



Ottawa, Monday, July 19, 1999

Review No.: RR-98-006

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on July 20, 1994, in Inquiry No. NQ-93-006 concerning:

**BLACK GRANITE MEMORIALS OF ALL SIZES AND SHAPES AND  
BLACK GRANITE SLABS IN THICKNESSES EQUAL TO OR GREATER  
THAN THREE INCHES ORIGINATING IN OR EXPORTED FROM INDIA**

**ORDER**

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of its finding made on July 20, 1994, in Inquiry No. NQ-93-006.

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

Patricia M. Close

Patricia M. Close  
Presiding Member

Anita Szlczak

Anita Szlczak  
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 finding made by the Canadian International Trade Tribunal on July 20, 1994, in Inquiry No. NQ-93-006.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: May 20 and 21, 1999  
Date of Order and Reasons: July 19, 1999  
Tribunal Members: Patricia M. Close, Presiding Member  
Anita Szluzak, Member  
Peter F. Thalheimer, Member  
Director of Research: Selik Shainfarber  
Lead Researcher: John Gibberd  
Researcher: Po-Yee Lee  
Economist: Ihn Ho Uhm  
Statistical Officer: Lise Lacombe  
Counsel for the Tribunal: Gilles B. Legault  
Registration and Distribution Officer: Pierrette Hébert

**Participants:** James P. McIlroy  
for Canadian Granite Association

**(Domestic Producer)**

David M. Attwater  
for Government of India

Lakshmi Kumaran  
for Gem Granites

**(Exporter)**

Elango Balakrishnan  
Sita Associates Inc.

**(Importer)**

**Witnesses:**

Gerald B. Pritchett  
President  
Cabot Granite Fabricators Inc.

R. Kelly Conn  
Vice-President—Administration  
Dominion Granite Ltd.

Donald Labonté  
Vice-President  
Rock of Ages Canada

Peter Pakalski  
President  
Granite Resources Corp.

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Additional Secretary  
Ministry of Commerce  
Government of India

Michel Martel  
President  
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TRIBUNAL: PATRICIA M. CLOSE, Presiding Member  
ANITA SZLAZAK, Member  
PETER F. THALHEIMER, Member

**STATEMENT OF REASONS**

**BACKGROUND**

This is a review, under subsection 76(2) of the *Special Import Measures Act*<sup>1</sup> (SIMA), of the finding made by the Canadian International Trade Tribunal (the Tribunal) on July 20, 1994, in Inquiry No. NQ-93-006<sup>2</sup> concerning black granite memorials of all sizes and shapes and black granite slabs in thicknesses equal to or greater than three inches originating in or exported from India.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the finding and issued a notice of review<sup>3</sup> on January 8, 1999. This notice was forwarded to all known interested parties. As part of this review, the Tribunal sent questionnaires to Canadian producers, importers and purchasers of black granite memorials and black granite slabs. The Tribunal also sent a questionnaire to the Government of India, via the High Commissioner of India in Canada, requesting information on the black granite memorial and black granite slab industry in India. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

The record of this review consists of all relevant documents, including the finding, the notice of review, public and confidential replies to the questionnaires, and the public and protected pre-hearing staff reports. All public exhibits were made available to interested parties, while protected exhibits were provided only to independent counsel who had filed a declaration and undertaking with the Tribunal.

Public and *in camera* hearings were held in Ottawa, Ontario, on May 20 and 21, 1999.

The Canadian Granite Association (CGA) made submissions and was represented by counsel. Evidence was presented by the members of the CGA, and arguments were made in support of continuing the finding.

1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.
2. *Finding*, July 20, 1994, *Statement of Reasons*, August 4, 1994.
3. *Canada Gazette* Part I, Vol. 133, No. 3 at 113.

The Government of India, Gem Granites (Gem), an exporter, and Sita Associates Inc. (Sita), an importer, made submissions in support of rescinding the finding. The Government of India and Gem were each represented by counsel. An official from the Government of India provided evidence at the hearing, as did the President of Sita.

## **PRODUCTS**

The goods under review are black granite memorials of all sizes and shapes and black granite slabs in thicknesses equal to or greater than three inches originating in or exported from India.

Granite is defined commercially as a natural hard stone that can be cut, sawn or polished, or that can undergo any combination of these processes, and that can receive any type of finish which modifies the original surface texture.

The term “memorials” includes granite tombstones, bases, slants, upright sloping dies, hickies, tablets, wings, vases, crosses, grave markers and pieces which, when assembled, can be utilized as a memorial. The subject goods are most commonly referred to as jet black memorials. Trade names used in the industry include “Absolute Black”, “India Black”, “Premium Plus Black”, “Premium Black” and “Star Black”. Historically, the principal sources of black granite blocks used in the domestic production of memorials and slabs have been the Republic of South Africa (South Africa) and the Republic of Zimbabwe (Zimbabwe).

The two primary categories of memorials are upright monuments and flat markers. Upright monuments are specified by their dimensions, polish and finish type, and top profile. Dimensions are normally given as width, thickness and height. Popular sizes include 30 in. × 6 in. × 24 in. and 30 in. × 8 in. × 24 in. A monument has essentially a rectangular shape and has, therefore, six surfaces. Monuments may be polished on two, three or five surfaces; hence the terms P2, P3 and P5. A P2 monument would be polished on its two largest surfaces, front and back. A P3 monument would also have a polished top, and a P5 monument would have all five exposed surfaces polished. The unpolished exposed surfaces on monuments are chiselled to give the surface a natural rock appearance referred to as “rock pitch”. Thus, monuments are described first by the number of polished surfaces, P2, P3 or P5, and, for those with rock pitch surfaces, the additional designation of “balance rock pitch” (BRP) is provided, for example, P2 BRP. The bottom (bed) of all monuments is sawn to ensure a flat surface.

There are three broad categories of upright memorial profiles: common, modified common and special shapes. Approximately two thirds of the domestic industry’s sales of black granite memorials are common profiles, that is, with a flat or serpentine top. One quarter of the sales of black granite memorials are modified common profiles that have some value-added feature, such as shaped corners. The remainder of the industry’s sales of black granite memorials are special shapes and would include, for example, stacked hearts and the book of life.

Flat markers are generally 3 in. thick and are designated by their length, width and height. The most common flat marker size is 24 in. × 12 in. × 3 in.

The memorials subject to this review are referred to as polished blanks. The memorials are finished except for the engraving or etching and are sold in that form. Engraving is a service that producers or importers may provide or arrange to have done for a customer, but it is a separate transaction that is not

included in the wholesale selling price of a memorial. Imported memorials arrive in Canada as finished blanks and are engraved locally.

Slabs are defined as rectangular pieces of granite with at least two sides roughly trimmed, cut, sawn or polished. Slabs used in the production of monuments are cut from blocks into thicknesses ranging from 3 in. to 12 in. As the most popular monument thicknesses are 6 in. and 8 in., these are also the most common slab thicknesses.

Granite product quality is assessed in terms of fineness of grain, colour, consistency of colour, polish lustre, strength, durability, density, water absorption and contrast.

Black granites come in a range of shades and granular compositions. The darkest South African and Zimbabwean black granites, like Indian black granite and black granite from the People's Republic of China (China), are deep black and have a fine grain. These deep black granites are more homogeneous in colour and finer in grain than granites such as Brits, which also originates in South Africa, and Canadian onyx, which originates in Quebec. Canadian onyx also tends to fade and discolour over time because of its iron content. The darker colour and finer grain in the deep black granites allow for a greater range of design and lettering by sandblasting and etching because of the contrast that they provide.

In the 1994 finding, the Tribunal concluded that memorials and slabs produced by the Canadian industry from South African and Zimbabwean pure black granites were like goods to the pure black granite memorials and slabs imported from India. In addition, the Tribunal concluded that the physical and market characteristics of memorials and slabs of lighter or different colours of granite were sufficiently different from those of the subject goods that they were not like goods to the subject goods.

Since the 1994 finding, domestic production of memorials and slabs has commenced using a black granite quarried in Newfoundland. This granite, which was not quarried at the time of the finding, is known as Newfoundland or Labrador black granite. A significant proportion of memorials and slabs made from Newfoundland or Labrador black granite are dark black in colour and, as quarrying has progressed deeper, the granite has become darker in colour.

The Tribunal noted in 1994, with regard to classes of like goods, that a black granite slab is the principal component from which a black granite memorial is produced. Black granite slabs are cut to a thickness to facilitate memorial production and have no other commercial utility. They also represent a significant portion of the total cost of producing black granite memorials. The Tribunal, therefore, concluded that black granite memorials and black granite slabs were like goods to each other and not separate classes of like goods because both have physical characteristics that closely resemble each other and both occupy the same stream of commerce.

## **PRODUCTION PROCESS**

The production of black granite memorials begins with the cutting of large blocks of granite (blocks are not the subject goods) into slabs, using diamond circular saws or diamond wire saws. Some of the diamond circular saws have the capability of cutting a series of blocks into slabs before any operator intervention is required. The other diamond circular saws and the diamond wire saws are generally only capable of cutting one block into slabs before the operator must remove the sawn slabs and place another block under the saw.

