robert C. Coates, Q.C., Member
Lyle M. Russell, Member

Director of Research: Peter Welsh

Lead Researcher: John Gibberd

Economist: Dennis Featherstone

Statistical Officer: Margaret Saumweber

Counsel for the Tribunal: David M. Attwater

Registration and Distribution Officer: Gillian Burnett

Participants:

for Lawrence L. Herman
Stelco Inc.
Stelpipe Ltd., A Subsidiary of Stelco Inc.

Ronald C. Cheng
Gregory O. Somers
Alan L. Ross

for Sidbec-Dosco (Ispat) Inc.
IPSCO Inc.

(Domestic Producers)

Witnesses:

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Director - Government Relations
Stelco Inc.

H.J. (Hank) MacComb
President and General Manager
Comco Pipe & Supply Company

R.P. (Rick) Jaszek
Sales Manager
Stelpipe Ltd., A Subsidiary of Stelco Inc.

Mario Lalanne
General Manager, Pipe
Sidbec-Dosco (Ispat) Inc.

Douglas J. Jury
Financial Manager
Stelpipe Ltd., A Subsidiary of Stelco Inc.

V.P. (Vic) Marks
Manager, Civil and Municipal Project Sales
IPSCO Inc.

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TRIBUNAL: CHARLES A. GRACEY, Presiding Member
ROBERT C. COATES, Q.C., Member
LYLE M. RUSSELL, Member

STATEMENT OF REASONS

BACKGROUND

This is a review, under subsection 76(2) of the *Special Import Measures Act*¹ (SIMA), of the findings of material injury made by the Canadian International Trade Tribunal (the Tribunal) on July 26, 1991, in Inquiry No. NQ-90-005, concerning carbon steel welded pipe originating in or exported from Argentina, India, Romania, Taiwan, Thailand and Venezuela, in the nominal size range 12.7 mm to 406.4 mm (1/2 in. to 16 in.) inclusive, in various forms and finishes, meeting one or more of the following specifications: ASTM A53, ASTM A120,² ASTM A795, ASTM A252, ASTM A589 or AWWA C200-80, or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe; and of the finding of material injury made by the Tribunal on January 23, 1992, in Inquiry No. NQ-91-003, concerning carbon steel welded pipe originating in or exported from Brazil, produced to ASTM standards A53 or A120 in sizes from 13.7 mm (0.54 in.) to 406.4 mm (16.00 in.) outside diameter, with plain or finished ends and with black, regular mill coat or galvanized surface finishes.

In Notice of Expiry No. LE-95-003³ dated November 28, 1995, the Tribunal informed persons and governments that the Tribunal's findings with respect to Argentina, India, Romania, Taiwan, Thailand and Venezuela were scheduled to expire on July 25, 1996, and that its finding with respect to Brazil was scheduled to expire on January 22, 1997. The Tribunal received submissions from Stelco Inc. (Stelco), Stelpipe Ltd., A Subsidiary of Stelco Inc. (Stelpipe), Sidbec-Dosco (Ispat) Inc. (Sidbec-Dosco) and IPSCO Inc. (IPSCO) requesting a review. The Embassy of Argentina, the Instituto de Comercio Exterior of Venezuela and Metalexportimport S.A. (Metalexportimport) of Romania made submissions opposing a review, but did not participate in this review.

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1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.
 2. The ASTM A120 standard is no longer used in Canada or the United States.
 3. Canada Gazette Part I, Vol. 129, No. 49, December 9, 1995, at 4205.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the findings and issued a notice of review⁴ on January 29, 1996. This notice was forwarded to all known interested parties.

As part of this review, the Tribunal sought consent from producers and importers to transfer to the record of this review confidential information that they had supplied in Review No. RR-94-004⁵ which had been conducted on the finding of material injury made by the Anti-dumping Tribunal on June 28, 1983, in Inquiry No. ADT-6-83.⁶ That finding covers goods similar to those that are the subject of this review, with the exception of some smaller diameter pipe. In addition, review questionnaires were sent to domestic producers of carbon steel welded pipe and importers of the subject goods to obtain more recent information, and questionnaires were sent to purchasers of carbon steel welded pipe to obtain information on market characteristics. From all of this information 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 findings in Inquiry Nos. NQ-90-005 and NQ-91-003, the notice of review, information referred to above that respondents had submitted in Review No. RR-94-004, submissions made in response to the notice of expiry, the public and confidential replies to the review questionnaires and the public and protected pre-hearing staff reports. All public exhibits were made available to 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, on June 3 and 4, 1996.

Stelco, Stelpipe, Sidbec-Dosco and IPSCO were represented by counsel at the hearing, submitted evidence and made argument in support of continuing the findings. Witnesses for Comco Pipe & Supply Company and Grinnell Supply Sales, A Division of Tyco International of Canada Ltd., both pipe distributors, appeared at the request of the domestic industry. No other parties participated in the review.

SUMMARY OF FINDINGS UNDER REVIEW

Inquiry No. NQ-90-005

On July 26, 1991, the Tribunal found that the dumping of carbon steel welded pipe originating in 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. The primary indicators of injury were a

4. Canada Gazette Part I, Vol. 130, No. 6, February 10, 1996, at 490.

5. *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*, Canadian International Trade Tribunal, Order and Statement of Reasons, June 5, 1995.

6. *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, the Republic of South Africa and Luxembourg*, Finding, June 28, 1983, Statement of Reasons, July 13, 1983.

significant loss of market share, price suppression that had aggravated the financial performance of the industry and reduced employment. The industry had been adversely affected by the depressed market for pipe, particularly in commercial and residential construction where most carbon steel welded pipe is used. However, this market effect had been worsened by the significant presence of dumped imports.

