



Ottawa, Friday, August 17, 2001

Inquiry No. NQ-2001-001

IN THE MATTER OF an inquiry, under section 42 of the *Special Import Measures Act*, respecting:

THE DUMPING OF CERTAIN FLAT HOT-ROLLED CARBON AND ALLOY STEEL SHEET AND STRIP ORIGINATING IN OR EXPORTED FROM BRAZIL, BULGARIA, THE PEOPLE'S REPUBLIC OF CHINA, CHINESE TAIPEI, INDIA, THE REPUBLIC OF KOREA, THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, NEW ZEALAND, SAUDI ARABIA, SOUTH AFRICA, UKRAINE AND THE FEDERAL REPUBLIC OF YUGOSLAVIA, AND THE SUBSIDIZING OF CERTAIN FLAT HOT-ROLLED CARBON AND ALLOY STEEL SHEET AND STRIP ORIGINATING IN OR EXPORTED FROM INDIA

FINDING

The Canadian International Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping in Canada of certain flat hot-rolled carbon and alloy steel sheet and strip originating in or exported from Brazil, Bulgaria, the People's Republic of China, Chinese Taipei, India, the Republic of Korea, the former Yugoslav Republic of Macedonia, New Zealand, Saudi Arabia, South Africa, Ukraine and the Federal Republic of Yugoslavia, and the subsidizing of certain flat hot-rolled carbon and alloy steel sheet and strip originating in or exported from India have caused injury or retardation or are threatening to cause injury to the domestic industry.

This inquiry is pursuant to the issuance by the Commissioner of the Canada Customs and Revenue Agency of a preliminary determination dated April 19, 2001, and of a final determination dated July 18, 2001, that the aforementioned goods had been dumped and, in the case of India, dumped and subsidized.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that:

- (a) the dumping of the aforementioned goods originating in or exported from the Republic of Korea, New Zealand and Saudi Arabia has not caused material injury or retardation and is not threatening to cause material injury to the domestic industry; and

- (b) the dumping of the aforementioned goods originating in or exported from Brazil, Bulgaria, the People's Republic of China, Chinese Taipei, India, the former Yugoslav Republic of Macedonia, South Africa, Ukraine and the Federal Republic of Yugoslavia, and the subsidizing of the aforementioned goods originating in or exported from India have caused material injury to the domestic industry.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

Ellen Fry
Ellen Fry
Member

Michel P. Granger
Michel P. Granger
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: July 16 to July 27, 2001
Date of Finding: August 17, 2001

Tribunal Members: Pierre Gosselin, Presiding Member
Richard Lafontaine, Member
Ellen Fry, Member

Director of Research: Sandy Greig

Lead Researcher: Richard Cossette

Researcher: Martin Giroux

Economist: Eric Futin

Statisticians: Lise Lacombe
Marie-Josée Monette
Rhonda Heintzman
Michael Dejong

Counsel for the Tribunal: John Dodsworth
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Registrar Officer: Gillian E. Burnett

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Gregory O. Somers
Paul D. Conlin
Algoma Steel Inc.
Ispat Sidbec Inc.

for Lawrence L. Herman
Craig S. Logie
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Stelco Inc.

for Steven D'Arcy
C. Brent Jay
Laurel C. Broten
Dofasco Inc.

for Dalton J. Albrecht
Dunniela Kaufman
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IPSCO Inc.

(Domestic Producers)

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Steel Authority of India Ltd.
The Tata Iron and Steel Company
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Usinas Siderúrgicas de Minas Gerais S/A
Companhia Siderúrgica Nacional
World Metals Corporation

Donald J. Goodwin
Carol McGlennon
James C. Hopkins
Evgeny Pavlenko
for BHP New Zealand Steel Limited

Victoria Bazan
Michael Burgar
for Saudi Iron and Steel Company (Hadeed)

(Importers/Exporters)



Ottawa, Tuesday, September 4, 2001

Inquiry No. NQ-2001-001

**THE DUMPING OF CERTAIN FLAT HOT-ROLLED CARBON AND ALLOY
STEEL SHEET AND STRIP ORIGINATING IN OR EXPORTED FROM BRAZIL,
BULGARIA, THE PEOPLE'S REPUBLIC OF CHINA, CHINESE TAIPEI, INDIA,
THE REPUBLIC OF KOREA, THE FORMER YUGOSLAV REPUBLIC OF
MACEDONIA, NEW ZEALAND, SAUDI ARABIA, SOUTH AFRICA, UKRAINE
AND THE FEDERAL REPUBLIC OF YUGOSLAVIA, AND THE SUBSIDIZING OF
CERTAIN FLAT HOT-ROLLED CARBON AND ALLOY STEEL SHEET AND
STRIP ORIGINATING IN OR EXPORTED FROM INDIA**

Special Import Measures Act — Whether the dumping and subsidizing of the above-mentioned goods have caused material injury or retardation or are threatening to cause material injury to the domestic industry.

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods originating in or exported from the Republic of Korea, New Zealand and Saudi Arabia has not caused material injury or retardation and is not threatening to cause material injury to the domestic industry, and that the dumping of the aforementioned goods originating in or exported from Brazil, Bulgaria, the People's Republic of China, Chinese Taipei, India, the former Yugoslav Republic of Macedonia, South Africa, Ukraine and the Federal Republic of Yugoslavia and the subsidizing of the aforementioned goods originating in or exported from India have caused material injury to the domestic industry.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	July 16 to July 27, 2001
Date of Finding:	August 17, 2001
Date of Reasons:	September 4, 2001
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Director of Research:	Sandy Greig
Lead Researcher:	Richard Cossette
Researcher:	Martin Giroux
Economist:	Eric Futin
Statisticians:	Lise Lacombe Marie-Josée Monette Rhonda Heintzman Michael Dejong

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Ottawa, Tuesday, September 4, 2001

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respecting:

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MACEDONIA, NEW ZEALAND, SAUDI ARABIA, SOUTH AFRICA, UKRAINE
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CERTAIN FLAT HOT-ROLLED CARBON AND ALLOY STEEL SHEET AND
STRIP ORIGINATING IN OR EXPORTED FROM INDIA**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
RICHARD LAFONTAINE, Member
ELLEN FRY, Member

STATEMENT OF REASONS

BACKGROUND

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry to determine whether the dumping of certain flat hot-rolled carbon and alloy steel sheet and strip (hot-rolled steel sheet products) originating in or exported from Brazil, Bulgaria, the People's Republic of China (China), Chinese Taipei, India, the Republic of Korea (Korea), the former Yugoslav Republic of Macedonia (Macedonia), New Zealand, Saudi Arabia, South Africa, Ukraine and the Federal Republic of Yugoslavia (Yugoslavia), and the subsidizing of hot-rolled steel sheet products originating in or exported from India have caused material injury or retardation or are threatening to cause material injury to the domestic industry.

On January 19, 2001, the Commissioner of the Canada Customs and Revenue Agency (the Commissioner), following a complaint filed by Algoma Steel Inc. (Algoma), initiated an investigation to determine whether imports of hot-rolled steel sheet products from the aforementioned countries and Thailand had been dumped and whether imports of these products from India had been subsidized. On January 22, 2001, pursuant to subsection 34(2) of SIMA, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping and subsidizing had caused material injury or retardation or were threatening to cause material injury to the domestic industry. On March 20, 2001, pursuant to subsection 37.1(1) of SIMA, the Tribunal determined that the evidence disclosed a reasonable indication that the dumping and subsidizing of hot-rolled steel sheet products had caused material injury to the domestic industry.

1. R.S.C. 1985, c. S-15 [hereinafter SIMA].

On April 19, 2001, the Commissioner issued a preliminary determination of dumping and subsidizing. As the goods from Thailand were not dumped, the Commissioner terminated the investigation with respect to Thailand.

On April 20, 2001, the Tribunal issued a notice of commencement of inquiry.² As part of the inquiry, the Tribunal sent questionnaires to domestic producers, importers, exporters, purchasers and foreign producers. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

On July 18, 2001, the Commissioner issued a final determination that hot-rolled steel sheet products originating in or exported from Brazil, Bulgaria, China, Chinese Taipei, India, Korea, Macedonia, New Zealand, Saudi Arabia, South Africa, Ukraine and Yugoslavia had been dumped and that hot-rolled steel sheet products originating in or exported from India had been subsidized.

Public and in camera hearings were held in Ottawa, Ontario, from July 16 to 27, 2001. The domestic producers, Algoma, Dofasco Inc. (Dofasco), IPSCO Inc. (IPSCO), Ispat Sidbec Inc. (Ispat) and Stelco Inc. (Stelco) were represented by counsel at the hearing. The following exporters and importers were also represented by counsel at the hearing: Essar Steel Ltd. (Essar), Steel Authority of India Ltd. (SAIL), The Tata Iron and Steel Company (Tata Steel) and Jindal Vijayanagar Steel Limited (Jindal) from India (the Indian producers); Pohang Iron & Steel Co., Ltd. (POSCO) from Korea, Daewoo Canada Ltd. (Daewoo Canada) and Daewoo Corporation; Iscor Limited (Iscor) from South Africa, Macsteel International South Africa (Pty) Ltd., and Macsteel International (Canada) Ltd.; Benxi Iron & Steel (Group) Co. Ltd. (Benxi), Benxi Steel International Economic & Trading Co., Ltd., Angang Group International Trade Corporation and AnShan Iron and Steel Group Corporation (AnShan) from China; Shanghai Baosteel Group Corp. (Shanghai Baosteel) also from China; Companhia Siderúrgica Paulista (COSIPA), Usinas Siderúrgicas de Minas Gerais S/A (USIMINAS), Companhia Siderúrgica Nacional (CSN) from Brazil and World Metals Corporation; BHP New Zealand Steel Limited (BHP New Zealand) from New Zealand; and Saudi Iron and Steel Company (Hadeed) from Saudi Arabia. The Tribunal also heard testimony from witnesses from Ferrostaal Metals Ltd., who were subpoenaed by counsel for Shanghai Baosteel. At the Tribunal's request, witnesses for Thyssen Canada Ltd. also testified.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, requests for information and replies thereto, all briefs, witness statements and all exhibits filed by the parties throughout the inquiry, as well as the transcript of the hearing. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

The Tribunal issued its finding on August 17, 2001.

RESULTS OF THE COMMISSIONER'S INVESTIGATION

The Commissioner's dumping and subsidizing investigation covered all hot-rolled steel sheet products from the subject countries sold or released into Canada during the period from January 1 to September 30, 2000. The percentage of goods dumped, the percentage of goods subsidized, the margins of dumping and the amounts of subsidy are set out in the following tables.

2. C. Gaz. 2001.I.1440.

In the case of India, both anti-dumping and countervailing duties may apply to the same goods. Under section 10 of SIMA, only the amount by which the margin of dumping exceeds the countervailing duty attributable to export subsidies will be levied as an anti-dumping duty.

Country	Quantity of Goods Dumped	Range of Margin of Dumping¹	Weighted Average Margin of Dumping
Brazil	96.5	0.3 – 49.4	11.2
Bulgaria	100	62.9	62.9
China	72.5	0.2 – 62.9	7.7
Chinese Taipei	99	0.5 – 62.9	56.4
India	100	11.9 – 62.9	34.2
Korea	100	4.5 – 62.9	24.7
Macedonia	100	62.9	62.9
New Zealand	90.2	0.2 – 42.4	17.3
Saudi Arabia	100	62.9	62.9
South Africa	97.2	10.2 – 62.9	30.2
Ukraine	100	62.9	62.9
Yugoslavia	100	62.9	62.9

Note 1. The margin of dumping is expressed as a percentage of the total normal value of all goods reviewed, dumped and non-dumped.

Source: Canada Customs and Revenue Agency, *Final Determination of Dumping and Subsidizing and Statement of Reasons*, 18 July 2001, Tribunal Exhibit NQ-2001-001-04, Administrative Record, Vol. 1 at 145.46-145.48.

Country	Quantity of Goods Subsidized (%)	Amount of Subsidy (per metric tonne)
India	100	1,402 rupees ¹

Note 1. The average exchange rate for the Indian rupee for the year 2000 was 0.03307.

Source: Canada Customs and Revenue Agency, *Final Determination of Dumping and Subsidizing and Statement of Reasons*, 18 July 2001, Tribunal Exhibit NQ-2001-001-04, Administrative Record, Vol. 1 at 145.49.