The granite slabs then are polished on the front and back surfaces. The polishing process uses abrasive-filled bricks and is carried out in much the same way as the sanding of a piece of wood, with coarser bricks being replaced by finer bricks through a number of stages. The polishing is done using either “bridge polishers” or “line polishers”. The bridge polisher head that holds the bricks moves over the surface of a slab and can polish up to 30 slabs at one time. Once a bridge polisher completes polishing with a given coarseness of abrasive, the machine must be stopped and the bricks must be replaced with bricks containing a finer abrasive. In the case of a line polisher, the slabs move forward under a series of 12 polishing heads. As the slab progresses through the machine, the abrasive bricks become finer after every second head.

The next stage of production involves the splitting or cutting of the memorial blanks and edge finishing. The memorial profiles that utilize the maximum amount of a polished slab are drawn on the surface of the slab that, eventually, will become the front of the memorial. If the layout calls for a P5 memorial, the edge of the slab that will be the bed of the memorial is sawn. If the layout calls for a P2 or P3 memorial, the slab is split into a memorial using a hydraulic splitter and then the bottom edge of the memorial is sawn.

The top edge is then finished. If a memorial is a P3 or P5, the top edge is contoured to a flat or serpentine profile and then polished using an edge polisher. If the memorial is a P2, the top edge is rock pitched using a hammer and chisel.

Finally, the two side edges are finished. If the memorial is a P2 or a P3, the side edges are rock pitched. If the memorial is a P5, the edges are sawn and then polished.

At the completion of the edge finishing process, the product is referred to as a polished blank.

The final stage in finishing a granite memorial is the engraving, which is done by using a full-size, rubber-like stencil of the artwork and family name(s). The stencil is applied to the face of the polished blank, and the pattern is sandblasted into the surface. Diamond etching and other custom work may be required, depending upon the customer’s specifications.

The same production process applies to the production of flat markers, except that the back of the slab is not polished, as it becomes the bottom when it is installed in the cemetery.

## **DOMESTIC PRODUCERS**

Domestic producers can be divided into three main categories: primary producers, granite processors and secondary producers.

Primary producers are involved in all stages of memorial production. These producers purchase imported or domestic blocks of black granite from which they produce slabs and, ultimately, memorials. Granite processors saw blocks into slabs and/or polish slabs that they supply to memorial producers. Secondary producers consist of memorial retailers that generally take up the production process at the slab-polishing stage. These producers engrave the finished memorials and sell directly to the consumer.

The CGA, which represents over 75 percent of the domestic granite industry, currently includes 16 primary producers and 2 granite processors.

The primary producers are concentrated in Beebe, Quebec. Generally, these producers are privately owned companies.

Both before the 1994 inquiry and since the finding, various individual Beebe producers have entered into joint ventures with other Beebe producers. For example, at the time of the inquiry, three of the primary producers, Rock of Ages, Dominion Granite Ltd. (Dominion Granite) and Adu Granite Inc., jointly owned a company called Memorial Imports, which had imported black granite memorials from India. Since 1995, the name of the company has been changed to Dimensioned Stone Imports BB Inc., and the company now imports only granite blocks. Further, three producers located in Beebe, Dominion Granite, Ogden Granite Ltd. (Ogden) and Granite Center Beebe Inc. (Granite Center Beebe) have recently formed a company called Beverly Granite Ltd. whose primary purpose is to polish slabs. This company has purchased a line polisher to do the polishing.

Since the 1994 inquiry, Adu Granite Inc. has gone bankrupt, and its assets were purchased by Rock of Ages. In addition, Border Granite Co. (1977) Ltd. was purchased by Lepitre Granite Works Ltd. and Les Granits de Saint-Samuel Inc. bought Granite Appalaches. Les Granits de Saint-Samuel Inc. was then bought by a third firm, and the combined granite producers now operate under the Appalaches name.

Also since the 1994 inquiry, a new CGA member, Cabot Granite Fabricators Inc. (Cabot), has begun operations in Newfoundland. This company, which is still in the start-up phase of operations, currently produces memorials and slabs from Newfoundland or Labrador black granite quarried in Newfoundland. The Newfoundland or Labrador black granite deposit is proving to be extensive and appears to comprise a significant potential source of dark-coloured granite for the Canadian industry.

Primary producers may be integrated further back in operations, such as Rock of Ages which owns its own quarries or Cabot which obtains its granite from an affiliated company that owns a quarry, or they may be integrated further forward in the sector and operate their own retail outlets, as does Heritage Memorials Limited, of Windsor, Nova Scotia, Nelson Monuments Ltd., of Sussex, New Brunswick, and Tingley Monuments Limited, of Amherst, Nova Scotia. Another primary producer, engaged solely in memorial production, Imperial Granite Inc., located in Beebe, is owned by a large retailer, Remco Memorials Ltd., of Regina, Saskatchewan. Yet another primary producer, Ogden, does substantial tolling work for some customers such as HGH Granite Inc., i.e. the customer provides the granite block and Ogden performs the work requested by the customer for a fee.

The two granite processors that are members of the CGA, namely, Granite Center Beebe and The Polishing Center, are both located in Beebe. Granite Center Beebe is the largest producer of slabs for sales to third parties in Canada.

Secondary producers/retailers are quite dispersed and are located mainly in Quebec and the Maritimes. According to available information, these producers are quite small and generally handle from 200 to 300 memorials per year.



## **IMPORTERS/EXPORTERS**

The majority of importers of black granite memorials<sup>4</sup> from India are wholesalers/distributors. The exceptions are Ellero Marble & Granite Mfg. Ltd. and Remco Memorials Ltd., which sell at the retail level, and Rock of Ages, which is a primary domestic producer. Another importer/wholesaler/distributor, Taygor Granite Imports Inc., is affiliated with Creative Memorials Ltd., a retailer located near Toronto, Ontario.

Importers of Chinese black memorials<sup>5</sup> include producers, wholesalers and retailers. Importers of memorials from China include Mafer Inc., Martel & Sons Inc., Remco Memorials Ltd. and SuperNova International, Inc. Two primary producers, namely, Ogden and Nelson Monuments Ltd., both CGA members, reported imports and sales of Chinese memorials.

## **1994 FINAL DETERMINATION**

### **Dumping**

The final determination of dumping in the original inquiry was issued on June 17, 1994. Normal values in the dumping investigation were determined according to paragraph 19(b) of SIMA using the aggregate of the cost of production, an amount for administrative, selling and other costs, and an amount for profit. A cost-based approach was used because there was a lack of sales in the Indian market, as memorials are generally not used in Indian funeral practices.

The Deputy Minister of National Revenue (the Deputy Minister) reviewed 99.8 percent of the subject goods shipped to Canada during the period of investigation from January 1 to June 30, 1993. In some cases, the Deputy Minister found a margin of dumping of 0 percent. In other cases, including those where exporters did not co-operate with the Department of National Revenue (Revenue Canada), dumping was found at weighted average margins that ranged from 8.7 percent to 32.7 percent.<sup>6</sup> In total, the Deputy Minister found that 34.5 percent of the goods were dumped at a weighted average margin of 27.9 percent.

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4. Virtually all the subject imports reported by importers in this review, as well as at the time of the inquiry, were comprised of memorials. Slabs appear to have been included by the Department of National Revenue in the definition of the subject goods because they constitute a significant proportion of the value of the finished memorials and, as such, to exclude them would have left open the possibility of circumvention of the finding.
  5. As with Indian imports, almost all Chinese imports reported by importers in this review were comprised of memorials.
  6. The margin of dumping of 32.7 percent was the highest margin of dumping found by Revenue Canada, and it was assigned, through a ministerial specification, to those exporters that did not co-operate in providing complete information to Revenue Canada.

## **Subsidizing**

The Deputy Minister also undertook a subsidizing investigation. The investigation found that six programs instituted by the Government of India were conferring countervailable benefits. These programs are as follows:

1. Import Duty Exemptions Available to Export Oriented Units (EOUs)<sup>7</sup>;
2. Income Tax Exemption on Export Earnings;
3. Preferential Pre-shipment Loans;
4. Preferential Post-shipment Loans;
5. Sale of Replenishment Licences; and
6. Sale of Additional Licences.

The Deputy Minister found that 100 percent of the goods shipped by three exporters, which provided information, were countervailable and that the total amount of subsidizing, expressed as a percentage of the total FOB selling price, was a weighted average of 35.4 percent, or 20.7 cents per pound. The amount of subsidizing for exporters that provided incomplete or no information was set by ministerial specification at 35 cents per pound.

## **SUMMARY OF THE 1994 INJURY FINDING**

On July 20, 1994, the Tribunal found that the dumping in Canada and subsidizing of black granite memorials and black granite slabs originating in or exported from India had caused, were causing and were likely to cause material injury to the production in Canada of like goods.

From 1990 to 1992, sales of imports from India increased by 69 percent, and, as a result, total imports from India captured 11 percentage points of market share. The decline in the domestic producers' market share of sales from domestic production was almost exclusively attributable to the market share gains by imports from India. The average selling price of importers' goods was consistently below that of the domestically produced like goods. The Tribunal had no doubt that the major reason for the rapid expansion in market share by Indian imports was their availability in the market at very low prices.

In 1993, in response to the market share gains by Indian imports, the domestic industry decided to reduce the use of South African black granite blocks in the production of finished memorials and increase the use of less expensive Zimbabwean granite blocks. This resulted in a decrease in the average selling price of the Canadian made like goods. At the same time, the average price of the imported memorials from India increased, and the domestic industry recovered part of the market share lost over the two previous years. However, the Tribunal was convinced that, over the inquiry period, low-priced Indian imports played a major role in suppressing producers' prices and harming the financial performance of domestic producers.