Inquiry No. NQ-91-003

On January 23, 1992, the Tribunal found that the dumping of carbon steel welded pipe originating in Brazil had caused, was causing and was likely to cause material injury to Canadian production of like goods and that the dumping of carbon steel welded pipe originating in Luxembourg, Poland, Turkey and Yugoslavia had caused, but was not causing and was not likely to cause material injury to Canadian production of like goods. As well, pursuant to paragraph 42(2)(b) of SIMA, the Tribunal found that the dumping of carbon steel welded pipe originating only in Brazil would have caused material injury, except for the acceptance of the undertakings. This case is the only injury inquiry that has taken place under SIMA subsequent to a price undertaking being violated.

Product

The findings being reviewed concern dumped imports of carbon steel welded 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.⁷ 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 and is produced to the American Society for Testing and Materials (ASTM) specifications that prescribe chemical and mechanical properties.

Most standard pipe is used for plumbing and heating applications and is produced to meet the ASTM A53 specification in standard black and galvanized finishes. The major nominal sizes include 1 in., 2 in., 3 in., 4 in., 6 in. and 8 in. 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 [American Water Works Association] C200-80) and sprinkler pipe (ASTM A795).

Carbon steel welded pipe is also identified as standard pipe. It is generally produced in mills using either the continuous weld (CW) or the electric resistance weld (ERW) process. Manufacture using either process begins with strips of steel sheet that have been slit from coils of flat steel. The CW process can be used to manufacture pipe up to 4.5 in. in diameter. The ERW process can be used to produce pipe up to 24.0 in. in diameter. CW pipe and ERW pipe are interchangeable, although certain users prefer ERW to CW pipe.

Standard pipe can also be produced using a combination of both the ERW process and a hot stretch reduction mill. Pipe shells are first produced using the ERW process. These shells are heated in a furnace

7. 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 Publication 2564, October 1992, at I-7, Manufacturer's Exhibit A-17 (single copy), Administrative Record, Vol. 9B.

and passed through a stretch reduction mill that reduces the outside diameter of the pipe and can be used to thicken, maintain or reduce the thickness of the pipe walls.

After the basic pipe is formed using either the CW or the ERW process, 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 will be finished, if required, with such finishes as lacquer or zinc (galvanizing). Other operations include stencilling and bundling of the pipe.

Carbon steel welded pipe is sold by domestic producers to major distributors, most of which have branch offices across Canada that purchase standard pipe from domestic producers or importers or import the pipe directly.

Dumping Margins

The results of the investigations of the Deputy Minister of National Revenue (the Deputy Minister) for both carbon steel welded pipe cases are presented in Table 1. For each of the named countries, the table shows the exporters involved, the percentage of the exporter's goods reviewed that were dumped and the margin of dumping.

Table 1			
MARGINS OF DUMPING			
(Inquiry Nos. NQ-90-005 and NQ-91-003)			
Country	Exporter	Percentage of Reviewed Goods Dumped (%)	Margin of Dumping (%)
NQ-90-005			
Argentina	Industria Argentina de Aceros S.A.	100	46.5
India	The Tata Iron & Steel Co.	100	19.8
Romania	Metalexportimport	100	17.8
Taiwan	Kao Hsing Chang Iron & Steel Corp.	94.9	23.7
	Yieh Hsing Enterprise Co., Ltd.	100	11.6
Thailand	Saha Thai Steel Pipe Co., Ltd.	100	14.2
	Others	100	46.5
Venezuela	Conduven S.A.	100	33.4
	Grupo Siderpro C.A.	100	31.5
	Others	100	46.5
Average All Countries		99.9	32.3
NQ-91-003			
Brazil	Persico Pizzamiglio S.A.	100	17.5
	Fornasa S.A.	100	28.3

Source: Department of National Revenue, Final Determination of Dumping, Statement of Reasons, June 21, 1991, and Final Determination of Dumping, Statement of Reasons, December 9, 1991.

OTHER CARBON STEEL WELDED PIPE FINDINGS

There is one other finding covering carbon steel welded pipe, the Anti-dumping Tribunal's finding in Inquiry No. ADT-6-83 made on June 28, 1983, as continued, without amendment, by the Tribunal on June 5, 1990, in Review No. RR-89-008, and on June 5, 1995, in Review No. RR-94-004. The finding 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, 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.

DOMESTIC INDUSTRY

Stelpipe, Sidbec-Dosco and IPSCO account for almost all of the domestic production of standard pipe. These companies have mills in several Canadian locations. Other producers include Camrose Pipe Company (Camrose), Prudential Steel Ltd. and Welded Tube of Canada Limited.⁸

Stelpipe is a subsidiary of Stelco, which is a publicly traded company that was incorporated as the Steel Co. of Canada Ltd. in 1910. In 1992, Stelpipe sold all but a minority interest in its pipe operation located in Camrose, Alberta, which is now known as Camrose Pipe Company. In 1994, Stelpipe became a separate legal entity within the Stelco Group of Businesses.

Stelpipe produces standard pipe on three mills at its Welland, Ontario, facility. One of these is a stretch reduction mill which was built at a cost of \$72 million and commenced operations in 1992. It produces pipe with an outside diameter of up to 4 in. and now accounts for the bulk of Stelpipe's pipe production. The mills, taken together, manufacture carbon steel welded pipe having a nominal size from 1/2 in. to 16 in. Stelpipe's products are marketed nationally, and the company also exports a significant proportion of its production.