PRODUCT

Product Definition

The subject goods are defined as:

flat hot-rolled carbon and alloy steel sheet and strip, including secondary or non-prime material, originating in or exported from Brazil, Bulgaria, China, Chinese Taipei, India, Korea, Macedonia, New Zealand, Saudi Arabia, South Africa, Ukraine and Yugoslavia, in various widths from 3/4 in. (19 mm) and wider, and

- (a) for product in coil form, in thicknesses from 0.054 in. to 0.625 in. (1.37 mm to 15.875 mm) inclusive,
- (b) for product that is cut-to-length, in thicknesses from 0.054 in. up to but not including 0.187 in. (1.37 mm up to but not including 4.75 mm),

excluding flat-rolled stainless steel sheet and strip and flat hot-rolled, cut-to-length alloy steel products containing no less than 11.5 percent manganese, in thicknesses from 3 mm to 4.75 mm.

Product Information

For the purpose of this inquiry, the subject goods include strip and sheet, but do not include floor plate. Strip is usually produced in widths up to 12 in. (305 mm) inclusive. Sheet and floor plate are usually produced in widths over 12 in. (305 mm). Floor plate is hot finished in a final pass or passes to form a pattern on the surface of the sheet.

The subject goods are normally produced to a specification of the ASTM³ standard, some other international standard or to a proprietary specification. ASTM specifications for the subject goods include, but are not limited to, A505, A506, A507, A568, A569, A570, A606, A607, A621, A622, A635, A659, A715, A749, A907, A935 and A936. The subject goods are usually classified as either carbon-manganese or high-strength low-alloy (HSLA) steel and are available in several qualities and grades, which are usually reflected in ASTM or equivalent specifications or standards.

Alloy steel sheet products that are subject to this inquiry are alloy steel, other than stainless steel, that contain, by weight, one or more of certain specified elements in minimum specified proportions. The notes to Chapter 72 of the *Customs Tariff*⁴ specify the elements and the minimum proportions.

Flat hot-rolled stainless steel sheet and strip, which are excluded from the product definition, are commercially and metallurgically distinct from carbon steel, being produced to a lower carbon and higher alloy content than the subject goods. Stainless steel contains, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

Production Process

While details may vary from mill to mill, the process by which hot-rolled steel sheet products are produced is generally the same for all Canadian producers.

3. American Society for Testing and Materials.

4. R.S.C. 1985 (3d Supp.), c. 41.

Hot-rolled steel sheet is rolled on a continuous strip mill at temperatures above 1600°F (870°C) from an incoming hot slab up to 9 in. (229 mm) thick. This slab is progressively reduced to a sheet of the required thickness, 0.625 in. (15.88 mm) or less. During hot rolling, surface oxide (scale) forms, which is not acceptable for some applications. This scale may be removed by acid pickling. After pickling, rinsing and drying, an oil can be applied as a temporary protection against rust. Edges are usually slit to remove minor edge imperfections and to provide closer width tolerances.

Product Uses

Hot-rolled steel sheet products may be sold as such in the open or merchant market, or may be used by the domestic producers for further processing into such products as cold-rolled sheet, galvanized sheet or tubular products.

Hot-rolled steel sheet products are used in the automotive industry in the manufacture of frames, bumpers, wheels and some power train components. In the construction industry, hot-rolled steel sheet products are used to produce sheet piling and guard rails. Hot-rolled steel sheet products known as “skelp” are also used in the manufacture of pipe and tubes. Significant quantities of hot-rolled steel sheet products are also used by non-automotive stampers, steel fabricators and producers of agricultural and other machinery.

INDUSTRY

Algoma, Dofasco, IPSCO, Ispat and Stelco are the only Canadian producers of hot-rolled steel sheet products. Production of hot-rolled steel sheet products by each of the firms is destined both to the merchant market⁵ and for further internal processing. Between 1998 and 2000, a number of the firms imported and exported some quantities of hot-rolled steel sheet products.

Algoma

Algoma operates a major steelworks at Sault Ste. Marie, Ontario. Algoma, with its subsidiaries, is a vertically integrated primary iron and steel producer of finished steel products, including carbon steel plate, hot-rolled steel sheet and cold-rolled steel sheet. Until 1998, Algoma produced hot-rolled steel sheet products on a combined plate-steel complex. Algoma's Direct Strip Production Complex (DSPC), which began producing hot-rolled steel sheet products in 1998, expanded Algoma's capacity, thickness range and capabilities in HSLA and formable grades of hot-rolled steel sheet products. Algoma produces hot-rolled steel sheet products up to 63 in. wide.

Dofasco

Dofasco makes steel at its Hamilton, Ontario, plant. Products produced by Dofasco and its steel-related joint ventures include: flat-rolled steel (both hot- and cold-rolled); galvanized and Galvalume[®] steel; prepainted steel; tin plate and chromium-coated steel in coils; welded pipe and tubular steel. Dofasco's hot-rolled mill is capable of producing hot-rolled steel sheet products up to 62 in. wide. Dofasco produces a full range of carbon and high-strength steel, up to 9.5 percent carbon. As part of its finishing operations, Dofasco also has three pickling lines and oiling, coil-slitting and coil-shearing equipment. Dofasco has steel-making interests in the United States and Brazil.

5. Includes sales between related companies.

IPSCO

IPSCO produces hot-rolled steel sheet products at its plants in Regina, Saskatchewan, and in Scarborough, Ontario. IPSCO is comprised of three units: Raw Materials and Coil Processing Operations, Canadian Steel Mill Operations and Tubular Products. Both Raw Materials and Coil Processing Operations and Canadian Steel Mill Operations manufacture and sell hot-rolled steel sheet products. IPSCO also manufactures hot-rolled plate, hollow structural sections, line pipe, standard pipe, piling pipe, oil country tubular goods (OCTG), waterwell casing and OCTG casing. In addition to its Canadian operations, IPSCO has a 100 percent interest in a number of U.S. steel-making and tubular facilities.

Ispat

Ispat produces hot-rolled steel sheet products at its plant in Contrecoeur, Quebec. Ispat is divided into five strategic units: primary operations, machine wire, bars and profiles, flat products and tubing. Ispat also manufactures hot-rolled plate and cold-rolled steel sheet. The flat products division also produces hot bands for its tubing unit. Ispat's hot-rolled mill is capable of producing hot-rolled steel sheet products up to 54 in. wide. In addition to its Canadian operations, Ispat is associated with sister companies in the United States, Kazakhstan and Germany.

Stelco

Stelco produces hot-rolled steel sheet products at two plants: Hilton Works, Hamilton, Ontario, and Lake Erie Steel Company, Nanticoke, Ontario. Hilton Works produces hot-rolled steel sheet products up to 50 in. wide and Lake Erie Steel Company produces hot-rolled steel sheet products up to 75 in. wide. Other products manufactured by Stelco include cold-rolled sheet, galvanized sheet and pipes and tubes. Stelco has 100 percent ownership of Stelpipe Ltd. in Welland, Ontario, and 40 percent ownership of Camrose Pipe Co., in Camrose, Alberta.

IMPORTERS

Ten importers accounted for 90 percent of the imports of hot-rolled steel sheet products from the 12 subject countries from 1998 to 2000. These importers were Balli Klockner Canada Limited, BHP Steel, Daewoo Canada, Macsteel International (Canada) Ltd., Montsteel, Thyssen Canada Ltd., TradeARBED Canada Inc., Trans World Steel Inc., Salzgitter Trade, Inc. and Wirth Limited. Some of these firms also imported hot-rolled steel sheet products from non-subject countries, including the United States.

EXPORTERS

The Tribunal sent questionnaires to foreign steel producers in all the subject countries regarding their plant capacities, production, sales, exports and inventories of hot-rolled steel sheet products. The following 17 foreign steel producers provided responses: Essar, SAIL, Tata Steel, Jindal, POSCO, Iscor, Benxi, AnShan, Shanghai Baosteel, COSIPA, USIMINAS, CSN, BHP New Zealand, Hadeed, Highveld Steel and Vanadium Corporation Limited from South Africa, Yieh Loong Enterprise Co., Ltd. from Chinese Taipei and Zaporizhstal Integrated Iron & Steel Works JSC from Ukraine.

MARKETING AND DISTRIBUTION

Hot-rolled steel sheet products are sold directly to end users, pipe and tube producers or to steel service centres that may further process the steel and supply smaller users or fulfil the more immediate

needs of accounts that would normally purchase directly from mills. Certain service centres may purchase seconds. This sheet is then further processed to create a useable product that is subsequently sold.

Most sales of hot-rolled steel sheet products are made on a spot price basis. Each spot sale is negotiated individually. Hot-rolled steel sheet products are also sold on a contract basis, mainly to the automotive manufacturing industry. Under these arrangements, negotiations involve the specifications, price, volume and duration of the contract.

The price of hot-rolled steel sheet products consists of a “base coil price” to which additional charges are added for a variety of features that may be specified by the customer to meet the technical requirements of the application for which the steel is intended. The important features in determining the price of hot-rolled steel sheet products are grade, thickness, width, processing and surface finish.

Hot-rolled steel sheet products are imported by brokers or agents for resale to end users, pipe and tube producers or service centres, or, in some cases, they are imported directly by end users, pipe and tube producers or service centres. Steel trading companies either receive inquiries from domestic users or solicit orders.

POSITION OF PARTIES⁶

Domestic Producers

The domestic producers argued that the dumping and subsidizing of the subject goods caused material injury mainly in the form of price erosion, lost sales and loss of market share, leading to adverse financial performance. They also argued that the imports of the subject goods threatened to cause material injury to the domestic industry.

The domestic producers submitted that the dumped goods from the named countries in the previous case on hot-rolled steel sheet products⁷ were replaced by the dumped goods originating in the subject countries in the present case. As a result, in a growing market, the domestic producers were unable to maintain their market share. They noted that their 1997 market share of 78 percent went down to 66 percent in 1998, and then increased to 76 percent in 1999 with the finding of injurious dumping in that year. Their market share then declined to 65 percent in 2000, as the volume of imports from the subject countries doubled to over a million net tons. In 2000, the domestic producers' market share fell from 68 percent during the first quarter to 60 percent in the second quarter. Although the domestic producers were able to regain market share during the third quarter of 2000, they argued that this was only possible through a significant decline in prices, particularly in the service centre and pipe and tube sectors.

The domestic producers contended that the imports from the subject countries triggered the price erosion. The evidence, they argued, confirmed that pricing from some of the subject countries was the lowest available in the market in 1999 and much of 2000. It was argued that brokers brought in large volumes of low-priced product. The effect of this trading was amplified because these brokers were in competition with each other, and their offers were used by customers to obtain price concessions from the domestic mills. The domestic industry pointed to the examples of price competition between individual mills and the dumped imports at specific accounts.

6. This portion of the text is intended to outline a number of the key submissions made by the parties. It is not intended to be exhaustive.

7. *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (2 July 1999), Inquiry No. NQ-98-004 (CITT) [hereinafter *Certain Steel Sheet Products*].

The domestic producers argued that their injury was evident in the large decline in their gross margins and net incomes from the second quarter of 2000 through to the first quarter of 2001. The domestic industry acknowledged that not all producers were affected uniformly by the dumping and subsidizing. They submitted that it was within the Tribunal's discretion to assess injury on a producer-by-producer basis or on an aggregate basis.

In assessing the question of injury, the domestic producers argued that the Tribunal should focus on the merchant market, as it had in Inquiry No. NQ-92-009.⁸ Stelco submitted that the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*⁹ requires an examination of the impact of dumping on the domestic market and that feedstocks are not relevant because they are intermediate goods that are neither offered for sale nor entered into the market.

The domestic producers also submitted that the recent decision of the WTO Appellate Body¹⁰ is not binding in law and does not constitute guidance for the Tribunal. However, the domestic producers noted that this decision confirmed that it is permissible for the United States to have anti-dumping legislation that provides for a focus primarily on the merchant market.

In the alternative, the domestic producers contended that, if the Tribunal finds it appropriate to address feedstock, it has sufficient evidence to do so and that the Tribunal should conclude that there has been material injury in the context of overall domestic production.

On the question of the factors other than the dumping and subsidizing that could have caused injury, references were made to Inquiry Nos. NQ-94-001¹¹ and NQ-2000-001,¹² in which the Tribunal stated that the dumping and subsidizing did not have to be the sole cause of injury. These factors, argued the domestic industry, cannot, in the present case, override the large volumes and low prices of dumped imports and the direct correlation of these imports with the declines in industry performance.