The Tribunal considered the evidence concerning other possible causes of injury. These included imports of the subject goods by the domestic industry, the natural cost advantage enjoyed by Indian producers, the quality of Indian black granite memorials, the recession, the use of alternatives to traditional interment procedures and currency fluctuations. The Tribunal concluded that, save for some impact due to a

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7. An EOU is an Indian company which is provided with various government incentives, such as income tax and tariff exemptions, as long as it exports most of its production.

natural Indian cost advantage, factors other than dumping and subsidizing had an insignificant impact on the domestic industry.

The Tribunal was convinced that the continued dumping and subsidizing of black granite memorials and slabs from India were likely to cause material injury to the production in Canada of like goods, unless anti-dumping and countervailing duties were imposed. The Tribunal stated that all the factors which gave rise to the domestic industry's material injury in the past and in the present were likely to persist in the future, unless anti-dumping and countervailing duties were imposed.

### **ENFORCEMENT OF THE FINDING**

Since the Tribunal's 1994 injury finding, Revenue Canada has conducted three dumping and subsidizing re-investigations in its enforcement of the finding. Each of these re-investigations resulted in the continued application of countervailing duties.

Revenue Canada's most recent re-investigation, which set the countervailing rates of duty effective January 15, 1998, determined that there were nine subsidy programs that had conferred countervailable benefits on exporters of black granite memorials and slabs over the period of investigation.<sup>8</sup> Those programs, which were used in different combinations and to different degrees by each exporter, are as follows:

1. Import Duty Exemption on Consumables;
2. Income Tax Exemptions on Export Earnings;
3. Preshipment Export Financing (Packing Credit Loans);
4. Pre-shipment Packing Credits Loans in Foreign Currency;
5. Post-shipment Export Financing;
6. Long Term Preferential Loans;
7. Import Duty Exemption on Machinery;
8. Central & State Sales Tax Exemptions; and
9. Excise Duty Exemptions.

Revenue Canada found that the first three programs listed above "contributed the most to the amount of countervailing duty rate calculated"<sup>9</sup>. The countervailing rates of duty established for co-operating exporters ranged from a low of just over 2 cents per pound to a high of almost 16 cents per pound. The rate for other exporters remained fixed at the ministerial specification of 35 cents per pound.

Since the 1994 finding, the amount of countervailing and anti-dumping duties collected by Revenue Canada has been in the tens of thousands of dollars on an annual basis. Although the data provided to the Tribunal by Revenue Canada did not segregate countervailing duties from anti-dumping duties, in response to an information request from the Tribunal, Revenue Canada estimated that about 98 to 99 percent of the total duties collected over the enforcement period were countervailing duties. Under section 10 of SIMA, anti-dumping duties only become payable to the extent that they exceed the amount of countervailing duties payable. As this was often not the case, only small amounts of anti-dumping duties were collected.<sup>10</sup>

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8. Tribunal Exhibit RR-98-006-4 (protected), Administrative Record, Vol. 2 at 17.

9. *Ibid.*

10. Tribunal Exhibit RR-98-006-3C, Administrative Record, Vol. 1 at 142.

## **POSITION OF PARTIES**

### **Party Supporting a Continuation of the Finding**

#### **CGA**

Counsel for the CGA submitted that, in the absence of a finding, dumping and subsidizing are likely to resume and to cause material injury to the members of the CGA and, therefore, that the finding should be continued.

Counsel for the CGA noted that the final determination found significant margins of dumping and subsidizing. Counsel further indicated that, even though anti-dumping duties may not have been payable, this does not necessarily mean that dumping has not occurred. It only means that anti-dumping duties did not exceed countervailing duties payable. Counsel also argued that, since Indian exporters' costs were subsidized, normal values were low.

Counsel for the CGA went on to argue that there are a number of reasons that dumping and subsidizing are likely to continue or resume. Counsel submitted that export subsidy programs have been extended and expanded in recent years through revisions to the EXIM Policy<sup>11</sup> 1997-2002. Counsel noted the importance that the Government of India places on exports, especially granite exports, and the Government of India's hope for significant growth in exports. Counsel noted that the Government of India had revised the EXIM Policy to combat poor export performance caused by currency devaluations in Southeast Asia and the continued recession in parts of the world. Counsel argued that subsidy programs are particularly important for granite memorials, as there is no home market for the products in India.

Counsel for the CGA argued that the likelihood of dumped or subsidized imports was demonstrated by the fact that Indian export activities in the European Union had resulted in 15 new dumping and subsidizing investigations from 1994 to 1997 and 5 countervailing cases over the past eight months. Counsel further supported this argument by noting that there were a number of anti-dumping and countervailing orders in the United States against Indian exports. Turning to Canada, counsel indicated that Revenue Canada's most recent re-investigation had identified nine countervailable subsidy programs. Counsel also alleged that correspondence from Indian exporters to a CGA member was evidence of new exporters taking advantage of Indian subsidy programs.

Counsel for the CGA noted that, in 1992, Indian exports accounted for 30 percent of the Canadian market for black granite memorials and that the prices of Indian imports, on average, were 39 percent below domestic producers' average prices. Counsel argued that similar volumes and prices could be expected in the absence of a finding because subsidy programs have been extended and expanded and the Indian industry must export to survive, having no domestic market. Furthermore, India has significant granite reserves and growing manufacturing capacity, and the granite industry has been identified as "an export-thrust area" by the Government of India.

Counsel for the CGA noted that, since the finding, members of the CGA have made investments, reduced their costs and developed their export sales, but argued that the domestic granite industry remains vulnerable to dumped and subsidized imports. Counsel contended that, if the finding is allowed to expire, dumped and subsidized Indian imports, once again, will drive down Canadian prices, which will cause

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11. Export/import policy.

material injury to the Canadian granite industry. Counsel argued that just because the industry is profitable today does not mean that it would remain profitable if the finding were rescinded.

Counsel for the CGA noted that the industry's growing exports to the United States were assisted by a record low Canadian dollar and argued that exports to the United States helped the industry to maintain prices in the domestic market despite the growth of low-priced Chinese imports. Counsel, however, stated that there is no guarantee that the dollar will maintain its record low level. Counsel claimed that the presence of Chinese memorials in the market indicates that buyers are price sensitive. According to counsel, in the absence of a finding, Indian memorials will re-enter the market, and there will be a reaction from the Chinese, with the result being significant price competition in the market.

Counsel for the CGA referred to the consolidation taking place in the mortuary industry and the growing role of funeral homes and cemeteries in the selling of memorials. Counsel contended that, if the finding is not continued, there are now distribution outlets in Canada that can move a lot of dumped and subsidized imports quickly and that they can move those imports across the country.

Finally, counsel for the CGA submitted that the finding had safeguarded several hundred manufacturing and related jobs in Quebec and the Maritimes, and enabled a granite industry to emerge in Newfoundland. Counsel argued that a return to unrestrained dumping and subsidizing will injure not only the members of the CGA but also the communities in which they are located.

### **Parties Opposed to a Continuation of the Finding**

#### Gem

Counsel for Gem submitted that the finding should be rescinded. Counsel claimed that only a very small percentage of the goods reviewed by the Deputy Minister in 1994 were dumped. Counsel argued that, since dumping was not an issue in the 1994 investigation or at any time later, it is not an issue in the present review.

With respect to subsidy programs, counsel for Gem submitted that no action can be taken against India under the *General Agreement on Tariffs and Trade 1994*.<sup>12</sup> Counsel claimed that the prohibition of subsidies contingent on export performance, as provided under Article 3 of the *Agreement on Subsidies and Countervailing Measures*<sup>13</sup> (the Agreement on Subsidies), does not apply to India because, as provided for under Article 27 of the Agreement on Subsidies, it is a developing country. Notwithstanding this submission, counsel argued that benefits derived from the subsidy schemes have been drastically reduced since the 1994 finding. Counsel contended that this reduction in benefits is based on two factors. One factor is the correction of alleged mistakes that were made in Revenue Canada's determinations. The other factor is the reduction in various rates and the discontinuance of programs. In this connection, counsel submitted that the tariff rates on consumables in Chapters 68 and 82 of India's *Customs Tariff* were 85 percent in 1993-94, but had declined to 40 percent and 25 percent in the relevant tariff categories. Counsel also indicated that the income tax rate for companies registered under the *Companies Act* in India was 57.5 percent in 1993-94, but had declined to 35.0 percent for the assessment year 1999-2000.

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12. Signed at Marrakesh on April 15, 1994.

13. *Ibid.*

Turning to the likelihood of injury, counsel for Gem noted that exports from China are priced much lower than exports from India. Counsel argued that, if the finding is rescinded, imports from India are unlikely to increase, given the rising share of imports from China. Counsel contended that, if there was injury to the domestic industry, it could only be attributable to imports from China.

#### The Government of India

Counsel for the Government of India submitted that the finding should be rescinded. Counsel indicated that only small amounts of anti-dumping duties were paid between 1996 and 1998. Counsel noted that the Tribunal's pre-hearing staff report indicated that these duties were payable, for the most part, where exporters did not respond to Revenue Canada's requests for information. Counsel submitted that, since in most cases no anti-dumping duties were payable, the Deputy Minister, pursuant to section 10 of SIMA, was satisfied that the margin of dumping was attributable to the alleged subsidies. Counsel then argued that the Tribunal must consider actual dumping and not merely dumping determined on the basis of whether exporters responded to Revenue Canada's questionnaires. Counsel submitted that, in this context, there is no likelihood of resumed dumping.