Sidbec-Dosco, which was formerly owned by the province of Quebec, is a wholly owned subsidiary of Ispat Mexicana, a Mexican company. Sidbec-Dosco has facilities at three locations in Canada, but carbon steel welded pipe is only produced at its Montréal, Quebec, facility. At this location, a CW mill is used to produce standard pipe ranging between 1/2 in. and 4 in. in nominal size. In addition, since 1987, Sidbec-Dosco, through Delta Tube, a joint venture with Nova Steel, has been supplying standard pipe between 2 in. and 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 Sidbec-Dosco's Montréal facility for finishing. Sidbec-Dosco's pipe products are marketed throughout Canada, and the company also exports a significant proportion of its production.

IPSCO, which is a publicly traded company, operates ERW mills located in Regina, Saskatchewan, and in Edmonton, Red Deer and Calgary, Alberta. These mills are capable of producing standard pipe having a nominal size of 1/2 in. to 16 in. IPSCO markets carbon steel welded pipe throughout Canada, and the company exports a small percentage of its production.

8. Welded Tube of Canada Limited, as of 1995, no longer manufactures standard pipe.

POSITION OF THE DOMESTIC INDUSTRY

Stelco and Stelpipe

Stelco and Stelpipe requested that the findings be continued. Counsel for Stelco and Stelpipe gave a number of reasons for the likely resumption of dumping. Counsel indicated that, in 1991, the Department of National Revenue (Revenue Canada) found high margins of dumping and that virtually all of the shipments investigated were dumped. Counsel suggested that this is indicative of future patterns of behaviour. Counsel pointed to the nature of importers' operations and the ease with which they can source low-priced offshore imports with minimal investments in infrastructure. Counsel stated that importer practices of source shifting and off-the-dock selling continue today. In addition, a number of the importers identified by Revenue Canada in 1991 are still active in the market today. Counsel submitted that producers in each of the named countries have a huge production capacity. As well, a number of the exporters that Revenue Canada identified as dumping standard pipe in 1991 have also been found to be dumping and causing material injury in the United States.

Counsel for Stelco and Stelpipe indicated that, if the findings were rescinded, there would be only one finding in Canada covering standard pipe, whereas there would be a number of findings in the United States. This would leave an imbalance for the domestic industry, which is operating in an effectively integrated North American market. Counsel argued that findings in the United States, many of which have been made since the Tribunal's findings of 1991 and 1992 and that cover imports of standard pipe and related goods from the named countries, are evidence of a clear pattern of dumping which is injuring North American producers.

Counsel for Stelco and Stelpipe argued that a resumption of dumping is likely to cause material injury to the domestic industry. Counsel submitted that Stelpipe's prices remain suppressed because of pressure from low-priced imports from the countries that had replaced the named countries. As well, Stelpipe's revenues per ton were substantially higher in 1988, 1989 and 1990 than they were in 1995 and 1996. Stelpipe noted that the industry had a negative gross margin and a net loss before taxes in 1995. Stelpipe indicated that, in spite of volume and revenue increases, it had not been able to return the production of carbon steel welded pipe to profitability. This was not due to production problems or an outmoded plant. Counsel indicated that Stelpipe had invested a considerable amount in its new stretch reduction mill and that improved unit production efficiency had resulted in a decline in the cost of goods sold as a percentage of sales. Counsel also indicated that the prices that the industry paid for raw materials increased from 1993 to 1995. However, because of import pressures, the industry was unable to recover those increases in raw material costs through price increases.

Sidbec-Dosco and IPSCO

Sidbec-Dosco and IPSCO requested that the findings be continued. Counsel for Sidbec-Dosco and IPSCO addressed the likelihood of resumed dumping, material injury to the domestic industry and some general issues. To illustrate the likelihood that the named countries would resume dumping, counsel supplied an aid to argument that listed each of the named countries and Canadian and US findings covering the subject goods and other steel products originating in those countries. Counsel also stated that, at the end of June 1996, there would, in all likelihood, be 12 findings in place in the United States covering the subject goods originating in the named countries. Counsel submitted that the propensity of the named countries to

dump is clearly demonstrated by what happened after the 1992 finding of the U.S. International Trade Commission (USITC) that imports of the subject goods from Venezuela were causing material injury, but that those from Romania were not. Counsel indicated that, in a subsequent one-year period, Venezuela exported only a few tons of the subject goods to the United States, while Romania exported a significant volume of the subject goods to the United States.

Counsel for Sidbec-Dosco and IPSCO made a number of points on the vulnerability of the domestic industry to resumed dumping. Counsel stressed the commodity nature of the subject goods and that price is the key to their sale. It was noted that the market for carbon steel welded pipe has been flat since the inquiries and that, in 1996, the market, at best, would be equal to that in 1995. Counsel stated that the costs of production of domestic producers of carbon steel welded pipe and of exporters of the subject goods are highly sensitive to volume and indicated that there had been significant underutilization of domestic production capacity. Counsel drew attention to the continued investments in production facilities made by all three domestic producers in order to improve their financial viability. Finally, counsel pointed out that there are limited export opportunities for the domestic producers and that it is the domestic market that is critical to the producers.