Regarding imports from the United States, the domestic industry submitted that U.S. pricing was, except for the last quarter of 2000, consistently higher than the subject countries' pricing throughout the period of inquiry. Moreover, it argued that a large proportion of the imports from the United States went into the automotive sector and was, therefore, isolated from the spot market and had a much smaller price impact.

In addition, the domestic producers submitted that there was no evidence of increased competition between themselves that would explain such a decline in prices. The domestic producers denied that their alleged inability to fully supply the market during the first two quarters of 2000 was relevant to the injury finding. They further submitted that seconds and excess prime products had no effective impact on market pricing of the subject and like goods.

On the question of threat of injury, the domestic industry argued that the named exporters have substantial production capacity and export plans to use their capacity. In addition, it argued that, among

8. *Certain Cold-rolled Steel Sheet* (29 July 1993).

9. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [hereinafter *Anti-dumping Agreement*].

10. *United States – Anti-dumping Measures on Certain Hot-rolled Steel Products from Japan* (24 July 2001), AB-2001-2 [hereinafter *Hot-rolled Steel Sheet from Japan*].

11. *Fresh, Whole, Delicious, Red Delicious and Golden Delicious Apples* (9 February 1995) (CITT).

12. *Certain Refrigerators, Dishwashers and Dryers* (1 August 2000) (CITT).

other things, the Tribunal should consider the global overcapacity in the production of hot-rolled steel sheet products, the growth in the volume of dumped imports, the imperative for steel mills to produce because of their high fixed costs, anti-dumping measures in other jurisdictions against many of the subject countries and the risk of diversion of hot-rolled steel sheet products to Canada with the initiation of a U.S. safeguard investigation.

Parties Opposed

The parties opposed to a finding of injury argued that there was insufficient information on the record for the Tribunal to make a finding of injury. In the alternative, they argued that factors other than the dumping and subsidizing caused the injury to the domestic industry.

The parties opposed submitted that the Tribunal must examine the total production of like goods by each producer, which includes production sold in the merchant market, production destined for internal processing and production destined for export. They noted that a major proportion of Canadian production of like goods is not sold on the merchant market, but is transferred internally for further production of non-subject goods (i.e. captive production), and that the Tribunal's preliminary determination of injury¹³ included captive production as part of like goods. They also submitted that exports are an integral part of the domestic industry's overall production of like goods, even though they are insulated from the effect of imports of the subject goods.

In support of their position, the parties opposed referred to *Hot-rolled Steel Sheet from Japan*, submitting that, even if of no legal force in Canada, it is still the ultimate benchmark for Tribunal decisions. Based on this decision, the parties opposed argued that the Tribunal has two options in its injury analysis: either to conduct an analysis of the effect of the subject goods on all parts of the domestic production or to provide a satisfactory explanation of why such an analysis is not necessary. The parties opposed submitted that it is not sufficient to examine only the poorly performing parts of the domestic production because this may give a misleading impression of the domestic production as a whole. The parties opposed argued that there was insufficient positive evidence before the Tribunal in this case to allow it to follow either of the two available options. In particular, the parties opposed submitted that the domestic producers submitted very little evidence concerning captive production.

The parties opposed further submitted that, since reductions in the price of prime goods cannot be directly imputed to reductions in the price of seconds, as their effect differs between the different producers, the Tribunal cannot infer injury with respect to sales of seconds for all producers. This lack of a one-to-one relationship, in their view, also makes it unreasonable for the Tribunal to make any inferences regarding the relationship between the prices of hot-rolled steel sheet products and those of the various downstream products produced from hot-rolled feedstock.

The parties opposed submitted that a causal connection cannot be made between the subject goods and the injury alleged by the domestic industry. Factors other than the dumping and subsidizing of the subject goods have caused that injury. The parties opposed referred to three principal factors: the present adverse circumstances of Algoma; the downturn in the Canadian economy, especially in the automotive sector; and the significant presence of non-subject country imports, particularly from the United States.

13. *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (20 March 2001), Preliminary Injury Inquiry No. PI-2000-006.

With respect to the financial difficulties experienced by Algoma, the parties opposed referred to: (1) high financing costs incurred by Algoma principally relating to the financing of the DSPC; (2) delays in the “ramp-up” of the DSPC, resulting in higher costs and lower earnings and cash flow; (3) the strong “leverage” of large automotive customers, which has suppressed prices; and (4) the increased market share of low-cost mini-mills. The parties opposed argued that these factors caused Algoma’s financial difficulties, not dumped and subsidized imports.

The parties opposed submitted that the downturn in the Canadian economy, especially in the automotive sector, led to an oversupply of hot-rolled steel sheet products in Canada, which brought prices down. They argued that, despite a significant increase in the production capacity of the domestic mills, Canadian producers could not keep up with demand in the first half of 2000. This caused some customers to source imported goods, from both the subject and non-subject countries, most notably the United States. As well, some Canadian producers increased their imports during the period of inquiry, once again, notably from the United States. However, when the downturn in the North American economy occurred in mid-2000, the domestic producers were left with excess inventory and an oversupply of production that would otherwise have been destined for the automotive sector. As a result, they switched their focus to the service centres and the low-margin pipe and tube sector, competing directly with an increased volume of imports, especially from the United States. It was this oversupply that caused prices to go down.

The parties opposed submitted that the imports of hot-rolled steel sheet products from the United States caused injury to the domestic industry. The parties opposed noted that the volume of imports from the United States of hot-rolled steel sheet products exceeded the volume of imports of the subject goods from the 12 subject countries. They submitted that the evidence indicates that the U.S. product is not different from that of domestic mills in terms of quality and delivery and, therefore, competes with the Canadian product on the basis of price. Imports from the United States doubled from 1998 to 2000 by undercutting Canadian prices. They further argued that, if the pricing of imports from the United States is not disruptive in the Canadian market, then the pricing of the subject goods from the subject countries cannot be considered to be disruptive either. The parties opposed suggested that the domestic industry disregarded the effects that imports from the United States had in the Canadian market because it wanted to avoid a direct confrontation with the U.S. industry that could adversely affect its own export interests. The parties opposed referred to evidence on the record that indicates that, in the automotive sector, the domestic industry was competing directly on price with imports from the United States and that it lost sales. The parties opposed submitted that it is clear from the record that any injury that occurred to the domestic industry in the automotive sector was due solely to competition with imports from the United States.

The parties opposed also argued that the domestic producers made specific production decisions that impacted negatively on their financial results for like goods. For example, uncertainty relating to labour agreement negotiations at Stelco resulted in an inventory buildup in the third quarter of 2000. As well, both Stelco and Algoma have, over the past few years, added capacity for the production of hot-rolled steel sheet products.

Some parties opposed questioned the small number¹⁴ and the veracity of account-specific injury allegations made against them. One party reminded the Tribunal of the importance of account-specific evidence on sales or offers of dumped imports in concluding that dumped imports caused injury.

14. Typically, where the domestic producers wish to submit customer-specific allegations of injury, the Tribunal requests that they provide a small sample which is reasonably representative or illustrative of the nature of the injury that is being alleged. See Tribunal Exhibit NQ-2001-001-08 at 26, Administrative Record, Vol. 3.

The parties opposed argued that there was no threat of injury from imports of the subject goods from the subject countries. Among the arguments raised were those concerning the meaning of clearly “imminent” injury, capacity constraints on export sales, projected demand in the exporters’ local and regional economies, allocation policies for international steel sales and the absence of anti-dumping measures in place against certain subject countries.

The parties opposed addressed the argument that there could be a possible diversion of imported goods into Canada, once the U.S. section 201 “safeguard” investigation is completed. They referred to the Tribunal’s decision in Inquiry No. NQ-2000-008,¹⁵ in which the Tribunal stated: “it is impossible at this point to predict the outcome of that investigation and whether it might have repercussions on the international and Canadian markets for corrosion-resistant steel sheet.”¹⁶ The parties opposed submitted that it is difficult to believe that the outcome of this investigation in the United States has become any more certain at the present time.

ANALYSIS

Pursuant to subsection 42(1) of SIMA, the Tribunal is required to make inquiry as to whether the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury. “Injury” is defined in subsection 2(1) as “material injury to a domestic industry”. “Domestic industry”, in turn, is described, in part, as “the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods”.

The Tribunal must, therefore, first determine what are the like goods and which domestic producers constitute the domestic industry. The Tribunal will then determine if the prerequisite conditions are met in order to make a cumulative assessment of the impact of the dumping and subsidizing from the subject countries on the domestic industry. Next, the Tribunal will proceed to determine the effects of the dumping and subsidizing of the subject goods on the domestic industry, for individual countries and for the cumulated countries, as appropriate. The Tribunal will then determine whether those effects amount to material injury, retardation or threat of material injury. In its injury analysis, the Tribunal will examine other relevant factors to ensure that it does not attribute to the dumping and subsidizing any injury caused by other factors.

Like Goods

The Tribunal will, first, determine which domestically produced hot-rolled steel sheet products are “like goods” to the imported hot-rolled steel sheet products. Subsection 2(1) of SIMA defines “like goods”, in relation to any other goods, as follows:

- (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 considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods (such as appearance), their method of manufacture, their market characteristics (such as substitutability, pricing and distribution) and the question of whether the goods fulfil the same customer needs.

15. *Certain Corrosion-resistant Steel Sheet* (3 July 2001).

16. *Ibid.* at 19.

During the preliminary injury inquiry, the Tribunal found that hot-rolled steel sheet products used for further internal processing were “like goods” to the subject goods. The evidence confirms that finding and that the like goods can be allocated to the domestic merchant market or for further internal processing¹⁷ or for export. As such, for the purposes of this inquiry, the Tribunal finds that domestically produced hot-rolled steel sheet products, of the same description as the subject goods, constitute like goods to the subject goods.

Further Internal Processing and Exports

The Tribunal collected information on goods destined for further internal processing and for export, and all parties were given the opportunity to address these parts of production through evidence, argument and requests for information from other parties.¹⁸

Article 3.1 of the Anti-dumping Agreement requires that a determination of injury be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products. The *Agreement on Subsidies and Countervailing Measures*¹⁹ includes the same requirement with respect to the determination of injury caused by subsidized imports.²⁰

None of the five domestic producers claimed that the dumping and subsidizing had caused or were threatening to cause injury directly to production for further internal processing.

The subject goods will only have a direct impact on the prices of like goods sold in the domestic merchant market, not on the prices of goods destined for further internal processing. The evidence indicates that, in fact, there is no market price for the goods destined for further internal processing; there are only transfer prices, which are set according to established accounting practices in each company.

One producer submitted that production for further internal processing was injured indirectly by dumping and subsidizing, arguing that a fall in the prices of basic hot-rolled coils will translate into lower prices for downstream products. It is the Tribunal’s view that the price of derivative or downstream products is not relevant to this inquiry, since they are not like goods and their prices are determined in a different market subject to a different set of forces.

The Tribunal considers that, in appropriate circumstances, changes in the allocation of hot-rolled steel sheet products between further internal processing and the domestic and export merchant markets could be a relevant factor in assessing the causes of injury to the production of like goods. For example, in *Certain Steel Sheet Products*, the Tribunal considered the strategic plans of domestic mills to produce more value-added products, which led to an increase in the growth of production of hot-rolled steel sheet for use as feedstock and contributed to the tight supply of hot-rolled steel sheet in the domestic merchant market. However, the situation is different in this case, as there is no evidence of diversion of like goods to further internal processing. On the contrary, in 2000, there has been a small transfer towards the domestic and export merchant markets of 200,000 net tons.

17. *Transcript of Public Hearing*, Vol. 3, 18 July 2001, at 505; *Transcript of Public Hearing*, Vol. 1, 16 July 2001, at 96.

18. See State of the Market and Industry.

19. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm>.

20. *Ibid.* Article 15.1.

Similarly, the subject goods do not compete directly with the domestic industry's exports of hot-rolled steel sheet products. As such, exports are generally insulated from the effects of the dumping and subsidizing. Furthermore, none of the five domestic producers claimed that the dumping and subsidizing had caused or were threatening to cause injury directly to exports of like goods. In addition, there is no evidence that the allocation of hot-rolled steel sheet products between the export market and the domestic merchant market is a relevant factor in assessing the causes of injury to the production of like goods.