Counsel for the Government of India submitted, with regard to the likelihood of continued subsidizing, that there had been a dramatic decrease in the countervailing rates of duty since the final determination in 1994. Counsel argued that these rates will continue to decrease over time.

Turning to the likelihood of material injury, counsel for the Government of India noted that, from 1996 to 1998, the industry's production, sales, income, prices and total employment increased. Counsel submitted that imports increased from 7 percent of the domestic market in 1996 to 23 percent in 1998 and argued that the data revealed that the imports have not injured the domestic industry. Counsel noted that, in fact, the industry had its best financial performance in 1998, when imports held the largest market share. Counsel stated that the testimony of a witness for the CGA was that the health of the industry would continue to improve and that Newfoundland black granite would replace South African black granite, which would, in turn, lower the domestic cost of production by 15 percent. Counsel claimed that, by lowering the cost of production, the net income before taxes for the industry would improve.

Counsel for the Government of India referred to the testimony of industry witnesses that Chinese imports were not injuring the industry and argued that, if the Chinese are not causing injury while accounting for 16 percent of the market, Indian imports are not likely to injure the industry, if the finding is rescinded. Counsel contended that Chinese imports have captured a significant market share because they are of good quality and are priced low.

Counsel for the Government of India argued, noting the testimony of a CGA member, that the memorial market is price sensitive. Counsel noted that the price comparisons provided by witnesses for the Government of India showed that, on an FOB (country of origin) basis, the prices of Chinese memorials, on average, were between 35 and 38 percent lower than the prices of Indian memorials. Counsel also referred to testimony that buyers would switch sources given a 10 to 15 percent price difference and, when faced with two identical memorials, would purchase the lower-priced memorial. Counsel stated that the testimony of a witness for the Government of India, to the effect that his Indian supplier would not lower prices when he shifted his purchases to Chinese memorials, supported the argument that Indian exporters would not engage in a price war with Chinese exporters.

## Sita

Sita's representative submitted that the finding should be rescinded. The representative noted that, since the finding, CGA members and Canadian retailers have been able to establish China as an alternative and cheaper source for memorials. The representative contended that the FOB prices of memorials from China, on the basis of full container loads, were significantly lower than the FOB prices of memorials from India. The representative argued that, if the finding is rescinded, it is highly unlikely that imports from India are going to increase, as there is now a cheaper source of supply from China.

## **PRELIMINARY ISSUES**

### **Considering the Effects of Both Dumped and Subsidized Goods**

Counsel for the Government of India argued that the effects of dumping and subsidizing should be considered separately, as neither SIMA nor the World Trade Organization (WTO) agreements<sup>14</sup> allow the Tribunal to "cross-cumulate" these effects when considering the likelihood of material injury to the domestic industry. In support of his argument, counsel relied on subsection 2(7) of SIMA, which provides that, where a provision of that act expressly applies to both dumped and subsidized goods, the application of the provision, either to the dumped or subsidized goods, shall not be taken into account with respect to the other, in the application of any provision under SIMA.

The Tribunal is not convinced that the arguments raised by counsel for the Government of India are determinative. It is the Tribunal's view that subsection 2(7) of SIMA appears to have been enacted as a declaratory provision *ex abundanti cautela* (out of abundant caution). Generally, provisions of SIMA dealing with both dumping and subsidizing are interpreted as applying only with respect to either subsidized goods or dumped goods, as the particular case dictates. To contend that subsection 2(7) prohibits the Tribunal from considering together the effects of dumping and subsidizing when the same goods are being both dumped and subsidized, or are likely to be both dumped and subsidized, is unreasonable, given the impossibility of separating the effects of dumping from the effects of subsidizing those same goods. Had Parliament intended not to allow the Tribunal to cross-cumulate in such situations, it would have said so much more clearly and directly, in plain language.

Finally, and without restricting the generality of the foregoing, there is another, perhaps more convincing, reason why subsection 2(7) of SIMA does not apply in this instance. The concept of cross-cumulation of the effects of dumping and subsidizing, at issue here, relates to the second of the two questions that the Tribunal generally addresses in a review under subsection 76(2) of SIMA,<sup>15</sup> the likelihood of material injury to the domestic industry if dumping and subsidizing were to resume. Although they stem from a long-standing practice based on SIMA and the relevant trade agreements, these questions are not found in any provisions under SIMA. In fact, neither subsection 76(2), which deals with the conduct of the review, nor subsection 76(4), which deals with the order that the Tribunal must issue at the completion of the review, uses the words "dumped or subsidized goods". Consequently, neither subsection 76(2) nor subsection 76(4) can be said to apply "by its terms" to both dumped and subsidized goods, as provided for in subsection 2(7). It follows, therefore, that this latter provision does not apply.

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14. *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, signed at Marrakesh on April 15, 1994, and the Agreement on Subsidies.

15. The first question that the Tribunal generally addresses is whether there is a likelihood of subsidizing and/or dumping if the finding is rescinded.

Moreover, in Inquiry No. NQ-95-002,<sup>16</sup> the Tribunal, based on the fact that subsidized and dumped goods from the European Union were, in fact, one and the same goods, concluded that:

in considering the effect of the goods originating in the European Union, it is not possible to isolate the effects caused by the subsidizing from the effects caused by the dumping.<sup>17</sup>

The Tribunal added:

In other words, the effects of subsidizing and dumping are so closely intertwined that it is impossible to unravel them so as to allocate specific or [discrete] portions to the subsidizing and dumping.<sup>18</sup>

In the 1994 finding, the Tribunal also stated that it did not attempt to isolate the separate effects of the dumping and subsidizing. The Tribunal concluded that the domestic industry responded to unfairly traded goods and that to undertake to separate and measure that response between that portion relating to dumping and that portion relating to subsidizing would be an arbitrary analytical exercise.<sup>19</sup> The Tribunal, in this case, is of the same view.

### **The Domestic Industry and Like Goods**

In the inquiry in 1994, the Tribunal determined, after consideration of the evidence and analysis of the law, that only memorials and slabs produced from South African and Zimbabwean black granites were like goods to the subject goods. However, as a result of new production of black granite memorials and slabs started by Cabot of Newfoundland a year or so ago<sup>20</sup>, the Tribunal informed the parties to this review, prior to the hearing, that, in terms of both evidence and arguments, they should address the question of whether Cabot's production of black granite memorials and slabs should be considered to constitute, in whole or in part, domestic production of like goods.<sup>21</sup>

Subsection 2(1) of SIMA defines "like goods", in relation to any other goods, as:

- (a) goods that are identical in all respects to the other goods, or
- (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

In addressing this issue, counsel for the CGA submitted that the like goods in this case must be determined pursuant to paragraph 2(1)(b) of SIMA, not paragraph 2(1)(a) which deals with identical goods, since granite is a natural stone, and that there can be no two identical products when referring to natural stone. The issue, according to counsel, thus turns on whether Cabot's black granite memorials and slabs have uses and characteristics which clearly resemble those of the other goods, namely, the memorials and slabs produced from South African and Zimbabwean black granites. Counsel added that the Tribunal must consider two things in making that determination, namely, market considerations and physical characteristics.

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16. *The Dumping in Canada of Refined Sugar Originating in or Exported from the United States of America, Denmark, the Federal Republic of Germany, the Netherlands, the United Kingdom and the Republic of Korea, and the Subsidizing of Refined Sugar Originating in or Exported from the European Union*, Canadian International Trade Tribunal, Inquiry No. NQ-95-002, *Findings*, November 6, 1995, *Statement of Reasons*, November 21, 1995.

17. *Ibid.* at 21.

18. *Ibid.*

19. *Supra* note 2, *Statement of Reasons* at 19.

20. *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 98.

21. Tribunal Exhibit RR-98-006-50, Administrative Record, Vol. 1 at 188.



With respect to market considerations, counsel for the CGA relied on the Federal Court of Appeal's decision in *Sarco Canada Limited v. The Anti-dumping Tribunal*,<sup>22</sup> where the Federal Court of Appeal set out certain criteria to evaluate, including whether the same consumers are being sought, whether the goods have the same end use and whether the goods fulfil the same need. In counsel's view, the answer to all these questions was "yes". The evidence showed that Cabot's black granite memorials and slabs were fully substitutable for those made from South African and Zimbabwean granites.

As to the physical characteristics of the Cabot black granite memorials and slabs, counsel for the CGA conceded that the memorials and slabs produced from granite that was quarried in 1995 and 1996 were not as dark and fine grained as products manufactured from recent quarrying operations. However, counsel contended that Cabot's recent products, as well as those that it is going to put on the market over the next few years, are like goods in terms of colour, grain and the ability to achieve the sharp contrasts needed for etching.

Counsel for the Government of India noted that Cabot had identified Exhibits A-14, a dark black granite quarried in 1999, and A-11, a granite lighter in colour than Exhibit A-14 quarried in 1998, as representing samples of its production. With respect to Exhibit A-11, counsel argued that it does not constitute "like goods", since it is not "jet black", which is the type of black that the Tribunal had found to constitute like goods in the 1994 finding. In counsel's view, Exhibit A-11 does not display the jet black granite colour that is accepted by wholesalers, and it is not interchangeable with the subject goods in terms of quality of granite, density, grain and darkness.