On more general issues, counsel Sidbec-Dosco and IPSCO submitted that the consideration of material injury and the threat of material injury do not have to apply equally to all domestic producers in order for the Tribunal to find that they exist. As well, consideration should not focus on the relative costs of production in Canada and the named countries. Counsel argued that the reasons that led the Tribunal to continue the finding with respect to the Republic of Korea a year ago, which include uncertain market conditions and uncertain prospects for producers in the face of low-priced imports, exist today. Counsel stated that the practice of importers shifting to sources not covered by anti-dumping duties continues today and that the domestic industry remains as vulnerable to dumping today as it did at the time of the review with respect to the Republic of Korea. Counsel stated that it is appropriate for the focus to be on importers because it is clear that, without their involvement with the subject goods, there would be no dumping. Finally, competition between domestic producers, which exists today as it did in the past, should not outweigh the likelihood of material injury to the industry.

PRELIMINARY MATTERS

Notice of Motion

Prior to commencement of the hearing, counsel for Stelco and Stelpipe filed a notice of motion requesting the Tribunal to notify the Deputy Minister as described in section 46 of SIMA. Under section 46, notice is to be provided where, in an inquiry under section 42, the Tribunal is of the opinion that there is evidence that certain goods from countries other than the subject countries are being dumped or subsidized and that the evidence discloses a reasonable indication that the dumping or subsidizing has caused injury or retardation or is threatening to cause injury. Where such notice is received, the Deputy Minister may initiate an investigation, pursuant to subsection 31(7), respecting the dumping or subsidizing of the goods described in the notice. At the commencement of the hearing, the Tribunal asked to hear the motion prior to the parties tendering any evidence described in section 46.

Counsel for Stelco and Stelpipe took the position that, while section 46 of SIMA refers to evidence received in the course of an inquiry under section 42, such inquiry continues into a review under section 76. Thus, in a review, such as the present proceeding, the Tribunal may provide notice to the Deputy Minister under section 46. In support of this proposition, counsel referred to section 47.⁹ It was argued that, as section 47 continues an order or finding or a proceeding not otherwise terminated, an inquiry conducted under section 42 continues beyond the time of the inquiry itself.

In response to the motion filed by counsel for Stelco and Stelpipe, the Tribunal ruled that, in its view, an inquiry under section 42 of SIMA is not resumed during a review under section 76. In support of this conclusion, the Tribunal noted that section 42 confers jurisdiction on the Tribunal to conduct an inquiry into certain issues. When a finding is made under section 43 subsequent to that inquiry, the proceeding ceases, and the Tribunal loses its jurisdiction to resume the proceeding, subject to the matter being referred back to the Tribunal. Section 76 confers a separate jurisdiction on the Tribunal to conduct a distinct proceeding for purposes of reviewing the finding made under section 43. A review is not a mere resumption of the inquiry conducted under section 42, and section 47 does not convince the Tribunal that it is otherwise.

As section 46 of SIMA refers to evidence received in the course of an inquiry under section 42, the Tribunal ruled that it could not provide notice to the Deputy Minister pursuant to section 46 in a review conducted under section 76.

Cumulation

In the course of the hearing, the Tribunal asked counsel for the parties to address a submission made by Metalexportimport of Romania in response to the notice of expiry¹⁰ of the injury findings with respect to the subject goods. It was submitted that, pursuant to paragraph 3 of Article 3 of the World Trade Organization *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*¹¹ (the Agreement), “[w]here imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that ... [inter alia] the volume of imports from each country is not negligible.” Therefore, it was suggested that, because Metalexportimport had not exported the subject goods to Canada in the last five years, its exports were negligible. As such, the Tribunal cannot cumulatively assess the effects of a threat of dumping of Romanian goods with those of the other subject countries.

In response, counsel for Stelco and Stelpipe submitted that there is nothing in SIMA or the Agreement that prevents the Tribunal from considering the cumulative effects of the threat of dumping in a review proceeding, even where imports have been negligible. For the reasons provided by counsel, the Tribunal is satisfied that its cumulative assessment of the threat of dumping in review proceedings is consistent with SIMA and the Agreement.

9. Section 47 of SIMA states:

Subject to [certain provisions], an order or finding made by the Tribunal with respect to any dumped or subsidized goods, other than an order or finding described in any of sections 3 to 6, terminates all proceedings under [SIMA] respecting the dumping or subsidizing of the goods.

10. *Supra* note 3.

11. Signed at Marrakesh on April 15, 1994.

As to SIMA, counsel for Stelco and Stelpipe submitted that subsection 42(3) gives the Tribunal authority to cumulate in inquiries conducted under section 42, where the volume of imports is not negligible. However, by its terms, subsection 42(3) applies only to inquiries conducted under section 42, which the Tribunal has ruled is a distinct proceeding from a review conducted under section 76. Therefore, the prohibition on cumulation where imports are negligible, contained in subsection 42(3), does not apply to reviews conducted under section 76. As such, even where the volume of imports from a subject country has been negligible, the Tribunal may assess the cumulative effects of the threat of dumping from all subject countries in a review proceeding.

As to the Agreement, counsel for Stelco and Stelpipe submitted that paragraph 3 of Article 3 applies to “determinations of injury” in an inquiry. This provision was implemented into Canadian law pursuant to subsection 42(3) of SIMA. In contrast, paragraph 2 of Article 11 pertains to reviews of injury findings and was implemented into Canadian law pursuant to section 76 of SIMA.

Paragraph 2 of Article 11 of the Agreement provides that the Tribunal “shall review the need for the continued imposition of the duty, where warranted.” Furthermore, paragraph 3 of Article 11 provides that definitive anti-dumping duties shall expire unless it is determined that the expiry “would be likely to lead to continuation or recurrence of dumping and injury.” Counsel submitted that Article 11 is distinct from Article 3 and does not incorporate the prohibition on cumulation where imports have been negligible.