Based on all the factors and evidence discussed above, the Tribunal has decided to focus its analysis in this case primarily on the impact of the dumping and subsidizing on the domestic merchant market. However, the Tribunal will assess the materiality of the injury caused by the dumping and subsidizing against the domestic industry's production of like goods as a whole.

The Tribunal does not consider that, when assessing injury to the domestic industry, good performance in one part of the domestic production should be used as a reason for failing to take into account injury caused to another part. In other words, the Tribunal does not support the notion that the determination of injury is an algebraic sum where the pluses and minuses of profits and losses in different parts should be used to cancel each other out. It is entirely possible for an industry to do well in one part and, yet, still be injured in another to the detriment of the industry as a whole. For example, if the domestic industry did not perform well in the domestic merchant market, while still, at the same time, generating positive returns from further internal processing and export sales, this would not negate in any way the fact that the domestic industry had, on the whole, been materially injured. The Tribunal's task is to determine whether the injury resulting from dumped and/or subsidized imports is material to the domestic industry as a whole and not whether injury in one part of the production has been matched by unrelated gains in other parts unaffected by dumped and/or subsidized imports or whether the injury has been spread equally across the parts of the domestic production.

Domestic Industry

Next, the Tribunal will determine which producers constitute the domestic industry. The term "domestic industry" is defined in subsection 2(1) of SIMA as follows:

"domestic industry" means, other than for the purposes of section 31 and subject to subsection (1.1), the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers.

In the present inquiry, Stelco, Dofasco, Algoma, Ispat and IPSCO are the domestic producers as a whole of the like goods and constitute the domestic industry.

The Indian producers argued that, in order for the Tribunal to make an affirmative determination of injury or threat of injury in this proceeding, it must independently examine each of the producers comprising the domestic industry. It must conclude that the collective production of those producers found to be injured or threatened with injury constitutes a major proportion of the total domestic production of like goods.

The Tribunal does not agree that it is required to adopt such an approach. The Tribunal is required to make inquiry as to whether the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury to the domestic industry as a whole, not to individual producers. The Indian producers referred to the Tribunal's recent decision in Inquiry No. NQ-2000-005 (*Certain Grain Corn*), in which, it argued, injury was assessed in regard to both aggregate data and with

respect to individual producers of that domestic industry. However, in that case, the Tribunal did not examine injury to each individual producer, as has been suggested should occur in the present case. The Tribunal was presented with significant evidence indicating that certain types of producers within the domestic industry were affected by imports of the subject goods to a differing degree, and, in fact, a group of domestic producers testified that the subject goods did not cause injury to them at all. Given that *Certain Grain Corn* was a regional market case, where a positive finding requires that the subject goods cause or threaten to cause injury to the producers of all or almost all the production of like goods, the Tribunal was of the view that such evidence had to be considered.

This is not a regional market case and, therefore, does not involve the higher injury standard present in a regional market case. In the Tribunal's opinion, the aggregate data regarding the domestic producers provide an accurate representation of the state of the domestic industry, and the Tribunal has relied on such data as the primary means of assessing whether or not the domestic industry has suffered material injury.

Cumulation

According to subsection 42(3) of SIMA, the Tribunal shall, when conducting an inquiry under subsection 42(1), make an assessment of the cumulative effect of the dumping or subsidizing of the goods that are imported into Canada from more than one country if the following conditions are met:

- (a) the margin of dumping or the amount of the subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and
- (b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and
 - (i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or
 - (ii) like goods of domestic producers.

The Tribunal will cross-cumulate the effects of dumping and subsidizing as is its usual practice when conducting its injury analysis.²¹

Taking into consideration the relevant provisions of SIMA and based on the Commissioner's final determination of dumping and subsidizing, the Tribunal finds that the margins of dumping and amounts of subsidy in relation to the goods from each of the subject countries are not insignificant.

The concept of negligibility is defined in subsection 2(1) of SIMA:

"negligible" means, in respect of the volume of dumped goods of a country,

- (a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods,

except that

- (b) where the total volume of dumped goods of three or more countries, each of whose exports of dumped goods into Canada is less than three per cent of the total volume of goods referred to in paragraph (a), is more than seven per cent of the total volume of goods referred to in paragraph (a),

the volume of dumped goods of any of those countries is not negligible.

21. See *Certain Grain Corn*.

For the purposes of the negligibility calculation, the Tribunal has relied upon import data pertaining to the Commissioner's period of investigation. The Tribunal has used the Commissioner's volume of imports for the subject countries, but has relied upon its own import data for the non-subject countries.

The Tribunal notes that the volume of dumped goods from Saudi Arabia reported by the Commissioner relates to subject goods which were determined by the Commissioner to have been sold to a Canadian importer during the Commissioner's period of investigation, but not released into Canada during that period.

Hadeed, the sole Saudi Arabian producer, argued that the Commissioner was incorrect in including the goods from Saudi Arabia in the volume of dumped goods. The Tribunal notes that this determination is within the jurisdiction of the Commissioner and not that of the Tribunal.

Hadeed also referred to the fact that, in making the negligibility calculation, the volume of dumped goods from each country is expressed as a percentage of the total volume of goods of that description that are released into Canada from all countries. It submitted that goods that have been sold for export, but not yet imported, cannot be included in the numerator of the fraction used to calculate negligibility, since they are not included in the total volume of imported goods shown in the denominator.

SIMA directs that dumped or subsidized goods sold for export to Canada during the relevant period are to be included in the calculation of the volume of dumped or subsidized goods, regardless of whether they have been released into Canada during that period.²²

However, the Tribunal is of the view that it would be inappropriate, and indeed absurd, to include goods sold and not yet imported in the numerator of the negligibility calculation, but to exclude them from the denominator. Further, it would result in an incongruous "apples and oranges" comparison of the volume of sales plus imports from a country against the actual imports only. Such an approach would skew the results of the negligibility calculation in favour of including that country in the inquiry.²³

As a principle of statutory interpretation, it is presumed that legislation is not intended to produce absurd consequences.²⁴ Therefore, the Tribunal presumes that Parliament intended that the total for each subject country, including both actual imports and sales for export, should be added to both the numerator and the denominator. Accordingly, the volume of dumped goods from Saudi Arabia sold for export to a Canadian importer during the Commissioner's period of investigation has been included in both the numerator and the denominator for the purposes of the negligibility calculation for that country. Furthermore, all sales for export of dumped and subsidized goods identified by the Commissioner, for all the subject countries, have been included in both the numerator and the denominator.

The volumes of the dumped goods from China, Chinese Taipei, India and Korea are each above 3 percent and are, therefore, not negligible. While volumes from the other eight subject countries are individually below 3 percent, when added together, the volume of dumped goods from those countries exceeds 7 percent of the total volume of goods. Therefore, in accordance with the definition of "negligible", the volume of dumped goods from those countries is also not negligible.

22. See subsections 2(1) and 42(6) of SIMA.

23. As stated in *Hot-rolled Steel Sheet from Japan* at para. 196, "investigating authorities are not entitled to conduct their investigation in such a way that it becomes more likely that, as a result of the fact-finding or evaluation process, they will determine that the domestic industry is injured."

24. R. Sullivan, *Driedger on the Construction of Statutes*, 3d ed. (Toronto: Butterworths, 1994) at 85.

The Tribunal must also consider whether an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between the subject goods from each subject country and imports from any of the other subject countries or the like goods of domestic producers.

Exporters from Brazil, New Zealand, Korea and Saudi Arabia each argued that the subject goods exported to Canada from their respective countries should not be cumulated with exports of the subject goods from the other subject countries for the purposes of the assessment of injury. In the event that cumulation of any subject country is not appropriate based on the conditions of competition, the Tribunal must conduct a separate assessment of injury and threat of injury with respect to that country.

The domestic producers contended that the effect of the imports from all the subject countries should be cumulated, since all the prerequisite conditions were met. The domestic producers submitted that the evidence demonstrates that, throughout the range of the subject goods, there was direct competition between the like goods and the imports, and among the imports.

In assessing the conditions of competition, the Tribunal will consider a number of factors, including: (1) fungibility, which refers primarily to whether there exist physical characteristics of the subject goods imported from the subject countries which differentiate them to a significant degree from those of the other subject countries and from the like goods; (2) the presence or absence of sales or offers to sell in the same geographical markets as imports from different subject countries and the domestic like product; (3) the existence of common or similar channels of distribution; and (4) the differences in the timing of imports from a subject country and of those of the other subject countries, and of the availability of like goods supplied by the domestic industry.

However, the Tribunal recognizes that there may be other factors that it could consider in deciding whether or not the exports of a particular country should be cumulated and that no single factor may be sufficient to support the decision. The assessment of whether or not it is appropriate to cumulate the exports of a country involves the weighing of evidence and circumstances in each case.

In the present case, the Tribunal has considered the conditions of competition among the subject goods and between the subject goods and the like goods, and has determined that an assessment of the cumulative effect of the subject goods from Brazil, Bulgaria, China, Chinese Taipei, India, Macedonia, South Africa, Ukraine and Yugoslavia would be appropriate. The Tribunal is of the view that they are fungible, have similar distribution channels and were present in the market with each other and with like goods to a sufficient degree to warrant cumulation.

The Tribunal considered the specific arguments made by USIMINAS and COSIPA regarding “conditions of competition”, in support of their position that Brazil should not be cumulated. USIMINAS and COSIPA referred to the fact that specific evidence on the record indicates that their pricing is either comparable to that of the domestic producers or higher. In addition, Brazilian prices did not follow the market down, and, in fact, Brazilian producers abandoned the Canadian market in mid-2000. Further, USIMINAS and COSIPA argued that the volumes of imports of the subject goods from Brazil and dumping margins were very low during the period of investigation.

However, upon reviewing the record and considering the aforementioned criteria, the Tribunal notes that Brazilian goods are fungible with the other subject goods and like goods, compete in the same market and have similar distribution channels as the subject goods from the other subject countries, as well as like goods produced by the domestic industry. Further, imports of the subject goods from Brazil competed with the other subject goods and like goods during a significant part of the period of inquiry.

The Tribunal has, therefore, determined that it would be appropriate to cumulate the exports from Brazil with those of the other cumulated countries.

The Tribunal has also considered carefully the requests made that imports of the subject goods from Korea, New Zealand and Saudi Arabia not be cumulated with those of the other subject countries.

POSCO submitted that its product is unique, in that it is of unrivalled quality and includes a large proportion of light-gauge product not readily available from domestic mills. As a result, POSCO's product is in high demand and is among the most expensive of the subject goods. POSCO submitted that it is not a "price-leader" (i.e. not the producer with the lowest price) and did not cause any price decline in the Canadian market. In addition, costs associated with sourcing its product result in the product of Canadian mills being able to command a "price-premium", such that the "conditions of competition" are different from those experienced by the domestic industry. Therefore, POSCO submitted that it should not be cumulated in the injury assessment.

Further, by way of long-term supply agreements with Daewoo Canada, its exclusive Canadian agent, which, in turn, has a single customer, POSCO supplies limited fixed volumes of the subject goods to the Canadian market. As such, POSCO submitted that the allegations of injurious offers of its product are simply not credible. These supply arrangements will continue, according to POSCO, which negate any suggestion that it poses a threat of injury to the domestic industry.

The Tribunal notes that POSCO is the only producer and exporter of the subject goods from Korea. In terms of the fungibility of the product as compared with other products sold in Canada, POSCO sells a high-quality steel, which is "as good as there is in the world".²⁵ The Korean subject goods are pickled and oiled hot-rolled steel sheet products intended for the automotive industry. There is a very small amount of the subject imports in this sector, such that the degree of competition between POSCO's product and those of the other subject countries is very low. Similarly, the evidence indicates that 40 percent of POSCO's exports to Canada are of light-gauge material, which the domestic industry acknowledged is difficult to make. The mills are typically reluctant to allocate a large amount of this product in their product mix.

Further, POSCO sells into the Canadian market in a manner that sets its products apart from those of the other subject countries and from the like goods. It has an exclusive selling arrangement with Daewoo Canada, its Canadian importer, under which it allocates small fixed quantities. Daewoo Canada, in turn, sells to only one Canadian customer.²⁶ POSCO, despite its size and production capacity, has resisted entreaties to sell more product into the Canadian market.

Therefore, the Tribunal has determined that it would not be appropriate to cumulate Korea in its assessment of injury.