With respect to Exhibit A-14, counsel for the Government of India argued that this sample was taken from quarrying operations that were so recent that no memorials or slabs had yet been produced from this stone. Therefore, it could not constitute "like goods" today. In counsel's view, the characteristics of this granite would qualify it as "like goods" only in the year 2000, when the memorials and slabs made from it come on the market. Goods that will qualify as like goods only next year had no role in the Tribunal's consideration of injury in this case, according to counsel.

Having considered the foregoing arguments, the Tribunal is of the view that the issue of like goods should take into account not only the criteria stated in *Sarco* but also any applicable conclusions that were made in connection with this issue in the 1994 inquiry. On the basis of the criteria for market considerations in *Sarco*, the Tribunal finds that there is evidence that some of the memorials that are made from the Cabot black granite, represented by Exhibit A-11, are currently being offered by certain domestic producers as alternatives to the subject goods, as well as to goods made from South African and Zimbabwean black granites and that the same consumers are being sought,<sup>23</sup> albeit not always with the same success.

In terms of physical characteristics, the Tribunal notes that, in the 1994 inquiry, the Tribunal stressed that black granite memorials and slabs from South Africa and Zimbabwe were darker in colour and finer in grain than lighter granites, such as Brits. After examining Exhibit A-11 and comparing it to other exhibits representing granite from India, China, South Africa and Zimbabwe, the Tribunal finds that Exhibit A-11 is not quite as dark in colour or pure in grain as the deep black granite from these other sources, but that it is darker than Brits. To meet the test of like goods, the Newfoundland black granite needs only to be "similar" to competing products, not identical. In the Tribunal's view, Exhibit A-11 is sufficiently similar to the deep

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22. [1979] 1 F.C. 247.

23. *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 57 and 58.

black granite from the aforementioned four sources, both in terms of physical characteristics and in regard to market considerations, that it constitutes “like goods” within the meaning of SIMA.

As far as Exhibit A-14 is concerned, there was no disagreement among counsel that the granite represented by this sample is of a quality similar to the best pure black granite available in the world. The Tribunal has examined this sample in comparison with others and agrees that, from a visual and esthetic standpoint, there is little to distinguish this granite from the best black granites available. Moreover, the fact that memorials made from this granite may not be available until next year (2000) does not exclude it from the purview of this review, contrary to the argument of counsel for the Government of India. Changes to the Canadian market over the period of a review, and the likely effects of these changes over the next 12 to 18 months, are generally the focus of a review under section 76 of SIMA. The discovery, development and future prospects of the Newfoundland granite deposit is, thus, a relevant consideration in this case.

The Tribunal, therefore, finds that black granite memorials and slabs produced from the granite represented by Exhibit A-11 and those to be produced in the near future from the granite represented by Exhibit A-14 are like goods.

### **Exclusion from the Domestic Industry**

At the outset of the hearing, counsel for the Government of India questioned the inclusion of Rock of Ages in the domestic industry for the purpose of this review. As the issue was raised rather late in the review process, the Tribunal decided that it should be dealt with by counsel during evidence and arguments, since the Tribunal was not in a position to rule on this issue at the outset of the hearing.

In argument, counsel for the Government of India submitted that parties appearing before the Tribunal, requesting the extraordinary remedy that is provided by SIMA, should be disqualified from being part of the domestic industry if they import significant volumes of the subject goods, as Rock of Ages is doing.

The Tribunal notes that the definition of “domestic industry” in subsection 2(1) of SIMA provides the Tribunal, among other things, with discretion to exclude from the domestic industry a domestic producer who is also an importer of the subject goods. This discretion was noted by the Tribunal in the 1994 inquiry.<sup>24</sup> Among the criteria that the Tribunal considers before excluding a domestic producer are: (1) whether the exclusion would effectively deny the existence of a domestic industry;<sup>25</sup> (2) whether the domestic producer was the first to import the subject goods into Canada; (3) whether the subject goods were imported by that producer as a defensive response to low-priced imports and to maintain market share; and (4) whether the imports of the subject goods represent more than a small proportion of the domestic industry’s total sales.<sup>26</sup>

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24. *Supra* note 2, *Statement of Reasons* at 19.

25. See, for example, *Certain Solder Joint Pressure Pipe Fittings and Solder Joint Drainage, Waste and Vent Pipe Fittings, Made of Cast Copper Alloy, Wrought Copper Alloy or Wrought Copper, Originating in or Exported from the United States of America and Produced by or on Behalf of Elkhart Products Corporation, Elkhart, Indiana, Nibco Inc., Elkhart, Indiana, and Mueller Industries, Inc., Wichita, Kansas, their Successors and Assigns*, Canadian International Trade Tribunal, Inquiry No. NQ-93-001, *Finding and Statement of Reasons*, October 18, 1993, at 14.

26. *Supra* note 2, *Statement of Reasons* at 19.

Insofar as the argument made by counsel for the Government of India is concerned, only the last criterion noted above is pertinent, namely, the extent of the subject imports by Rock of Ages. In this connection, a witness for Rock of Ages testified that the company imported five containers of the subject goods, from 1996 to 1998<sup>27</sup> inclusively, to meet specific requests from retailers in British Columbia. The imported memorials were limited in style and represented a small percentage of the company's sales of black granite memorials and slabs.<sup>28</sup> The statistical data collected by the Tribunal show that the subject imports by Rock of Ages, over the three-year period reviewed, comprise a very small proportion of the domestic industry's total sales over the period.<sup>29</sup> On the basis of this evidence, the Tribunal has no difficulty concluding that Rock of Ages should be included in the domestic industry for the purpose of this review.

## **ANALYSIS**

Subsection 76(4) of SIMA provides that, on completion of a review, the Tribunal shall rescind or continue, with or without amendment, the order or finding. In making its decision in this case, the Tribunal considers two fundamental issues. First, is there a likelihood of subsidizing and/or dumping if the finding is rescinded? Second, if there is a likelihood of subsidizing and/or dumping, is such subsidizing and/or dumping likely to cause material injury to the domestic industry?

Before addressing these issues, the Tribunal notes that, under the Canadian anti-dumping and countervailing system, it is the exclusive responsibility of Revenue Canada to establish, in an inquiry, whether there are any subsidies, in order to determine whether any such subsidies are actionable under the relevant Canadian and international laws and, if they are actionable, to specify the countervailing rates of duty that are applicable to a specific exporter at any given time. Similarly, Revenue Canada has the sole jurisdiction to determine the normal values at which products must be priced by exporters selling to Canada and to determine the margins of dumping. Furthermore, it is Revenue Canada's responsibility to enforce injury findings that are made by the Tribunal. This includes the periodic re-investigations and re-determinations of both countervailing rates of duty and normal values, as it has done on several occasions in this case, the last being at the beginning of 1998. Once the Deputy Minister has made a decision with respect to the existence and amount of subsidy, or with respect to the dumping, the Tribunal must accept that decision as being authoritative and compliant with both SIMA and Canada's international obligations under the WTO.

In short, in exercising its jurisdiction under SIMA in an inquiry under section 42 or a review under section 76, the Tribunal has no jurisdiction to entertain arguments about whether certain subsidy programs are actionable or not, nor can the Tribunal look behind Revenue Canada's countervailing duty and/or normal value calculations to determine whether any errors or oversights have been made. The Tribunal must take Revenue Canada's determinations and re-determinations as they are, at face value.

In addressing the question of whether there is a likelihood of subsidizing and/or dumping in a review under section 76 of SIMA, however, the Tribunal must take the historical inquiry and enforcement data compiled by Revenue Canada with respect to subsidizing and dumping and consider what is likely to happen in these areas in the future. Thus, the Tribunal might examine changes to subsidy programs that Revenue

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27. Two containers were imported in 1996, one in 1997 and two in 1998. *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 27-28.

28. *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 162-68.

29. *Protected Pre-hearing Staff Report*, April 8, 1999, Tribunal Exhibit RR-98-006-6 (protected), Administrative Record, Vol. 2 at 59 and 61.

Canada has found to be actionable to determine if, for example, they are likely to be discontinued or whether the benefits have been, or are about to be, reduced to the point where they will have no injurious effect on Canadian producers. Insofar as dumping is concerned, the Tribunal might examine changed market conditions in India and/or Canada that might heighten or lessen the chances that dumping will occur in the future. It is these types of considerations that are within the Tribunal's mandate and on which the following sections focus.

### **Likelihood of Subsidizing**

The Tribunal notes that the Government of India has not indicated any intention to discontinue the export subsidy programs that are now in place and that, to one degree or another, have been in place since well before the 1994 finding. Just the opposite. The Government of India continues to maintain and revise its EXIM Policy.

The current version of the EXIM Policy was introduced in 1997 and will be in place until 2002.<sup>30</sup> In April and August 1998, there were several revisions made to fine-tune the policy, including, for example, extending a tax holiday from 5 to 10 years<sup>31</sup> to Indian EOUs.<sup>32</sup> Revenue Canada has found this tax exemption program to be countervailing in this case. A principal consideration in making the second round of revisions in August was the poor performance of Indian exports at that time, which the Government of India believed was being caused by the wave of currency devaluations that was sweeping Southeast Asia, giving the devaluing countries an export advantage over India.<sup>33</sup> In this context, the objective of the revisions was to facilitate exporters' ability to achieve 20 percent growth in exports.<sup>34</sup>

In April 1999, the Government of India announced further revisions of its EXIM Policy. Again, in making these revisions, it pointed to the continued lacklustre performance of Indian exporters in the face of the ongoing Asian currency crisis and the poor economic conditions in many export markets. One of the changes announced in April was that the required level of net foreign exchange earnings as a percentage of exports (NFEP), which exporters needed to achieve to be eligible for export subsidies and programs, would be made uniform at 20 percent for all EOUs and export processing zones.<sup>35</sup> Previously, the NFEP applicable to granite EOUs had been set at 30 percent.<sup>36</sup> As the Tribunal sees it, this reduction in NFEP for Indian producers of granite memorials and slabs would, among other things, appear to allow them to operate at lower levels of export earnings without compromising their eligibility for export incentives. In so doing, they would have greater flexibility to lower prices to meet competition from other sources in export markets.