Counsel for Stelco and Stelpipe noted that, in a review, the Tribunal considers, in part, whether there is a likelihood of resumed dumping by the subject countries. In this regard, the Tribunal will consider the propensity to dump by these countries. That propensity can be demonstrated in many ways and can exist whether or not there have been imports during the existence of the finding. If the Tribunal departed from its practice of cumulatively assessing the effects of a threat of dumping where there have not been imports from the subject countries in the recent past, the domestic industry would be denied relief in cases where there is a clear propensity to dump by these countries.

LIKELIHOOD OF RESUMPTION OF DUMPING

The Tribunal first examined whether there is a likelihood of resumed dumping from the named countries if the findings are rescinded. In this regard, the Tribunal looked into, first, whether imports from the named countries are likely to be offered or sold in the domestic market if the findings are rescinded and, second, if imports do resume, whether they are likely to be dumped.

To determine if imports from the named countries are likely to compete in the Canadian market for carbon steel welded pipe if the findings are rescinded, the Tribunal considered several factors. They include whether carbon steel welded pipe from the named countries would be an alternative source of supply to Canadian buyers, whether importers would offer the subject goods in the Canadian market, the past behaviour of the subject goods in the Canadian market, the presence of the subject goods in the United States, the potential diversionary effects of injury findings against the named countries in the United States and pipe production capacity in the named countries.

Irrespective of the source of production, whether it be domestic or foreign, once carbon steel welded pipe meets specified standards, it is considered physically interchangeable with any other carbon steel welded pipe that also meets those standards.¹² Thus, carbon steel welded pipe is basically like a commodity, with the result that price becomes a key factor in the purchasing decision, as buyers attempt to seek out the cheapest source of supply. Despite its commodity nature, purchasers may give some preference to domestically produced pipe over imported pipe for what they consider to be more favourable conditions of supply, i.e. delivery time, product availability, security of supply and terms of sale.¹³ This preference can translate into a price premium for domestic pipe. However, once the price spread between domestic production and imports exceeds that premium, purchasers will generally turn to buying imported pipe.¹⁴

The importance of price in the purchasing decision means that importers are continuously searching the globe for the lowest-priced source of imports. If the price of standard pipe imported from one source becomes uncompetitive because of the imposition of anti-dumping duties, importers find other low-priced suppliers in other countries. The Tribunal made reference to this phenomenon in its review of the finding with respect to the Republic of Korea in 1995, pointing out that importers had switched from the named countries to new suppliers in the Philippines, Turkey and the Republic of South Africa subsequent to the findings being issued in 1991 and 1992.¹⁵ The record of this review shows that the practice of offering imports from low-priced sources continues in the domestic marketplace today.¹⁶ With a rescission of the findings, importers would again be able to buy standard pipe from exporters in the named countries.

Many of the firms that imported standard pipe from the countries named in the proceedings are still active in the market today, importing standard pipe from other low-priced sources.¹⁷ A number of these importers are part of large international trading houses, with the ability to support the global search for low-priced sources of supply.¹⁸

The past presence of imports of carbon steel welded pipe in the Canadian market is suggestive of the future presence of imports from those sources in the domestic market, if the findings are rescinded. Imports from the named countries accounted for a large percentage of total imports in 1990 and the first half of 1991

12. Public Pre-Hearing Staff Report, April 15, 1996, Tribunal Exhibit RR-95-002-5, Administrative Record, Vol. 1 at 139-41.

13. Public Pre-Hearing Staff Report, April 15, 1996, Tribunal Exhibit RR-95-002-5, Administrative Record, Vol. 1 at 140-41.

14. Transcript of Public Hearing and Argument, June 3, 1996, at 98-99.

15. *Supra* note 5 at 10.

16. For example, see Transcript of In Camera Hearing, June 3, 1996, at 2-3; Manufacturer's Exhibit A-12 (protected) at 4, Administrative Record, Vol. 10; Transcript of In Camera Hearing, June 3, 1996, at 19-23; Manufacturer's Exhibit A-10A (protected), Administrative Record, Vol. 10; Transcript of In Camera Hearing, June 3, 1996, at 78-79; and Manufacturer's Exhibit C-2A (protected) at 3-4, Administrative Record, Vol. 10.1.

17. Manufacturer's Exhibit A-1 at 19, Administrative Record, Vol. 9; Manufacturer's Exhibit A-10 (protected) at 3-4, Administrative Record, Vol. 10; Manufacturer's Exhibit A-11 at 3, Administrative Record, Vol. 9; and Manufacturer's Exhibit C-1 at 6, Administrative Record, Vol. 9.1.

18. Manufacturer's Exhibit A-1 at 18-19, Administrative Record, Vol. 9; Manufacturer's Exhibit A-3 at 4, Administrative Record, Vol. 9; and Transcript of Public Hearing and Argument, June 3, 1996, at 21-23.

and a significant proportion of the market.¹⁹ That level of market penetration was the result of the low pricing of the imports from the named countries. Without the restrictions of anti-dumping measures, low-priced imports from the named countries might again enter the market in significant volumes.

Several of the exporters identified in Revenue Canada's final determinations for the two cases have been active in the US market for carbon steel welded pipe and now face anti-dumping duties in the United-States.²⁰ There are six findings in place in the United States covering imports of standard pipe from Taiwan, Thailand, India, Brazil and Venezuela, with the findings for Brazil, Taiwan and Venezuela being made after the Tribunal's findings of 1991 and 1992.^{21,22}

The Tribunal notes that a rescission of the findings would leave Canada with no findings in place against the named countries, whereas the United States would have findings in place for all countries except Argentina and Romania. In addition, a USITC final determination on material injury is pending in the case of Romania, and the level of the dumping margin for Thailand has increased.²³ Thus, insofar as opportunities for trading standard pipe into the United States are further restricted, they would increase for trading the subject goods into Canada.