BHP New Zealand, the sole New Zealand producer, submitted that, in order to find that conditions of competition warrant cumulation, the Tribunal must be satisfied that there exists price competition between the individual country and other importers and the Canadian mills. In this regard, BHP New Zealand submitted that it does not compete on price; that its product is not sold into Canada by a trader or broker; and that it operates only on confirmed orders from a limited number of service centre customers in British Columbia. It does not sell or offer to sell the subject goods into Ontario and Quebec, which are the prime markets of the domestic industry.

25. *Transcript of Public Hearing*, Vol. 3, 18 July 2001, at 581.

26. Exporter's Exhibit J-03A at 6, Administrative Record, Vol. 13.

In terms of price, BHP New Zealand submitted that its price was trending upwards through the second and third quarters of 2000, only decreasing in the fourth quarter when the Canadian market fell precipitously. Further, its price is higher than the average Canadian mill price to all service centres. Therefore, BHP New Zealand submitted that imports of the subject goods that it produced did not compete directly with those of other importers or the domestic product and, therefore, should not be cumulated.

It is clear from the record that the competition of the subject goods from New Zealand with those from the other subject countries and with like goods has been extremely limited. New Zealand has historically sold the subject goods in British Columbia and, within the B.C. market, New Zealand has limited its sales to three service centres. Further, British Columbia is only a small part of the Canadian market for the subject goods. The B.C. market constituted only an extremely small percentage of total domestic sales in 1998, 1999 and 2000.²⁷ Furthermore, BHP New Zealand has recently further decreased its focus on competing in the Canadian market by closing its B.C. office and starting to serve the B.C. market from Seattle, Washington.

Based on the foregoing factors, the Tribunal has determined that it would not be appropriate to cumulate New Zealand in assessing injury.

Hadeed argued that Saudi Arabian steel is not known in this country because no one has ever used it or consumed it. Hadeed submitted that the sole shipment from Saudi Arabia is still sitting at a port, so that it remains to be seen whether the subject goods produced by Saudi Arabia can compete with the subject goods from the other subject countries or with domestically produced like goods. As such, Hadeed submitted that the imports from Saudi Arabia should not be cumulated.

In the Tribunal's view, there is no evidence that would indicate that the subject goods from Saudi Arabia have ever truly competed in Canada with the subject goods from the other subject countries or with like goods produced by domestic producers. Saudi Arabia has had no historic presence in the Canadian market for the subject goods. Hadeed, the sole Saudi Arabian producer of the subject goods, only started commercial production in 2000. The Commissioner included Saudi Arabia as a subject country on the basis of a single sale for export of the subject goods during the period of investigation. The goods were not imported during that period, but entered Canada in December 2000. There is no evidence to indicate that any of this steel has been used in Canada to date, and there was some evidence to suggest that it may still be in storage at its port of entry.

The Tribunal is of the view, therefore, that, taking into account the conditions of competition concerning Saudi Arabia, it is not appropriate to include that country in an assessment of the cumulative effects of dumping and subsidizing by the subject countries.

In summary, the Tribunal is of the view that the subject goods from Korea, New Zealand and Saudi Arabia should not be cumulated and has conducted a separate analysis of injury and threat of injury with respect to the subject goods from those countries.

27. *Protected Pre-hearing Staff Report*, revised 3 July 2001, Tribunal Exhibit NQ-2001-001-07A (protected), Administrative Record, Vol. 2.1A at 44.

State of the Market and Industry

Before assessing the effects of the dumping and subsidizing of the subject goods on the domestic industry, the Tribunal reviewed developments in the Canadian market for hot-rolled steel sheet products during the period from 1998 through the second quarter of 2001. Key performance indicators for the Canadian market for hot-rolled steel sheet products are summarized in Tables 3 and 4.

Total production for domestic market sales, export sales and further internal processing increased by some 425,000 net tons in 1999 over 1998, but remained fairly constant in 2000. In 2000, the domestic industry increased its allocation to the domestic and export merchant markets by 200,000 net tons at the expense of further internal processing.

The apparent Canadian market dropped by some 200,000 net tons in 1999, a decrease of 3 percent from 1998 levels. However, the market increased by more than 1 million net tons in 2000, a rise of 18.8 percent over 1999 levels.

The domestic producers did not participate fully in the market growth in 2000. Although sales from domestic production by the domestic producers increased by 50,000 net tons in 2000 over 1999, domestic producers saw their market share decrease from 76 percent in 1999 to 65 percent in 2000. Producers' inventory levels for the domestic and export merchant markets rose by 38 percent at year-end 2000, compared to year-end 1999.

Imports from the cumulated countries increased fourfold in volume terms in 1999 over 1998 and almost doubled in 2000 over 1999, an overall increase of 758,000 net tons.²⁸ These gains enabled the imports from the cumulated countries to increase their market share from 2 percent in 1998 to 13 percent in 2000. Imports from Korea fell during the same period, while imports from New Zealand increased. Saudi Arabia exported to Canada only in 2000. Imports from the United States also posted gains, increasing from 6 percent in 1998 to 12 percent in 2000. In contrast, the share held by imports from the other countries²⁹ remained roughly constant during this period, while that of the named 1999 countries³⁰ declined to negligible levels in 2000. Briefly stated, almost all of the recent gains in market share made by the cumulated countries and the United States were at the expense of the domestic industry and the named 1999 countries.

In the domestic merchant market, the domestic producers' average selling price for sales from domestic production fell from \$505 per net ton in 1998 to \$471 per net ton in 1999, then rose to near 1998 levels in 2000 (\$498 per net ton). The average selling price of imports from the cumulated countries fell from \$466 per net ton in 1998 to \$375 per net ton in 1999, then increased to \$445 per net ton in 2000. The average unit selling price of imports from the United States was above that of imports from the cumulated countries, but followed a similar trend. The domestic industry's gross margins and net income before taxes, expressed as a percentage of sales for the domestic merchant market, both declined in 1999 compared to 1998, but rebounded to near 1998 levels in 2000.

28. Data relating to imports and sales from imports in this inquiry were compiled on an individual country basis. "Cumulated countries" are comprised of nine subject countries, i.e. Brazil, Bulgaria, China, Chinese Taipei, India, Macedonia, South Africa, Ukraine and Yugoslavia.

29. Does not include countries named in *Certain Steel Sheet Products*.

30. Countries covered by *Certain Steel Sheet Products*, i.e. France, Romania, the Russian Federation and the Slovak Republic.

In the export market, sales by the domestic producers declined by 100,000 tons in 2000. The domestic producers' average selling price was about the same in both 1998 and 1999, at \$550 per net ton and \$548 per net ton respectively. In 2000, the average selling price increased to \$566 per net ton.³¹ The export market accounted for about 4 percent of the overall value of sales and transfers of hot-rolled steel sheet products in 2000. Profits, as a percentage of revenues on export sales, were substantially higher than profits on domestic sales throughout the period of inquiry.³²

As for further internal processing, average transfer values decreased from \$421 per net ton in 1998 to \$394 per net ton in 2000 and then increased to \$404 per net ton in 2000.³³ Further internal processing accounted for about 50 percent of the overall reported value of sales and transfers of hot-rolled steel sheet products in 2000.

The domestic producers' total consolidated revenues (i.e. sales for the domestic and export merchant markets and transfers destined for further internal processing) remained fairly stable at about \$4.5 billion in 1999 and 2000. Domestic sales increased slightly in 2000 compared to 1999, while export sales and the value of transfers declined.

These annual data mask some of the recent changes that have shaped the domestic merchant market for hot-rolled steel sheet products. In order to gain a better understanding of the market, the Tribunal looked more closely at the quarterly information and at the evidence of the parties in the proceedings.

Demand for hot-rolled steel sheet products over the second half of 1999 until the first half of 2000 was strong, due to the strength of demand from the Canadian manufacturing sector, especially the automotive industry, and to the strength of the export market for finished goods.³⁴ Prices were also recovering following the withdrawal from the Canadian market of the countries covered by the Tribunal's 1999 finding.³⁵ As a result, the industry's gross margins from the domestic merchant market improved, from 18 percent of sales in the fourth quarter of 1999³⁶ to 20 percent in the first quarter of 2000 and to 23 percent in the second quarter of 2000. Net operating income followed a similar increasing trend.

Demand in the high end of the market (i.e. that destined for original equipment manufacturers [OEMs]) was such that domestic suppliers had some difficulty meeting demand on a timely basis. Although the data show that total plant capacity utilization rates in the first half of 2000 were of the order of 83 to 84 percent, there was evidence that plant loading for the hot strip mills of some producers was at or near capacity. As a result, some domestic producers imported hot-rolled steel sheet products from non-subject countries to supplement the needs of their cold-rolled steel sheet and galvanizing facilities. Some producers

31. *Public Pre-hearing Staff Report*, revised 3 July 2001, Tribunal Exhibit NQ-2001-001-06A, Administrative Record, Vol. 1.1A at 156.

32. Tribunal Exhibit NQ-2001-001-10.01 (protected), Administrative Record, Vol. 4 at 24; Tribunal Exhibit NQ-2001-001-10.02 (protected), Administrative Record, Vol. 4A at 26; Tribunal Exhibit NQ-2001-001-10.03 (protected), Administrative Record, Vol. 4B at 31; Tribunal Exhibit NQ-2001-001-10.04 (protected), Administrative Record, Vol. 4C at 41; Tribunal Exhibit NQ-2001-001-10.05C (protected), Administrative Record, Vol. 4C at 158.

33. *Protected Pre-hearing Staff Report*, revised 3 July 2001, Tribunal Exhibit NQ-2001-001-07A (protected), Administrative Record, Vol. 2.1A at 29, 199-203.

34. Manufacturer's Exhibits C-05 at 3 and C-07 at 4, Administrative Record, Vol. 11.2.

35. *Certain Steel Sheet Products*.

36. *Supplementary Schedules to the Public Pre-hearing Staff Report*, 11 July 2001, Tribunal Exhibit NQ-2001-001-06B, Administrative Record, Vol. 1.1A at 221.

also favoured the needs of their OEM customers at the expense of other lower-valued sectors.³⁷ Against this backdrop, some service centres and pipe and tube producers turned to imports to ensure a continuity of supply in a strong market.

During the first part of 2000, a fear that a shortage was developing gave rise to a “hoarding mentality”,³⁸ as many service centres and pipe and tube producers began to purchase for inventory, expecting demand to remain strong and supplies to be tight. In addition, one major service centre, Maksteel Inc. (Maksteel), increasingly turned to importing, as its traditional domestic suppliers were becoming more cautious in supplying it with product because of its financial difficulties.

There was also ample testimony that inventories at service centres increased substantially over the course of 2000.³⁹ While the evidence of the size of the inventory increase ranges from an increase of a few weeks to over a month,⁴⁰ the trend is quite clear. Inventories increased throughout 2000, as service centres anticipated that market growth would continue. However, when demand softened in the second quarter of 2000, the size of the inventories were out of line with the market and became a problem.⁴¹

By the end of the second quarter or the beginning of the third quarter of 2000, it became evident that demand in the automotive sector was beginning to soften in concert with a more general decline in demand.⁴² At the same time, offshore supplies of hot-rolled steel sheet products, ordered earlier in the year, began to arrive in large quantities. Some mills in the United States, which were experiencing similar market weaknesses or financial difficulties, exported increasing amounts of aggressively priced hot-rolled steel sheet products in the second half of 2000.⁴³ In addition to these pressures, Stelco built some inventory in anticipation of a possible contract dispute at its Lake Erie steel facility, which eventually did not materialize.

As a result of these various pressures, prices began to fall in the third quarter of 2000. This tendency accelerated, as the market continued to soften and imports from the subject countries and the United States continued to arrive in very substantial numbers. Furthermore, domestic suppliers began to price much more aggressively in order to recover some of the market share that they had lost to imports in the early part of the year. All these factors fuelled a downward spiral of prices. The price pressure on sales of hot-rolled steel sheet products was so severe that the domestic producers’ average prices declined by \$74 per net ton between the second quarter and the fourth quarter of 2000.

The price-cutting measures undertaken by the domestic producers in the third and fourth quarters enabled them to recover some of the market share losses that they had suffered in the second quarter of 2000. The market share for domestic producers increased from a low of 60 percent in the second quarter of 2000 to 68 percent in the last quarter. These market gains, however, came at a price, as both gross margins and net income before taxes declined precipitously. The producers’ gross margins declined from 23 percent in the second quarter of 2000 to 18 percent in the third quarter, and dropped further to only

37. Exporter’s Exhibit K-03A, Tab 3, paras. 33-34, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 3, 18 July 2001, at 544-45.