Although exports continue to be strongly promoted by the Government of India, the Tribunal notes that, since 1994, the countervailing duty rates applicable to Indian exports have been steadily declining.<sup>37</sup> However, these declines have not occurred primarily because of cutbacks or restrictions in the subsidy

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30. Manufacturer's Exhibit A-1, Tab 1, Appendix 1-1, Administrative Record, Vol. 11.

31. Manufacturer's Exhibit A-1, Tab 2, Appendix 2-2, Administrative Record, Vol. 11.

32. The program is available to Indian exporters in other industries as well.

33. Manufacturer's Exhibit A-1, Tab 2, Appendix 2-1, Administrative Record, Vol. 11.

34. Manufacturer's Exhibit A-1, Tab 2, Appendix 2-2, Administrative Record, Vol. 11.

35. Manufacturer's Exhibit A-1, Tab 4, Appendix 4-2, Administrative Record, Vol. 11.

36. Manufacturer's Exhibit A-1, Tab 1, Appendix 1-17, Administrative Record, Vol. 11.

37. As noted earlier, for exporters that co-operated with Revenue Canada in its most recent re-investigation, countervailing duty rates currently range from about 2 to 16 cents per pound, down from about 14 to 35 cents per pound in 1994.

programs themselves. They have occurred because of changes to other standard government programs from which the subsidy benefits are derived.<sup>38</sup> The way in which changes to standard government programs have caused declines in duty rates becomes clear from an examination of two of the most important Indian subsidy programs that have been found to be countervailable by Revenue Canada in this case, namely, the Import Duty Exemption on Consumables and the Income Tax Exemptions on Export Earnings.

Insofar as the import duty relief program is concerned, Indian EOUs are exempted from paying import duties or tariffs on certain consumables that are imported and used in the manufacturing process. The amount of countervailable benefit is equal to the amount of the exempted or avoided import tariff. While the fundamental elements of the subsidy program have not changed over the past several years, the relevant Indian tariff rates have come down substantially, as part of India's WTO commitments. In some cases, tariffs have gone below committed or "bound" levels. Thus, as the tariffs have fallen, so has the benefit derived from being exempted from the tariff under the subsidy program. Similarly, Indian income tax rates are lower now than they were in previous years. The benefits derived from not paying income tax, therefore, have fallen under the Income Tax Exemptions on Export Earnings program.

Nevertheless, despite the tariff and tax rate declines that have occurred, Indian import tariffs remain at relatively high levels,<sup>39</sup> and the applicable Indian income tax rate is not insignificant.<sup>40</sup> As a result, there continue to be substantial benefits that may be derived by Indian exporters from using the associated subsidy programs, alone or in combination with each other. This is evidenced by the fact that, throughout the period of enforcement of the finding, the amount of countervailing duties collected by Revenue Canada has been and continues to be substantial, representing, in 1998, in excess of 10 percent of the landed value of imports of black granite memorials from India.<sup>41</sup> Moreover, the high end of the range of the countervailing duty rates set by Revenue Canada (i.e. 12 to 16 cents per pound) are currently applicable to those Indian exporters that, historically, have been among the largest Indian exporters to Canada. These countervailing duties comprise about 10 to 20 percent of the wholesale price of a typical imported Indian memorial, which is not insignificant.

Looking ahead, there is nothing to indicate that the relevant Indian tariff rates are scheduled to decline further in the immediate future. On the contrary, the evidence indicates that the Uruguay Round of Indian tariff cuts has been completed.<sup>42</sup> While future multilateral trade and tariff negotiations might produce further tariff reductions by WTO countries, the time horizon for any such developments is uncertain.

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38. As well, exporters that had previously not co-operated with Revenue Canada and that were, therefore, assigned the maximum rate of 35 cents per pound by ministerial specification decided to co-operate with Revenue Canada so that a precise rate could be calculated for them.

39. According to Revenue Canada, the rates on consumables and capital goods decreased from about 80 percent, at the time that Revenue Canada conducted its investigation in 1995, to 40 percent, at the time that Revenue Canada conducted its most recent investigation. Tribunal Exhibit RR-98-006-4 (protected), Administrative Record, Vol. 2 at 17. Gem's submission also indicates that the tariff rates on consumables in Chapters 68 and 82 of India's *Customs Tariff* in 1993-94 were about 85 percent and that the rates have been reduced to 40 percent and 25 percent. Importer's Exhibit C-1, Administrative Record, Vol. 13.

40. Gem's submission indicates that the income tax rate for companies registered under the *Companies Act* in India was 57.5 percent in 1993-94 and has been reduced to 35.0 percent for the assessment year 1999-2000. Importer's Exhibit C-1, Administrative Record, Vol. 13.

41. According to Revenue Canada, 99 percent of SIMA duties collected in 1998 were countervailing duties. Tribunal Exhibit RR-98-006-3C, Administrative Record, Vol. 1 at 142; and *supra* note 4.

42. *Transcript of Public Hearing*, Vol. 2, May 21, 1999 at 299-300.

Furthermore, because not all Indian tariffs are bound (at least one third of the manufacturing tariffs are not<sup>43</sup>) and because some of the other tariff rates have come down further than the bound rate,<sup>44</sup> the Government of India has the right, as well as the room, to increase some of its tariff rates in the future. As a result, subsidy rates could increase.

As far as the future direction of Indian income tax rates is concerned, the only constraint on raising the rates is the will of the political party in power. Income tax rates rise and fall at the discretion of governments. While there is nothing to suggest that Indian income tax rates are about to rise, the possibility exists, especially with a new government soon to be elected.<sup>45</sup>

In sum, it is abundantly clear to the Tribunal from the evidence presented in this case that the Government of India intends, in the foreseeable future, to maintain and, if necessary, to enhance the current array of export incentive programs whose principal purpose is to encourage Indian exports, including exports of the subject goods. The record shows that many of these programs have been found to be countervailable by Revenue Canada. The record also shows that Indian exporters avail themselves of these export incentive programs in different combinations and to different degrees from time to time. The Tribunal finds that, although the benefits received under these programs are, on average, less today than they were in 1994, they are still substantial and, in all likelihood, will continue to be so in the future.

Accordingly, the Tribunal finds that there is a strong likelihood that subsidizing will continue.

### **Likelihood of Dumping**

As noted earlier, Revenue Canada's 1994 final determination established that a large percentage of the subject goods shipped to Canada, over the initial period of the investigation, were dumped at a significant margin. However, in the period since the finding, only a very small proportion of the duties collected have been anti-dumping duties.

In considering these historical data, the Tribunal notes that, merely because small amounts of anti-dumping duties were collected with respect to certain Indian exports during the enforcement period, this does not necessarily mean that there was no dumping in respect of those exports. All that can be concluded, given the fact that countervailing duties are considered first, is that the amount of countervailing duties due under SIMA exceeded all or almost all of the anti-dumping duties that otherwise would have been payable.<sup>46</sup> In other words, there could have been more dumping occurring than is reflected by the amount of anti-dumping duties actually collected. Furthermore, the existence of subsidies tends to lower the calculated level of normal values by lowering costs, which, in turn, lessens the chances that such normal values will exceed export values and, thereby, cause dumping. In this way, subsidies tend to mask potential dumping situations.

In any event, regardless of the extent of the dumping which has occurred in the past, the key issue before the Tribunal is what is likely to happen with regard to dumping in the future. In this connection, the

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43. *Transcript of Public Hearing*, Vol. 2, May 21, 1999, at 337-38.

44. *Transcript of Public Hearing* Vol. 2, May 21, 1999, at 337 and 340-41.

45. The President of India dissolved Parliament in April 1999 and the country is anticipating a general election later this year.

46. Section 10 of SIMA.

Tribunal notes that the conditions present in the Canadian black granite memorial market<sup>47</sup> today are quite different from those that existed in and before 1994. Specifically, at the time of the 1994 finding, the subject goods from India were the only imported black granite memorials available in the Canadian market.<sup>48</sup> Since then, black granite memorials from China have entered the domestic market and grown rapidly to command a significant share of the market. For example, in 1996, sales by importers of Chinese black granite memorials accounted for only 2 percent of the market, while, in 1998, they accounted for 16 percent.<sup>49</sup> As a result, China has replaced India as the most significant source of imported black granite memorials in the Canadian market.

The Tribunal notes that the exporters' selling prices for Chinese black granite memorials can be considerably less than those of Indian black granite memorials. For example, information submitted by one witness showed that, on average, the FOB export prices of Chinese memorials are 38 percent lower than those of comparable Indian memorials.<sup>50</sup> Although another witness submitted evidence which showed smaller gaps,<sup>51</sup> the data available to the Tribunal indicate that black granite memorials from China are consistently lower in price than those from India, before the application of any anti-dumping or countervailing duty.