19. Protected Pre-Hearing Staff Report prepared in Inquiry No. NQ-91-003, November 26, 1991, Tribunal Exhibit RR-95-002-12 (protected), Administrative Record, Vol. 2.1 at 129; and Protected Pre-Hearing Staff Report prepared in Inquiry No. NQ-91-003, revised December 9, 1991, Tribunal Exhibit RR-95-002-12A (protected), Administrative Record, Vol. 2.1 at 164.

20. The following companies were found to be dumping standard pipe in Canada and the United States: Kao Hsing Chang Iron & Steel Corp. and Yieh Hsing Enterprise Co., Ltd. of Taiwan, Conduven S.A. of Venezuela, Persico Pizzamiglio S.A. of Brazil, The Tata Iron & Steel Co. of India and Saha Thai Steel Pipe Co., Ltd. of Thailand. Metalexportimport of Romania was identified by Revenue Canada as dumping standard pipe in Canada and by the U.S. Department of Commerce in its final determination for the current Romanian case as dumping standard pipe in the US market. See Federal Register, Vol. 61, No. 94, May 14, 1996, at 24274-24283, Manufacturer's Exhibit A-13A, Administrative Record, Vol. 9.

21. There are two USITC findings covering imports of standard pipe from Taiwan. One finding applies to standard pipe with a diameter of less than 4.5 in. and the other applies to standard pipe exceeding 4.5 in. but less than 16.0 in. in outside diameter. Circular Welded Non-Alloy Steel Pipe from Romania and South Africa, Inv. Nos. 731-TA-732 through 733 (Preliminary), USITC Publication 2899, June 1995, Manufacturer's Exhibit A-13, Annex A at 17A, Administrative Record, Vol. 9.

22. At the time of the hearing, it was expected that the USITC would shortly be making the final determinations on whether imports from Romania and the Republic of South Africa were causing material injury to a domestic industry in the United States. See Manufacturer's Exhibit A-19, Administrative Record, Vol. 9.

23. Manufacturer's Exhibit A-19, Administrative Record, Vol. 9; Preston Pipe & Tube Report, Vol. 14, No. 3, March 1996 at 6, Manufacturer's Exhibit A-13, Annex C, Administrative Record, Vol. 9; and Federal Register, Vol. 61, No. 13, January 19, 1996, at 1328-1339, Manufacturer's Exhibit A-13E, Administrative Record, Vol. 9.

The Tribunal has considered whether producers in the named countries would be able to supply carbon steel welded pipe for export to Canada. Evidence provided by Stelpipe indicates that producers in the named countries currently have a significant capacity to manufacture tubular products.²⁴ This includes the ability to produce the subject goods. There is no reason to suppose that those countries could not supply the Canadian market at the same level as they did prior to the findings and possibly to an even greater extent with fewer opportunities now available for their pipe to be exported to the United States.

After considering all of the foregoing factors, the Tribunal concludes that imports from the named countries are likely to resume entering the Canadian market, if the findings are rescinded.

In considering the question as to whether imports from the named countries will be dumped on reentering the Canadian market, the Tribunal has considered the behaviour of exporters in the Canadian market and in other markets in respect to the subject goods and other steel products. As already mentioned, imports of the subject goods from all of the named countries have been found to be dumped in Canada. As well, imports of the subject goods from almost all of the named countries have been found to be dumped in the United States.

Other steel products from the named countries have also been found to be dumped in the Canadian market in the past. Findings against those countries have been made by the Tribunal and its predecessor organizations covering stainless steel bars and wire, wide flange beams, carbon and alloy steel plate, stainless steel plate, oil and gas well casing, alloy tool steel, barbed wire, carbon steel seamless pipe, hot-rolled carbon steel plate and alloy plate, corrosion-resistant steel sheet products, stainless steel welded pipe and corrosion-resistant steel sheet.²⁵

Since the Tribunal's findings, the USITC has also issued findings covering imports of steel products from the named countries that are related to standard pipe. This includes final determinations on oil country tubular goods originating in Argentina and seamless carbon and alloy standard, line and pressure steel pipe originating in Argentina and Brazil and preliminary determinations covering carbon steel butt-weld pipe fittings originating in Thailand, India and Venezuela.²⁶

The Tribunal also considered the effects of its findings of material injury on imports from the named countries. The Tribunal notes that imports from the named countries disappeared from the domestic market subsequent to the Tribunal's findings.

Taking account of all of these factors, the Tribunal concludes that it is likely that imports from the named countries will be dumped. Imports of the subject goods and other steel products from the named countries have been found to be dumped in the Canadian market and the US market in the past. It is of key importance that imports of carbon steel welded pipe from the named countries have not entered Canada in recent years with the findings in place. This indicates to the Tribunal that imports of carbon steel welded pipe from those countries are not able to compete at prices at least equal to normal values. If imports from the named countries were to reenter the Canadian market, they would likely do so at prices that are dumped.

24. Manufacturer's Exhibit A-1 at 20-30, Administrative Record, Vol. 9; and Tribunal Exhibit RR-95-002-14.2A, Administrative Record, Vol. 3 at 141-42.