38. *Transcript of Public Hearing*, Vol. 3, 18 July 2001, at 544-45.

39. See, for example, Manufacturer’s Exhibit A-4, para. 76, Administrative Record Vol. 11; *Transcript of Public Hearing*, Vol. 1, 16 July 2001, at 221, Vol. 3, 18 July 2001, at 597; *Transcript of In Camera Hearing*, Vol. 6, 23 July 2001, at 585-87.

40. Refers to volume sufficient to cover demand for a given period.

41. *Transcript of Public Hearing*, Vol. 3, 18 July 2001, at 597-98.

42. *Transcript of Public Hearing*, Vol. 3, 18 July 2001, at 426-27.

43. *Transcript of In Camera Hearing*, Vol. 8, 25 July 2001, at 785-86; *Public Pre-hearing Staff Report*, revised 12 July 2001, Tribunal Exhibit NQ-2001-001-06C, Administrative Record, Vol. 1.1A at 256.

7 percent of net sales in the fourth quarter. Net income before taxes also dropped sharply, declining from \$61 million in the second quarter of 2000 to a loss of \$31 million in the last quarter.⁴⁴

These losses continued and grew to \$67 million in the first quarter of 2001, as prices continued to drop.⁴⁵ In the Tribunal's view, the lingering effects of the inventory buildup explains the continuing low prices into the first quarter of 2001 and the consequent losses in that quarter. It also explains the difficulty that the industry encountered when it tried to raise prices at the end of the first quarter. In fact, prices did not recover until the usual winter slowdown in importing, combined with the filing of the present dumping and subsidizing complaint. These events caused imports to decline substantially and allowed inventories to be worked off.⁴⁶ Prices began a modest recovery in April 2001, when the domestic industry was partly successful in imposing a price increase.⁴⁷

Producers testified that cash flow management became more difficult during the second half of 2000 and into 2001.⁴⁸ Domestic producers also submitted that the decline in cash flow and operating income contributed to reducing or indefinitely delaying investment plans for capital projects, scheduled major maintenance and overtime hours.⁴⁹ The need to manage cash flow also had the effect of forcing some inventory liquidation.⁵⁰ Further, they submitted that reduced revenues caused year-end employee bonuses to be reduced or eliminated.⁵¹

In summary, it is clear from the evidence that the domestic producers, in the second half of 2000, suffered a significant deterioration in performance in the domestic merchant market in the form of reduced market share, price erosion and reduced gross margins, and net profits before taxes.

The Tribunal must now determine whether the dumping and subsidizing have caused all or part of the deterioration in the industry's performance and, if so, whether the effects of the dumping and subsidizing, in and of themselves, constitute injury. In doing its analysis, the Tribunal will focus primarily on the domestic merchant market for hot-rolled steel sheet products for the reasons outlined above.

44. *Public Pre-hearing Staff Report*, revised 3 July 2001, Tribunal Exhibit NQ-2001-001-06A, Administrative Record, Vol. 1.1A at 63.

45. *Public Pre-hearing Staff Report*, revised 3 July 2001, Tribunal Exhibit NQ-2001-001-06A, Administrative Record, Vol. 1.1A at 221.

46. Exporter's Exhibit K-03A, Tab 3, paras. 38-39, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 5, 20 July 2001, at 886; *Transcript of In Camera Hearing*, Vol. 6, 23 July 2001, at 586.

47. Manufacturer's Exhibit A-04 at 22-23, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 16 July 2001, at 27-28, 198; *Transcript of Public Hearing*, Vol. 4, 19 July 2001, at 673.

48. *Transcript of Public Hearing*, Vol. 1, 16 July 2001, at 226-28, Vol. 5, 20 July 2001, at 864-66.

49. *Transcript of In Camera Hearing*, Vol. 4, 19 July 2001, at 393, 396.

50. *Transcript of In Camera Hearing*, Vol. 4, 19 July 2001, at 353.

51. See, for example, *Transcript of Public Hearing*, Vol. 5, 20 July 2001, at 864, Vol. 6, 23 July 2001, at 1075.

TABLE 3
Summary of Key Market Indicators

	1998	1999	2000	2001			
				Q1	Q2	Q3	Q4
Apparent Imports (000 net tons)	2,060	1,362	2,404	512	736	599	557
Cumulated Countries	98	432	856	174	288	233	159
Production (000 net tons)							
For Domestic and Export Sales ¹	4,417	4,686	4,882	1,191	1,265	1,300	1,126
For Further Internal Processing	5,610	5,766	5,568	1,559	1,381	1,415	1,213
Total Volume	10,026	10,452	10,450	2,750	2,646	2,715	2,339
Producers' Exports (000 net tons)	343	416	311	80	89	80	62
Apparent Market (000 net tons)	5,851	5,656	6,718	1,655	1,786	1,592	1,685
Sales from Domestic Production (000 net tons)	3,859	4,305	4,355	1,140	1,070	1,007	1,138
Market Share (% of volume)							
Domestic Production ³	66	76	65	69	60	63	68
Importers							
Cumulated Countries	2	8	13	11	15	15	9
United States	6	7	12	12	14	12	12
Other Non-subject Countries ²	3	4	3	2	3	2	3
Average Prices (\$/net ton)³							
Sales from Domestic Production	505	471	498	514	527	500	453
Importers							
Cumulated Countries	466	375	445	447	454	443	428
United States	490	434	462	458	505	460	415
Other Non-subject Countries ²	477	440	485	485	506	500	459
Average Prices (\$/net ton)³							
To End Users³							
Domestic Producers	557	537	528	533	534	526	518
Cumulated Countries	432	367	459	412	-	469	449
To Service Centres³							
Domestic Producers	453	415	460	473	500	465	409
Cumulated Countries	466	372	450	436	462	449	457
To Pipe & Tube Producers³							
Domestic Producers	510	472	512	550	555	525	441
Cumulated Countries	476	376	441	456	451	439	411
Sales Volumes (000 net tons)							
To End Users³							
Domestic Producers	1,446	1,572	1,582	438	427	358	358
Cumulated Countries	2	1	5	1	0	4	1
To Service Centres³							
Domestic Producers	1,518	1,861	1,687	441	390	420	435
Cumulated Countries	90	104	311	87	80	85	58
To Pipe & Tube Producers³							
Domestic Producers	895	872	1,086	260	253	229	345
Cumulated Countries	4	322	529	96	191	147	94
Direct Employment (Merchant Markets)							
Employees	2,460	2,758	2,600				
Production Capacity (000 net tons)	11,702	12,514	12,915	3,281	3,205	3,328	3,141
Utilization Rate (%)	86	84	81	84	83	82	74

Notes 1. Production may not equal sales due to differences in inventory and production yield losses.

2. Does not include countries from *Certain Steel Sheet Products*, i.e. France, Romania, the Russian Federation and the Slovak Republic.

3. Does not include producers' sales from imports.

Source: *Public Pre-hearing Staff Report*, revised 3 July 2001, Tribunal Exhibit NQ-2001-001-06A, Administrative Record, Vol. 1.1A; *Public Pre-hearing Staff Report*, revised 12 July 2001, Tribunal Exhibit NQ-2001-001-06C, Administrative Record, Vol. 1.1A.

TABLE 4

Summary of Financial Indicators

	1998	1999	2000	2001			
				Q1	Q2	Q3	Q4
Financial Total Industry							
Sales Revenues (\$millions)							
Domestic Sales	1,910	1,957	2,088	565	544	486	492
Export Sales	182	219	168	45	50	42	31
Transfer Values	2,360	2,273	2,250	629	558	559	504
Consolidated Revenues ¹	4,452	4,450	4,506	1,239	1,153	1,087	1,027
Domestic Sales							
Gross Margin (% of sales)	17	13	17	20	23	18	7
Net Income Before Taxes (% of sales)	6	1	5	8	11	5	(6)

Note 1. Includes sales for the domestic and export merchant markets and actual transfer values for further internal processing as reported by each producer.

Source: *Public Pre-hearing Staff Report*, revised 3 July 2001, Tribunal Exhibit NQ-2001-001-06A, Administrative Record, Vol. 1.1A; Tribunal Exhibits NQ-2001-001-10.01 – 10.05C (protected), Administrative Record, Vol. 4, 4A, 4 B, 4C respectively.

Effects of the Dumping Respecting Korea, New Zealand and Saudi Arabia

The Tribunal first examined separately and individually the effects of the dumping and the threat posed by the dumping of the subject goods from Korea, New Zealand and Saudi Arabia on the domestic industry.

Korea

With respect to the dumping of hot-rolled steel sheet products from Korea, the Tribunal notes that POSCO was the only producer and exporter of hot-rolled steel sheet products from Korea and that POSCO does not sell on a spot basis, but sells only to order.⁵² According to the testimony of a major purchaser, the product made by POSCO is “as good as there is in the world”.⁵³ The volume of imports of the subject goods from Korea declined in 2000 compared to 1998.⁵⁴ Since 1999, POSCO has supplied the Canadian market exclusively through Daewoo Canada, which markets the subject goods in quantities set by long-term contracts⁵⁵ to only one Canadian customer, Maksteel.⁵⁶ The goods exported by POSCO consist of only one type of product, i.e. pickled and oiled hot-rolled steel sheet for automotive end use.⁵⁷ There are very few other subject imports of this type because of the stringent quality and delivery requirements set by the OEMs. The testimony also indicates that some 40 percent of POSCO’s shipments to Canada are of

52. Exporter’s Exhibit J-03A at 6, Administrative Record, Vol. 13.

53. *Transcript of Public Hearing*, Vol. 3, 18 July 2001, at 580-81.

54. *Protected Pre-hearing Staff Report*, revised 12 July 2001, Tribunal Exhibit NQ-2001-001-07C (protected), Administrative Record, Vol. 2.1A at 250.

55. Exporter’s Exhibit J-03A at 3, Administrative Record, Vol. 13.

56. Exporter’s Exhibit J-03A at 6, Administrative Record, Vol. 13.

57. Exporters’ Exhibits J-03A at 5 and K-03A at 2, Administrative Record, Vol. 13.

light-gauge material.⁵⁸ This product is more difficult to make, and mills are typically reluctant to allocate a large amount of this product in their product mix.⁵⁹

In addition to the limited product range and customer base of the imports from Korea, the Tribunal notes that the average selling price for imports from Korea was among the highest of those of the subject countries in 2000 and, in fact, was rising in the second and third quarters of 2000, at a critical time when other prices were declining in the Canadian market.⁶⁰

Finally, the Tribunal observes that POSCO continued to supply set quantities of product to Maksteel in 2000 under the terms of its agreement, even though Maksteel was experiencing severe financial difficulties.⁶¹ The testimony indicates that domestic suppliers at that time were becoming more cautious in supplying Maksteel with product because of these difficulties.⁶² Given all the above factors, the Tribunal is unable to conclude that imports from Korea caused material injury to the domestic industry.

Turning to threat of injury, the Tribunal observes that the marketing of Korean goods in Canada since 1998 has been done in a non-disruptive and consistent manner and that shipments have been limited to a high value-added product to a demanding sector of the market and in set contracted quantities. POSCO has resisted entreaties to sell more in this market, preferring a conservative marketing strategy.⁶³ The Tribunal also notes that POSCO is presently running at full capacity⁶⁴ and that there are no anti-dumping measures in other trade jurisdictions against Korean exports of hot-rolled steel sheet products.⁶⁵ There is nothing in the evidence that would lead to a conclusion that POSCO's export strategy regarding the Canadian market would change as a result of a no injury finding. Based on the foregoing evidence, the Tribunal concludes that there are no clearly foreseen and imminent circumstances under which the dumping in Canada of hot-rolled steel sheet products from Korea would threaten to cause material injury.

New Zealand

As discussed above, New Zealand's participation in Canada has been limited to British Columbia, a very small part of the Canadian market in which the participation of domestic producers has been extremely small since 1998. Import volumes from New Zealand were almost the lowest of the 12 subject countries over the period and its share of the overall market has remained very small over the period of analysis.⁶⁶ New Zealand sold to the same customers in the 1998-2000 period. It has not sold any product in the higher volume markets in Ontario and Quebec, which are the major focus of the domestic producers. BHP New Zealand's niche is to provide customers in the B.C. market with an uninterrupted supply of small quantities,

58. *Transcript of Public Hearing*, Vol. 7, 24 July 2001, at 1210, 1273, 1277.