This means that, if the finding is rescinded and if exporters and importers of the Indian subject goods wish to re-establish or even just approach their former substantial levels of market share in Canada,<sup>52</sup> they will have to do so not only in competition with the Canadian industry, as in the past, but now also against growing volumes of low-priced Chinese products. Although there are other factors to be considered, such as quality issues, which are discussed in the next section, the advent of the Chinese competition is bound to exert downward pressure on Indian prices for the subject goods, to an extent that the Tribunal believes poses a significant risk of dumping.

This risk is even more acute when considered against the Government of India's focus on export growth,<sup>53</sup> especially in light of declines in important Indian export markets such as Japan; the requirement for Indian memorial producers to export most of their production, given the lack of a home market; the vast deposits of granite reserves in India;<sup>54</sup> the surplus capacity within the Indian industry, which is currently operating at less than 40 percent of its potential production level;<sup>55</sup> the changes to the NFEP, which provide Indian producers with more flexibility to lower their prices than they have had in the past;<sup>56</sup> and the current

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47. As noted earlier, there were virtually no sales of slabs by importers. With the foregoing in mind, the focus of the analysis which follows is on memorials.

48. *Public Pre-hearing Staff Report*, revised June 14, 1994, Tribunal Exhibit RR-98-006-8C, Administrative Record, Vol. 1.1 at 206. South Africa and Zimbabwe were the sources of imported black granite blocks, but these were non-subject goods.

49. *Public Pre-hearing Staff Report*, April 8, 1999, Tribunal Exhibit RR-98-006-5, Administrative Record, Vol. 1A at 38.

50. Importer's Exhibit B-5 (protected), Tab 4, Administrative Record, Vol. 14.

51. Importer's Exhibit D-1 at 1-2, Administrative Record, Vol. 13. The prices cited by this witness pertained to smaller volumes of imports.

52. As discussed further in the next section on injury, in 1992, the subject goods held a 30 percent share of the Canadian market.

53. Manufacturer's Exhibit A-1, Appendices 1 to 5, Administrative Record, Vol. 11.

54. Manufacturer's Exhibit A-1, Tab 6, Appendix 6-8, Administrative Record, Vol. 11.

55. Tribunal Exhibit RR-98-006-25, Administrative Record, Vol. 5.3 at 18.

56. Manufacturer's Exhibit A-1, Tab 4, Appendix 4-2, and Tab 1, Appendix 1-17, Administrative Record, Vol. 11.

practice of price-undercutting among Indian granite producers, which appears to have led to official discussions between the European Union and Indian representatives.<sup>57</sup>

As a result of the foregoing considerations, the Tribunal finds that there exists a likelihood of dumping of the subject goods from India.

### **Likelihood of Material Injury**

Having decided that there is a likelihood that dumped and subsidized goods from India will be exported to Canada, the Tribunal will now address the issue of the likely effect on the domestic industry.

The first point that the Tribunal examined, in evaluating potential injury to the domestic industry if the finding is rescinded, is the likely magnitude of price reductions. As noted in the section on the likelihood of subsidizing, current countervailing duty rates, in certain cases, amount to about 10 to 20 percent of the Canadian wholesale prices of Indian memorials.<sup>58</sup> It is evident that, at these rates, elimination of countervailing duties would give importers considerable scope to lower their prices from currently prevailing levels. In this connection, the evidence shows that an important importer of the Indian subject goods deliberately attempts to position Indian goods at a price point that is approximately 20 to 25 percent below domestic industry prices.<sup>59</sup> Elimination of the countervailing duty would obviously facilitate this strategy.

Moreover, as noted in the section on the likelihood of dumping, Chinese export prices can be as much as 38 percent below Indian export prices. As Indian exporters move to narrow this gap, as the Tribunal believes they will if the finding is rescinded, the potential drop in Indian prices could be very steep. Having said that, the Tribunal notes that it is possible that Indian prices may not fall to Chinese levels because there appear to be some quality, consistency and reliability problems with some Chinese producers.<sup>60</sup> At the same time, the Tribunal heard evidence that there are Chinese producers exporting to Canada that are as capable, competent and advanced in their techniques and workmanship as Indian producers.<sup>61</sup> Given comparable quality, and in light of the price margins that now exist between Indian and Chinese products, the Tribunal is of the view that, as Indian producers seek to increase their current position in the Canadian market,<sup>62</sup> they will have to lower their prices to a range that makes them more competitive with the Chinese than they currently are.

In considering the presence of low Chinese prices in the Canadian market, the Tribunal notes that they have had relatively little effect on the domestic industry's prices. Counsel for the Government of India has pointed to this as evidence of the industry's robust health and lack of vulnerability to competition from imports. For its part, the industry has stated that it has not dropped prices in response to Chinese imports

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57. Manufacturer's Exhibit A-5, Appendix 3, Administrative Record, Vol. 11; and *Transcript of Public Hearing*, Vol. 2, May 21, 1999, at 323.

58. *Transcript of In Camera Hearing*, Vol. 2, May 21, 1999, at 64; and Importer's Exhibit B-1, Tab 2, Administrative Record, Vol. 13.

59. Tribunal Exhibit RR-98-006-21.8 (protected), Administrative Record, Vol. 6.1 at 34; and *Transcript of In Camera Hearing*, Vol. 2, May 21, 1999, at 67-68.

60. *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 216.

61. *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 245-46 and 280-81.

62. Imports of Indian memorials accounted for approximately 5 percent of the Canadian market in 1998. *Protected Pre-hearing Staff Report*, April 8, 1999, Tribunal Exhibit RR-98-006-6 (protected), Administrative Record, Vol. 2 at 61.



largely because the Chinese are relative newcomers, whose quality of goods and reputation remain to be established. Moreover, as the President of the CGA testified, the Chinese situation is being monitored by the industry for possible future trade action.<sup>63</sup> Be that as it may, in the Tribunal's opinion, while the domestic industry's prices, so far, have remained relatively stable despite the recent increase in Chinese imports, the central issue is whether the current competitive situation will be altered substantially if Indian imports are allowed to enter the Canadian market without the discipline of anti-dumping and countervailing duties. In this regard, the Tribunal is of the view, for the reasons discussed above, that the resulting mix of Chinese and Indian imports competing for market share creates a significant risk that Canadian prices will be destabilized.

Second, the Tribunal has considered the potential volumes of Indian imports if the finding is rescinded. In this connection, the Tribunal notes that the subject goods have been present in the Canadian market throughout the 1990s and, at their high water mark in 1992, Indian imports comprised about 30 percent of the Canadian market for black granite memorials.<sup>64</sup> However, following the 1994 finding, the volume of Indian imports fell substantially, so that, over the past three years, they have comprised about 5 percent of the Canadian market.<sup>65</sup> Clearly, if Indian imports were to return to anywhere near the levels that prevailed in the period prior to the 1994 finding, this would imply a surge of Indian imports. Indeed, even if Indian imports go back to only half of their early 1990 levels, their current volumes would triple.

On the basis of the evidence presented in this case, the Tribunal has little doubt that, if the finding is rescinded, there will be a substantial rise in Indian imports. As noted in the previous sections, the Indian granite industry is governed by an export imperative which, when combined with large surplus capacity, creates a powerful incentive to recapture some, or all, of its pre-1994 position in the Canadian market. Moreover, it is apparent that the Indian product is of undisputedly high quality and, on this ground alone, it would be welcomed by Canadian monument dealers and wholesalers. In this connection, the Tribunal notes that Indian granite producers have been actively soliciting customers at North American trade shows and through other marketing means.<sup>66</sup>

Further facilitating the potential future flow of Indian imports are the long-standing and ongoing business relations between significant Indian producers and companies importing the subject goods into Canada.<sup>67</sup> For example, Sita, one of the largest importers of the subject goods in the pre-1994 period, imports granite memorials exclusively from India because of its network of supplier contacts in that country. Since the 1994 finding, Sita has continued to import and sell Indian granite memorials of different colours, including the subject goods, albeit with the subject black granite at a significantly reduced volume following the imposition of anti-dumping and/or countervailing duties.<sup>68</sup> If unrestrained by the finding, there seems

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63. *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 36-37.

64. A certain proportion of these Indian imports were brought in by Canadian producers.

65. *Protected Pre-hearing Staff Report*, April 8, 1999, Tribunal Exhibit RR-98-006-6 (protected), Administrative Record, Vol. 2 at 61.

66. Manufacturer's Exhibit A-3, para. 19, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 72-73 and 239; and Manufacturer's Exhibit A-2, para. 22, 23 and 25, and Appendices 1 and 2, Administrative Record, Vol. 11.

67. *Transcript of Public Hearing*, Vol. 2, May 21, 1999, at 417 and 424-25; and *Transcript of In Camera Hearing*, Vol. 2, May 21, 1999 at 64-66.

68. *Protected Pre-hearing Staff Report*, revised June 14, 1994, Tribunal Exhibit RR-98-006-9C (protected), Administrative Record, Vol. 2.1 at 170; and *Protected Pre-hearing Staff Report*, April 8, 1999, Tribunal Exhibit RR-98-006-6 (protected), Administrative Record, Vol. 2 at 59.

little doubt that Sita and other companies with connections to Indian suppliers would seek to return to their former levels of imports and perhaps even seek to increase the volume of black granite memorials that it used to import, in light of the increasing demand for black granite memorials in the Canadian market.<sup>69</sup>

Having decided that Indian import volumes are likely to rise and Indian prices are likely to fall if the finding is rescinded, the Tribunal will now analyze the likely effect of such developments on the domestic industry. This analysis looks at the new domestic producer, Cabot, separately from the rest of the domestic industry.