25. Tribunal Exhibit RR-95-002-14.3B, Administrative Record, Vol. 3 at 297-98.

26. Manufacturer's Exhibit A-1 at 34-35, Administrative Record, Vol. 9.

LIKELIHOOD OF MATERIAL INJURY

The Tribunal then assessed how competition from imports from the named countries might affect the domestic industry, taking account of its recent performance and projected trade in the Canadian market for carbon steel welded pipe. Table 2 presents a summary of economic indicators for carbon steel welded pipe. A number of the indicators are presented in index form, with 1991 equal to 100, to protect the confidentiality of individual company statistics.

These indicators should be considered in light of a number of events that occurred in the industry over the period from 1991 to 1995. Stelpipe closed mills, opened its stretch reduction mill and sold its controlling interest in Camrose, and IPSCO disposed of a mill in Regina.

Table 2					
ECONOMIC INDICATORS					
(1991 = 100, unless other units specified)					
	1991	1992	1993	1994	1995
Imports (tonnes)					
Subject Countries	9,333	1,756	54	6	0
Non-Subject Countries	31,172	37,351	38,869	42,469	44,023
Market					
Sales from Domestic Production ¹	100	91	109	98	113
Sales from Subject Countries	100	19	1	0	0
Sales from Other Countries	100	120	125	136	141
Total Market	100	93	105	100	111
Exports	100	156	202	178	156
Domestic Industry Net Sales (\$000)	66,251	53,304	60,854	65,220	78,870
Industry Net Profit As					
Percent of Net Sales	(7)	(18)	(18)	(12)	(12)
Industry Capacity Utilization for					
Carbon Steel Welded Pipe	11.6	11.5	14.7	13.3	15.9
<hr/> 1. Domestic producers' sales of imports are included with sales of imports from other countries. Source: Replies to Tribunal review questionnaires and Statistics Canada import data.					

The Tribunal has considered what the likely impact of a resumption of dumped imports from the named countries would be on the domestic market for carbon steel welded pipe and what the consequences would be for the domestic industry. In 1995, the market for carbon steel welded pipe was only a little larger than in 1991, having increased by only 11 percent, and was smaller than in 1990.²⁷ Evidence and testimony suggest that the market is likely to be weaker in 1996 than it was in 1995.²⁸ The demand for carbon steel welded pipe is very much determined by construction activity, and the Tribunal did not receive any evidence or hear any testimony to suggest that there would be any significant increase in capital spending on construction in 1996. Based on the information before it, the Tribunal does not anticipate any large increase in the demand for carbon steel welded pipe in 1996. Testimony before the Tribunal demonstrated the sensitivity of the domestic industry's financial performance to changes in the volume of production.²⁹ With few prospects for market growth, it is imperative for the industry to maintain, if not increase, its market share.

The industry never recovered market share lost to dumped imports from the named countries. Imports changed little over the period, increasing from 40,505 tonnes in 1991 to 44,023 tonnes in 1995. While imports from the named countries disappeared from the Canadian market subsequent to the Tribunal's findings in 1991 and 1992, they were quickly replaced by imports from such countries as the Philippines, Mexico, Turkey, the Republic of South Africa and the People's Republic of China. Imports from the Republic of Korea remained a fairly constant proportion of total imports. A resumption of dumping of imports from the named countries in the Canadian market would place serious pressure on the domestic industry, whose per unit production costs are sensitive to changes in volumes. Accordingly, a loss of market share to dumped imports from the named countries would likely be materially injurious to the domestic industry. It is quite unlikely that domestic producers could make up a loss in domestic market share through increased exports. The actual volume of exports has declined since 1993, and producers have indicated that there is very little potential for increasing the volume of exports.³⁰ Thus, the industry, as a whole, faced by weak demand, continued import competition, little possibility of increased exports and the need to maximize capacity utilization, is likely to compete with imports from the named countries rather than give up market share.

Taking account of the likelihood of a resumption of dumped imports, the Tribunal notes that the prices for carbon steel welded pipe have not changed significantly since 1990. Stelpipe, which, in comparison to the other two major domestic producers, manufactures the broadest range of standard pipe and has a significantly larger sales volume, submitted a comparison of prices for a range of standard pipe sizes covering the years from 1990 to 1996.³¹ This comparison shows that some prices in 1995 and 1996 have increased modestly, while others have remained the same or have actually declined. This trend in prices is supported by a comparison of average sales revenues which shows that, between 1990 and 1995, average

27. Protected Pre-Hearing Staff Report, April 15, 1996, Tribunal Exhibit RR-95-002-6 (protected), Administrative Record, Vol. 2 at 63.

28. Manufacturer's Exhibit A-1 at 10-12, Administrative Record, Vol. 9; and Transcript of Public Hearing and Argument, June 3, 1996, at 108-109 and 122.

29. Transcript of In Camera Hearing, June 3, 1996, at 59 and 72.

30. Public Pre-Hearing Staff Report, April 15, 1996, Tribunal Exhibit RR-95-002-5, Administrative Record, Vol. 1 at 144.

31. Manufacturer's Exhibit A-1 at 38-40, Administrative Record, Vol. 9.

revenues per tonne increased by only 4 percent for the three major producers.³² Prices were not, in fact, increasing fast enough to recoup cost increases. Between 1990 and 1995, the cost of goods sold per tonne increased by 13 percent, 9 percentage points more than revenue per tonne.³³

A considerable amount of attention was focused on the suppressive effect that low-priced imports from the Philippines, Mexico, Turkey, the Republic of South Africa and other countries are having on Canadian market prices. These are the so-called “new countries” that have replaced the named countries in the market. Producers and distributors submitted information comparing low-priced import offerings with domestic prices.³⁴ In large part, imports from the new countries enter the domestic market in British Columbia, and this is where they have had their greatest impact. To deal with this import situation, Stelpipe issued a separate distributor price list for British Columbia in March 1995. Prices on the B.C. list were maintained when Stelpipe implemented price increases for distributors in the rest of Canada in April 1996.³⁵