59. *Transcript of Public Hearing*, Vol. 7, 24 July 2001, at 1209, 1298.

60. *Protected Pre-hearing Staff Report*, revised 12 July 2001, Tribunal Exhibit NQ-2001-001-07C (protected), Administrative Record, Vol. 2.1 A at 257.

61. Exporters' Exhibits J-04A (protected), para. 17, and K-04A (protected), paras. 19, 24, Administrative Record, Vol. 14.

62. *Transcript of In Camera Hearing*, Vol. 3, 18 July 2001, at 232-33, Vol. 4, 19 July 2001, at 362-64.

63. Exporter's Exhibit J-04A (protected), para. 17, Administrative Record, Vol. 14; *Transcript of In Camera Hearing*, Vol. 8, 25 July 2001, at 739-41; *Transcript of Public Hearing*, Vol. 7, 24 July 2001, at 1259-60.

64. *Protected Pre-hearing Staff Report*, revised 3 July 2001, Tribunal Exhibit NQ-2001-001-07A (protected), Administrative Record, Vol. 2.1A at 120.

65. *Public Pre-hearing Staff Report*, revised 3 July 2001, Tribunal Exhibit NQ-2001-001-06A, Administrative Record, Vol. 1.1A at 124.

66. *Protected Pre-hearing Staff Report*, revised 12 July 2001, Tribunal Exhibit NQ-2001-001-07A (protected), Administrative Record, Vol. 2.1A at 250, 252.

supplied monthly.⁶⁷ Despite a high margin of dumping, imports from New Zealand were sold at average price levels higher than those of any subject country during the period of inquiry and were often higher priced than domestic goods.⁶⁸ For these reasons, the Tribunal finds that the dumping of hot-rolled steel sheet products from New Zealand has not caused material injury to the domestic industry.

Regarding threat of injury, the Tribunal is of the view that imports from New Zealand were sold in a responsible and non-disruptive manner during the period of inquiry, by responding to the needs of its very small and unchanging customer base in the B.C. market. It has been present in Canada for over 20 years and BHP Steel Americas, the importer of the goods, sells only hot-rolled steel sheet products produced by BHP New Zealand.⁶⁹ The latter has not aggressively sought increased business with new customers in Canada. As discussed above, BHP New Zealand recently closed its Vancouver office, and Canadian customers are now serviced from Seattle.⁷⁰ Furthermore, BHP New Zealand indicated that it does not have the capacity to increase exports from New Zealand and will only service existing customers with the minimal tonnage requirements needed.⁷¹

Although the tonnage exported to Canada from New Zealand doubled from 1999 to 2000, the evidence explained this increase as a one-time occurrence that made extra tonnage available due to a delayed trial at a BHP New Zealand mill.⁷² Furthermore, even at the 2000 level, the tonnage from New Zealand is very low.

Based on the foregoing evidence, the Tribunal concludes that there are no clearly foreseen and imminent circumstances under which the dumping in Canada of hot-rolled steel sheet products from New Zealand would threaten to cause material injury.

Saudi Arabia

As discussed above, the Saudi Arabian subject goods have never truly competed in the Canadian market and, hence, have not caused material injury to the domestic industry.

Given the complete absence of market experience with Saudi Arabian hot-rolled steel sheet products in the Canadian market and Hadeed's stated evidence that it has no plans to export hot-rolled steel sheet products to Canada,⁷³ the Tribunal concludes that there are no clearly foreseen and imminent circumstances under which the dumping in Canada of hot-rolled steel sheet products from Saudi Arabia would threaten to cause material injury.

Effects of the Dumping and Subsidizing Respecting the Cumulated Countries

The Tribunal next examined the effects of the dumping and subsidizing of the subject goods from the cumulated countries on the domestic industry.

67. Exporter's Exhibit V-1, para. 3, Administrative Record, Vol. 13.1.

68. *Protected Pre-hearing Staff Report*, revised 12 July 2001, Tribunal Exhibit NQ-2001-001-07C (protected), Administrative Record, Vol. 2.1A at 257.

69. Exporter's Exhibit V-1, paras. 5-6, Administrative Record, Vol. 13.1.

70. Exporter's Exhibit V-1, para. 6, Administrative Record, Vol. 13.1.

71. Exporter's Exhibit V-1, para. 6, Administrative Record, Vol. 13.1.

72. *Transcript of Public Hearing*, Vol. 8, 25 July, 2001, at 1543-45.

73. Exporter's Exhibit W-2, para. 51, Administrative Record, Vol. 13.1.

The domestic producers argued that there is a clear causal connection between their decline in performance and the dumped and subsidized imports. The parties opposed, however, argued that a number of factors other than the dumping and subsidizing led to the decline in performance. In addressing these conflicting views, the Tribunal carefully assessed the large volume of information submitted by the parties, as well as the evidence adduced during the hearing.

As in the 1999 inquiry on hot-rolled steel sheet products, the Tribunal has chosen to focus its analysis of the domestic merchant market on three sectors. These are not watertight compartments, and, while product does flow from one to the other, each sector is sufficiently different as to limit much movement. The three sectors chosen are end users (primarily automotive end use), pipe and tube, and service centres. The automotive end use sector requires a higher-quality hot-rolled steel sheet product, while the pipe and tube sector, depending on the application, generally uses a more basic grade and finish. Finally, the service centre sector is a mix of the two, depending on the focus and clientele.

The subject goods from the cumulated countries have no direct impact in the end use sector. The only significant competition in this sector was from non-subject countries, primarily the United States.⁷⁴ Sales of the subject goods from the cumulated countries to end users were only 5,000 net tons in 2000.

The end use sector represented 36 percent of total domestic hot-rolled steel sheet product sales in 2000. Sales to end users from domestic production increased very slightly, from 1.572 million net tons in 1999 to 1.582 million net tons in 2000. The quarterly data, however, confirm the softening in demand in the automotive sector, as domestic shipments declined by 150,000 net tons in the second half of 2000 compared to the first half of the year.

Although shipments to end users from the cumulated countries were marginal, the average selling price of these imports in this sector was well below that of the domestic producers. On the other hand, average prices of imports from the United States were consistently at or above domestic mill prices.⁷⁵

Domestic producers argued that, while direct import competition from the cumulated countries was not as strong in the end use sector, the eroded prices caused by the dumped and subsidized imports in the pipe and tube sector and service centre sector had a price-depressive effect on the contract negotiations with the OEMs. The Tribunal is of the view that contract negotiations of this sort typically do take into account, among the various factors, contemporaneous market price levels for a product, and, to that extent, lower prices for hot-rolled steel sheet products could affect contracted prices with OEMs for the next period. However, the influence that low prices may have had on contract negotiations has to be tempered by the realities of supply from offshore suppliers that would find it difficult to meet OEM conditions of supply. As such, the Tribunal concludes that the influence that dumped and subsidized imports had on the end-user sector was marginal at best.

Although sales to the pipe and tube sector represented a lesser proportion of the domestic producers' total domestic sales of hot-rolled steel sheet products in 2000 (25 percent) than to other sectors, it is still an important sector for them. Three domestic producers, Stelco, IPSCO and Ispat, have captive mills and, thus, compete with other pipe producers. The hot-rolled steel sheet products sold to this sector are basic commercial quality black and largely undifferentiated, thus making it easy for all mills to compete in this

74. *Protected Pre-hearing Staff Report*, revised 12 July 2001, Tribunal Exhibit NQ-2001-001-07C (protected), Administrative Record, Vol. 2.1A at 264.

75. *Public Pre-hearing Staff Report*, revised 12 July 2001, Tribunal Exhibit NQ-2001-001-06C, Administrative Record, Vol. 1.1A at 258, 260.

sector.⁷⁶ The commodity nature of the product means that purchasers have a tendency to switch from one supplier to another on the basis of price alone. It also means that, over time, prices from all suppliers in the market will converge on the lowest price offerings. Suppliers that do not respond to the lower price offerings run a risk of losing market share.

The domestic producers increased their sales to the pipe and tube sector from 872,000 net tons in 1999 to 1.086 million net tons in 2000. However, on a quarterly basis, domestic producers' shipments dropped from 260,000 net tons in the first quarter of 2000 to 229,000 net tons in the third quarter of 2000. The volume of imports from the cumulated countries and the volume of imports from the United States to this sector increased substantially over the period of inquiry.⁷⁷ Imports from the cumulated countries increased from 322,000 net tons in 1999 to 529,000 net tons in 2000. Their shipments peaked in the second quarter of 2000 at 191,000 net tons and tapered off to 94,000 net tons by the last quarter of the year. Imports from the United States more than doubled between 1998 and 2000. In 2000, imports from the United States had a larger participation in the domestic market than did imports from the cumulated countries. On a quarterly basis, imports from the United States stayed fairly constant throughout 2000, although reporting a peak in the third quarter.

The Tribunal notes that, in the pipe and tube sector, price competition for hot-rolled steel sheet products was the most aggressive. In this sector, producers had to compete with low-priced sales and offerings from both the cumulated countries and the United States. The average selling pricing of goods from the cumulated countries undercut domestic prices by \$94 per net ton and \$104 per net ton in the first and second quarters of 2000 respectively. The gap was narrowed to \$30 per net ton in the last quarter of the year, as the domestic producers competed more aggressively on price. As a result, the domestic producers were successful in recovering some of the volume losses that they had suffered in the second and third quarters of the year.

Exporters and importers argued that it was the presence of low prices from imports from the United States that caused the erosion of prices in the market, particularly in this sector. A close look at the detailed quarterly pricing data and the evidence of witnesses, however, leads the Tribunal to conclude that it was the low aggressive pricing of imports from the cumulated countries that led the way. In this regard, the evidence indicates that the cumulated countries were the price leaders in 1999, with the imports from the United States following their lead.⁷⁸ In the Tribunal's view, U.S. prices in 2000 were reacting to the prices already set in the Canadian market by the cumulated countries.⁷⁹ The evidence indicates that purchasers were using purchases and offers of product from the cumulated countries, not those from the United States, as leverage to obtain better prices from the domestic producers.⁸⁰ Had the imports from the cumulated countries not been in the market in 2000, the Tribunal is of the view that the imports from the United States would have reacted to the prices set by the domestic producers and that the U.S. prices would have been significantly higher.

To sum up, while some of the price erosion could have been caused by imports from the United States, the Tribunal is of the opinion that, in the pipe and tube sector, a significant part of the price erosion

76. Manufacturer's Exhibit A-2 at 38, Administrative Record, Vol. 11.

77. *Protected Pre-hearing Staff Report*, revised 12 July 2001, Tribunal Exhibit NQ-2001-001-07C (protected), Administrative Record, Vol. 2.1A at 265.

78. *Protected Pre-hearing Staff Report*, revised 12 July 2001, Tribunal Exhibit NQ-2001-001-07C (protected), Administrative Record, Vol. 2.1A at 259-60; *Transcript of Public Hearing*, Vol. 3, 18 July 2001, at 528.

79. *Ibid.*

80. *Transcript of Public Hearing*, Vol. 1, 16 July 2001, at 246-47, Vol. 3, 18 July 2001, at 426-27, 521-28, Vol. 4, 19 July 2001, at 681, 701, Vol. 5, 20 July 2001, at 883, Vol. 6, 23 July 2001, at 1032.

can be ascribed to the dumping and subsidizing of the goods from the cumulated countries. The Tribunal is also convinced that, absent the dumping and subsidizing from the cumulated countries, market prices would have been significantly higher in the pipe and tube sector and that the volume of sales for the domestic producers would have been higher.

Sales to the service centre sector represent the most important sector, in volume terms, for the domestic industry. The range of hot-rolled steel sheet products sold to this sector is quite mixed, as service centres sell the whole range of hot-rolled steel sheet products, from sophisticated product required by OEMs to plain product required in small quantities by small manufacturers or pipe and tube producers.