According to the evidence, shortly after the 1994 finding, the decision was made to begin quarrying black granite in Newfoundland. In fact, the President of Cabot indicated that, without the finding, it would not have been feasible to go forward and make the required investments.<sup>70</sup> Over the past four years or so, over \$12 million have been invested in the quarrying, manufacturing and marketing operations. All told, some 60 full-time jobs have been created to date, with more on the horizon, making the project an important source of employment in an area of chronic high unemployment. In addition, the potential size of the deposit is vast, and the production of memorials and slabs from the quarried blocks is increasing dramatically. Moreover, as quarrying operations go deeper into the deposit, the quality of the rock improves to the point where, after examining a sample submitted as a physical exhibit, all parties generally agreed that the rock currently being extracted is quite similar to the best black granite available on the market.

The Tribunal considers the discovery and development of the Newfoundland deposit to be an important consideration that was not present in the original inquiry and that holds the potential to alter significantly the complexion of the Canadian industry. Prior to the 1994 finding, and up until recently, the Canadian industry has been totally dependent on imported black granite blocks and slabs for the production of black granite memorials, as there was no Canadian source for this rock that was of the quality required by memorial and slab manufacturers. The primary foreign sources used by the domestic industry have been South Africa and Zimbabwe, exposing the industry to significant transportation and exchange rate costs. The advent of the Newfoundland deposit, if its development and growth are sustained, thus holds the promise of a Canadian source of black granite with potential transportation and other advantages over imported granite. Indeed, an industry witness estimated that memorials produced from Newfoundland black granite currently have a 15 to 20 percent cost advantage over memorials manufactured from Zimbabwean stone.<sup>71</sup>

Against this background, the evidence shows that, in 1998, several of the largest Canadian producers made significant purchases of Newfoundland finished memorials and slabs from Cabot.<sup>72</sup> The evidence also shows that these producers plan to continue to make significant purchases in 1999, as Cabot

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69. *Public Pre-hearing Staff Report*, April 8, 1999, Tribunal Exhibit RR-98-006-5, Administrative Record, Vol. 1A at 36-37; and *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 185.

70. Manufacturer's Exhibit A-4, para. 14-15, Administrative Record, Vol. 11.

71. *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 181 and 223.

72. Cabot began selling Newfoundland black granite memorials and slabs to domestic producers in 1998. International Granite Corp., which is affiliated with Cabot and supplies Cabot with blocks of Newfoundland black granite, started supplying blocks of Newfoundland black granite to domestic producers in 1995. These blocks were, however, not accepted at the time by the domestic producers because of impurities in the blocks and the small size of the blocks. Tribunal Exhibit RR-98-006-46B (protected), Administrative Record Vol. 2 at 192-93; Manufacturer's Exhibit A-4, para. 6, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 96; and Tribunal Exhibit RR-98-006-46B (protected), Vol. 2 at 194, 195 and 201.

expands its production.<sup>73</sup> At the present time, Cabot's production is insufficient to meet all the requests for its product from other Canadian producers. However, the President of Cabot testified that it was his intention to reach a production level, over the next few years, that would allow the company to supply as many domestic producers as possible.<sup>74</sup>

In the Tribunal's view, given time, the availability of Newfoundland black granite to the Canadian industry should lower its cost structure and enhance its ability to compete with imported memorials from any source, including India. However, for this to happen, the Newfoundland operation must be given the chance to establish itself from both a financial and a marketing perspective. In terms of its financial status, Cabot's first-ever financial operating statement was under preparation, but not yet available, at the time of the hearing in this case. With respect to marketing, it is clear that the Newfoundland product is still relatively unknown in the Canadian market.<sup>75</sup> Moreover, in some cases, opinions in the marketplace appear to be based on initial quarrying of lower-quality stone, rather than the higher-quality stone more recently quarried.<sup>76</sup>

In short, in the Tribunal's opinion, from both a financial and a marketing perspective, the Newfoundland operation is currently at a highly vulnerable stage of its development. This vulnerability is made even more acute by the fact that, unlike other Canadian producers that manufacture and sell memorials in a variety of different colours, the Cabot operation is entirely dependent on the production of black granite memorials, including the deep black granite which is the subject of this review. In this regard, Cabot's "eggs are all in one basket" and, if market conditions for black granite memorials deteriorate following a rescission of the finding, Cabot's promising potential could be short-lived.

Turning to the rest of the domestic industry, the Tribunal notes that counsel for the Government of India has submitted that the industry is currently profitable, that its performance indicators are generally pointing upward and that it is, therefore, not vulnerable to competition from imports. In considering this issue, the Tribunal first observes that, while the industry<sup>77</sup>, on a combined basis, experienced an upward trend in profitability from 1996 to 1998, the actual net income achieved was rather modest, comprising between 3 and 7 percent of total net sales. Moreover, the combined data belie a much more uneven industry performance when it is examined on an individual company basis. In particular, two of the four companies from whom comparable financial data were available actually experienced declining profitability in 1998 compared to 1997, and their net income in the most recent period was only marginally positive.<sup>78</sup>

Furthermore, the industry's domestic financial performance over the past two years or so has been bolstered by higher volumes of exports to the United States. These exports have allowed the industry to spread its costs over a larger production base and, accordingly, to achieve lower unit costs on domestic

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73. Tribunal Exhibit RR-98-006-46B (protected), Vol. 2 at 163, 166 and 172.

74. Tribunal Exhibit RR-98-006-46B (protected), Administrative Record, Vol. 2 at 193.

75. *Transcript of Public Hearing*, Vol. 2, May 21, 1999, at 370.

76. For example, see Tribunal Exhibit RR-98-006-46B (protected), Administrative Record, Vol. 2 at 189.

77. The consolidated income statement for the industry covered the domestic sales from domestic production for four primary producers, Rock of Ages, Dominion Granite, Imperial Granite Inc. and Granite Center Beebe, whose combined production averaged 53 percent of total reported domestic production over the years from 1996 to 1998. *Public Pre-hearing Staff Report*, April 8, 1999, Tribunal Exhibit RR-98-006-5, Administrative Record, Vol. 1A at 51-52.

78. *Protected Pre-hearing Staff Report*, April 8, 1999, Tribunal Exhibit RR-98-006-6 (protected), Administrative Record, Vol. 2 at 118 and 122.

sales.<sup>79</sup> However, according to the industry, these export sales are largely attributable to the record low values of the Canadian dollar. If the Canadian dollar were to return to its previous levels, these export sales and the benefits derived from them could diminish.<sup>80</sup>

It is apparent that the industry, as a whole, is operating at reasonable levels under the protection of the finding. However, the Tribunal does not find its performance to be so robust as to make it immune to injury from unfairly priced imports. On the contrary, it is clear that relatively small declines in the industry's domestic sales volumes and prices could turn the industry's financial performance from positive to negative. As already noted, if the finding is rescinded, the potential increase in the volume of imports from India is large and the potential decrease in prices is substantial. Therefore, the likelihood of a significant reversal in the industry's performance is high.

Finally, there are two other factors that could exacerbate the injurious effect of dumped and subsidized Indian imports if the finding is rescinded. First, there is the current and projected rise in the use of cremation as an alternative to traditional burial. This could soften demand and prices for memorials, such as upright monuments, that are the mainstay of the memorial industry.<sup>81</sup> Although demand for black granite memorials has been strong in recent years, this appears to be because of gains made at the expense of other colours, including Brits.<sup>82</sup> Nevertheless, alternative interment practices remain a risk factor for industry demand, which could increase the industry's vulnerability to dumped and subsidized Indian imports.

Second, the past few years have seen a move towards consolidation in the mortuary business. More specifically, funeral homes are extending their operations in monument retailing. Similarly, cemeteries are increasingly selling monuments to the bereaved. Further, in a number of cases, large, well-capitalized companies have combined funeral homes, cemeteries and monument retailing into vertically integrated operations.<sup>83</sup> These conglomerates are national and multinational in scope and can exercise substantial purchasing power, unlike the small, independent, family-run operations that they have acquired. Their resources and warehousing capabilities would allow them to seek out low-priced imports around the globe, to import them in significant quantities and to stock them for resale in the Canadian market. Although not all these conglomerates may prove to be successful, the trend away from small, independent operations is changing the environment for the domestic industry and could well threaten to undermine the profitability and financial health of the domestic industry, particularly if combined with the availability of dumped and subsidized Indian imports.

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79. *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 221.

80. *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 206.

81. *Public Pre-hearing Staff Report*, April 8, 1999, Tribunal Exhibit RR-98-006-5, Administrative Record, Vol. 1A at 23-25; and *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 187-89 and 227.

82. *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 185-87.

83. Manufacturer's Exhibit A-3, para. 21-23, Administrative Record, Vol. 11; and *Transcript of Public Hearing*, Vol. 1, May 20, 1999, at 196-201.

**CONCLUSION**

For the foregoing reasons, the Tribunal finds that there is a likelihood of continued subsidizing and a likelihood of continued dumping of black granite memorials of all sizes and shapes and black granite slabs in thicknesses equal to or greater than three inches originating in or exported from India and that such subsidizing and dumping are likely to cause material injury to the domestic industry. Therefore, the Tribunal hereby continues the finding without amendment.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Anita Szlajak  
Anita Szlajak  
Member

Peter F. Thalheimer  
Peter F. Thalheimer  
Member