Witnesses indicated that the low-priced imports not only suppress prices in the B.C. market but also put pressure on prices elsewhere in the domestic market.³⁶ The Tribunal realizes that imports from the named countries may not only enter the domestic market in British Columbia but, given the relative geographic locations of the named countries, may also be landed in Montréal, Quebec, and Toronto, Ontario. The entry of the subject goods into the domestic market at these locations would have a much greater impact on prices in eastern markets. Witnesses also suggested that the volume of low-priced imports entering the market did not have to be large to have a suppressive effect on prices.³⁷

32. Protected Pre-Hearing Staff Report, April 15, 1996, Tribunal Exhibit RR-95-002-6 (protected), Administrative Record, Vol. 2 at 21; Protected Pre-Hearing Staff Report prepared in Inquiry No. NQ-91-003, November 26, 1991, Tribunal Exhibit RR-95-002-12 (protected), Administrative Record, Vol. 2.1 at 140; and Protected Pre-Hearing Staff Report prepared in Inquiry No. NQ-91-003, revised December 10, 1991, Tribunal Exhibit RR-95-002-12A (protected), Administrative Record, Vol. 2.1 at 169 and 171.

33. Protected Pre-Hearing Staff Report, April 15, 1996, Tribunal Exhibit RR-95-002-6 (protected), Administrative Record, Vol. 1 at 21; Protected Pre-Hearing Staff Report prepared in Inquiry No. NQ-91-003, November 26, 1991, Tribunal Exhibit RR-95-002-12 (protected), Administrative Record, Vol. 2.1 at 140; and Protected Pre-Hearing Staff Report prepared in Inquiry No. NQ-91-003, revised December 10, 1991, Tribunal Exhibit RR-95-002-12A (protected), Administrative Record, Vol. 2.1 at 169 and 171.

34. Manufacturer's Exhibit A-6 (protected), Attachments, Administrative Record, Vol. 10; Manufacturer's Exhibit A-10 (protected), Attachments, Administrative Record, Vol. 10; Manufacturer's Exhibit A-10A (protected), Administrative Record, Vol. 10; Manufacturer's Exhibit A-12 (protected), Administrative Record, Vol. 10; and Manufacturer's Exhibit C-2A (protected), Administrative Record, Vol. 10.1.

35. Manufacturer's Exhibit A-6 (protected) at 2, Administrative Record, Vol. 10.

36. Transcript of Public Hearing and Argument, June 3, 1996, at 65-66; and Transcript of In Camera Hearing, June 3, 1996, at 17, 41 and 42.

37. Transcript of Public Hearing and Argument, June 3, 1996, at 78, 118, 119 and 127.

Both distributors and producers indicated that low-priced import offerings are quickly transmitted to producers, that must then react through downward price adjustments to retain sales. This occurs when imports are presold at low prices before an order is booked with a foreign mill or when the imports arrive in Canada. It also occurs when some or all of an import shipment of standard pipe is not presold, and importers stock and sell the unsold imports on the dock.

The Tribunal is of the view that the relatively weak level of demand within the market is a factor that is suppressing prices. The Tribunal also notes that, in a market where demand and prices are weak and the domestic producers must keep volumes up to keep unit costs down, the producers will compete to maintain market share.³⁸ The Tribunal is convinced, however, that low-priced imports are playing an important role in keeping prices down. The Tribunal noted one witness's testimony that, if the findings were rescinded, imports from the named countries would have to compete with the prices of imports from the new countries to enter the Canadian market.³⁹ The Tribunal believes that the effect of additional imports from the named countries would be to further destabilize prices in the domestic market.

The Tribunal is convinced that further destabilization in prices is likely to worsen the whole industry's financial picture and is likely to cause material injury to the domestic industry. The industry's total domestic sales increased from \$66.3 million in 1991 to \$78.9 million in 1995, with all of the increase occurring in 1995. The industry earned a gross profit only in 1991, with costs surpassing revenues in the other years. The industry had a net loss before taxes in every year from 1991 to 1995, with the losses ranging between 7 and 18 percent of net sales.

The Tribunal notes that, because of price levels in the market in recent years, there has been a significant decline in IPSCO's sales volumes.⁴⁰ More importantly, the Tribunal notes that carbon steel welded pipe is a much more significant component of Stelpipe's and Sidbec-Dosco's sales than it is for IPSCO. IPSCO has more product options to which it can switch when faced with competition from low-priced and dumped imports. Thus, the financial health of Stelpipe and Sidbec-Dosco, which account for most of the sales from domestic production and which have made efforts to increase production volumes of carbon steel welded pipe to achieve lower production costs, will be very sensitive to the presence of dumped imports in the market.

After considering the performance of the domestic industry and the present and likely state of the Canadian market, the Tribunal concludes that dumped imports from the named countries are likely to cause material injury to the domestic industry.

38. Transcript of In Camera Hearing, June 3, 1996, at 59 and 72.

39. Transcript of In Camera Hearing, June 3, 1996, at 23.

40. Transcript of In Camera Hearing, June 3, 1996, at 98-99.

CONCLUSION

The Tribunal, based on the foregoing reasons, concludes that the domestic industry is likely to be materially injured by resumed dumping by Argentina, India, Romania, Taiwan, Thailand, Venezuela and Brazil which is likely to occur from a rescission of the findings. The findings are, therefore, continued without amendment.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Lyle M. Russell

Lyle M. Russell
Member