Domestic industry sales to the service centre sector declined from 1.861 million net tons in 1999 to 1.687 million net tons in 2000. Quarterly sales in 2000 were relatively flat, at around 420,000 to 440,000 net tons, with a dip in the second quarter to 390,000 net tons. Meanwhile, sales of goods from the cumulated countries tripled, from 104,000 net tons in 1999 to 311,000 net tons in 2000. Quarterly sales of hot-rolled steel sheet products from the cumulated countries were fairly flat in the first three quarters of 2000 at 80,000 to 87,000 net tons, before dropping to 58,000 net tons in the last quarter. Imports from the United States were not an important factor in this sector, totalling only 68,000 net tons in 2000.⁸¹ The prices of imports from the United States were at or above domestic prices.⁸²

In terms of prices, the average selling price of imports from the cumulated countries to the service centre sector for the year 2000 was only \$10 per net ton below that of the domestic producers. However, the quarterly data clearly show that imports from the cumulated countries led prices down in the first and second quarters of the year. More specifically, imports from the cumulated countries undercut domestic prices by \$37 to \$38 per net ton in each of these quarters. In contrast, U.S. prices, with the exception of the third quarter, were significantly above domestic prices throughout 2000.⁸³ Here again, the evidence indicates that purchasers were using purchases and offers of product from the cumulated countries, not those from the United States, as leverage to obtain better prices from the domestic producers.⁸⁴ As in the pipe and tube sector, the domestic producers chose to compete more aggressively on price, narrowing the gap to \$16 per net ton in the third quarter of the year and selling at lower prices than the cumulated countries in the last quarter. The more aggressive pricing by the domestic producers reversed the loss of market share and resulted in modest volume gains, as their sales to the service centres increased by only 24,000 net tons in the second half of the year over the previous half. To conclude, the Tribunal is of the view that imports from the cumulated countries were the cause of most of the price erosion in the service centre sector of the market. The Tribunal is also convinced that, absent the dumping and subsidizing from the cumulated countries, market prices would have been significantly higher in the service centre sector and the volume of sales for the domestic producers would also have been significantly higher.

In conclusion, on the basis of the above evidence, the Tribunal finds that imports of hot-rolled steel sheet products from the cumulated countries are responsible for a significant part of the price erosion in the pipe and tube sector and most of the price erosion in the service centre sector. While there are other factors

81. *Public Pre-hearing Staff Report*, revised 12 July 2001, Tribunal Exhibit NQ-2001-001-6C, Administrative Record, Vol. 1.1A at 264.

82. *Public Pre-hearing Staff Report*, revised 12 July 2001, Tribunal Exhibit NQ-2001-001-6C, Administrative Record, Vol. 1.1A at 258.

83. *Public Pre-hearing Staff Report*, revised 12 July 2001, Tribunal Exhibit NQ-2001-001-06C, Administrative Record, Vol. 1.1A at 258, 260.

84. *Transcript of Public Hearing*, Vol. 1, 16 July 2001, at 246-47, Vol. 3, 18 July 2001, at 426-27, 521-28, Vol. 4, 19 July 2001, at 681, 701, Vol. 5, 20 July 2001, at 883, Vol. 6, 23 July 2001, at 1032.

at play, it is clear that the subject goods from the cumulated countries led the prices down in both these key sectors.

The domestic industry's efforts in the second half of 2000 to regain market share from the dumped and subsidized imports through additional price discounting were partially successful, as its share in the fourth quarter rebounded to 68 percent, almost the same level as in the first quarter of the year, but still some 8 points below its 1999 level. However, the extent of price discounting necessary to compete against dumped and subsidized imports from the cumulated countries led to a significant deterioration in the domestic industry's financial performance.

The dumped and subsidized imports from the cumulated countries also had a negative effect on utilization of plant capacity. The Tribunal notes that, while some domestic producers operated at or close to full utilization throughout 2000, there was capacity available to meet market needs and that they, therefore, suffered injury, as dumped and subsidized imports captured sales that otherwise could have been supplied by the domestic producers.

The dumped and subsidized imports from the cumulated countries also affected the domestic industry in other ways. The price erosion caused by these imports had a significant impact on cash flow. Also, to the extent that domestic producers lost market share, this further aggravated the decline in cash flow. The decline in cash flow and operating income also contributed to reducing or delaying investment plans, major maintenance and overtime hours.⁸⁵

Having considered the foregoing evidence and testimony, the Tribunal concludes that, absent the dumping and subsidizing of hot-rolled steel sheet products from the cumulated countries, the domestic producers' market share, volume of sales and utilization of plant capacity would have been higher and that a significant portion of the price erosion suffered by them was caused by the dumped and subsidized imports from the cumulated countries. Further, this price erosion and lost volume account for a significant part of the financial losses incurred by the domestic producers. The reduced profitability on sales of hot-rolled steel sheet products also had a proportionate negative impact on cash flow and the ability to invest in expansion and maintenance projects.

In addition, direct employment declined in the industry from 2,758 employees in 1999 to 2,600 in 2000, a decline of 6 percent. This decline did not accompany a reduction in production of like goods for the domestic and export merchant markets. Therefore, it is unlikely that the increased imports were a significant cause of employment losses.

The Tribunal also concludes that the injury suffered by the domestic industry is material, when assessed against the total revenues generated by hot-rolled steel sheet production, i.e. production for the domestic and export merchant markets and production for further internal processing.

Other Factors

Exporters and importers of hot-rolled steel sheet products argued that there were factors other than the dumping and subsidizing that caused injury to the domestic producers. The Tribunal notes that, in any inquiry, there are almost always other factors present. In this case, imports from non-subject countries, Algoma's financial difficulties, Maksteel's financial difficulties, domestic producers' capacity to supply the

85. *Transcript of In Camera Hearing*, Vol. 4, 19 July 2001, at 393, 396.

market, contraction of demand in the second half of 2000 and competition between domestic producers were identified as factors that could have had an impact on the domestic industry.

Imports from Non-subject Countries

The importers and exporters argued that it was the presence of low-priced products from non-subject countries, principally the United States, that caused the erosion of prices and lost volumes in the market and the injury to the domestic industry.

Regarding imports from the United States, while the volume of these imports was large, the increase in their market share between 1998 and 2000 was less rapid than the increase for the subject goods. The Tribunal has already analyzed the prices in each market segment and the impact of U.S. pricing therein. In summary, in the end use sector, average prices of imports from the United States were consistently at or above domestic mill prices. In the pipe and tube sector, price competition was aggressive, but the Tribunal concluded that it was the low aggressive pricing of imports from the cumulated countries that led the way and caused a significant part of the price erosion in the market. In the service centre sector, U.S. prices, with the exception of the third quarter, were significantly above domestic prices throughout 2000, and, in any event, the United States was not a major player in the service centre sector. The Tribunal concluded that most of the price erosion in this sector was caused by the imports from the cumulated countries.

Regarding imports from other non-subject countries, the Tribunal notes that they maintained a relatively small share of the market throughout the period of inquiry and that there was no evidence that they were the source of declining prices in the market.

On the basis of the foregoing, the Tribunal finds that the U.S. goods were a factor in the market in 2000. The Tribunal has not attributed to the dumping and subsidizing the price erosion and lost sales caused by the U.S. imports.

Algoma's Financial Difficulties

The importers and exporters claimed that the financial difficulties experienced by Algoma are related to factors other than the dumping and subsidizing of the subject goods. The evidence indicates that the high financial expenses reported by Algoma related to the construction of the DSPC and contributed significantly to its poor net profit performance.⁸⁶ In addition, the length of time that has been required to ramp-up production in the DSPC has resulted in higher costs and a significant delay in realizing the projected benefits.⁸⁷ However, these higher costs did not affect Algoma's ability to supply or lower the prices at which it sold its products in the market. The Tribunal has not attributed any of Algoma's financial expenses and higher costs relating to the construction and the ramp-up of the DSPC line to the dumping and subsidizing.

Maksteel's Financial Difficulties

The testimony and evidence before the Tribunal are that Maksteel, a large service centre in Mississauga, Ontario, started to experience financial difficulties in the latter part of 1999 or the first quarter of 2000. These difficulties became acute in the third quarter of 2000, when steel prices and automotive

86. Exporter's Exhibit P-06/Q-06 at 8-9, Administrative Record, Vol. 13.

87. Exporter's Exhibit P-06/Q-06 at 9, Administrative Record, Vol. 13.

demand turned down.⁸⁸ Moreover, the downturn in the market happened when Maksteel had a large inventory⁸⁹ and had difficulty in liquidating these products at prices above cost.⁹⁰

With respect to the inventory liquidation, the Tribunal notes that the liquidation was at the time of the downturn in steel prices. The evidence indicates that Maksteel was selling hot-rolled steel sheet products to meet the prevailing prices in the marketplace.⁹¹ This also suggests to the Tribunal that Maksteel was not setting the prices in the marketplace, but rather reacting to them. For this reason, the Tribunal considers that Maksteel did not contribute to the price erosion in the domestic industry. Moreover, the Tribunal does not consider that Maksteel's financial difficulties impacted, in a significant way, on the sales volumes and accounts receivable of the domestic industry. The industry had started to reduce its supply to Maksteel in 1999,⁹² and had a cautious response to the onset of the financial difficulties at Maksteel.⁹³

Domestic Producers' Capacity to Supply the Market

The Tribunal heard evidence from importers and exporters that, with a strong upward trend in the market in the first half of 2000, domestic producers could not meet the demand and that this caused some customers to source imported goods, from both the subject and non-subject countries.

The Tribunal observes that, while the increase in demand in the first half resulted in some supply difficulties at domestic mills that could have led to increased imports, it does not explain the pricing behaviour of the subject countries or the magnitude of imports from the subject countries since 1998. Moreover, in the third and fourth quarters of 2000, when the market experienced a downturn, the imports from the subject countries remained high. The Tribunal also notes that there was no widespread indication of domestic producers not being able to serve the market at that time. The Tribunal observes that the subject import prices continued to be lower than domestic product prices throughout the relevant period, which would not necessarily have been the case if supply problems had been widespread.

On the basis of the foregoing, the Tribunal is not convinced that the domestic producers' capacity to supply the market had a significant impact on injury to the domestic industry over the Tribunal's period of inquiry.

Contraction of Demand in the Second Half of 2000

The importers and exporters argued that the drop in demand in the second half of 2000 was the cause of the domestic producers' lost sales volumes and lower market prices. The Tribunal is of the view that the softening of demand contributed to the reduced sales volumes and lower market prices experienced by the domestic industry and, as indicated earlier, particularly in the end use sector. In the end use sector, the Tribunal is of the view that the contraction in demand is largely related to the downturn in the economy. However, the Tribunal is convinced that, absent the dumping and subsidizing, market prices and the volume of sales by the domestic industry would have been significantly higher, for the most part in the service

88. Manufacturer's Exhibit B-02, Attachment 7, Administrative Record, Vol. 11.1.

89. Exporter's Exhibit K-03A, Tab 3, paras. 38-39, Administrative Record, Vol. 13.

90. *Transcript of Public Hearing*, Vol. 7, 24 July 2001, at 1322; Exporter's Exhibit K-03A, Tab 3, paras. 38-39, Administrative Record, Vol. 13; *Transcript of In Camera Hearing*, Vol. 8, 25 July 2001, at 739.

91. Exporter's Exhibit K-03A, Tab 3, para. 39, Administrative Record, Vol. 13.

92. Exporter's Exhibit K-03A, Tab 3, paras. 33-34, Administrative Record, Vol. 13.

93. *Transcript of In Camera Hearing*, Vol. 3, 18 July 2001, at 233; *Transcript of In Camera Hearing*, Vol. 4, 19 July 2001, at 364.

centre and pipe and tube sectors. The Tribunal did not attribute any of the effects of the contraction in demand to the dumping and subsidizing.

Competition Between Domestic Producers

Witnesses for the importers and exporters testified that the domestic producers had an excess supply of hot-rolled steel sheet products available in the second half of 2000 and that this oversupply in inventories led to price competition among the domestic producers and the eventual price erosion in the market.⁹⁴ On the other hand, the domestic producers submitted that there was no evidence that competition between domestic producers could explain such a decline in prices in the second half of 2000. On the contrary, the domestic producers submitted that they wanted to increase prices so as to maintain or raise their operating income at a level that all producers identified as reasonable in this industry.

The Tribunal accepts that competition between domestic producers is vigorous. The domestic producers themselves confirmed that they were competing with each other primarily on service, but also on prices and other factors.⁹⁵ However, it is clear that the domestic average selling prices remained above those of imports from the cumulated countries throughout the Tribunal's period of inquiry and that the market strategies of the domestic producers were driven primarily by their respective responses to the dumped and subsidized imports from the cumulated countries⁹⁶ rather than by considerations of competition between domestic producers.

Requests for Exclusions

POSCO, BHP New Zealand, Hadeed and Shanghai Baosteel requested producer exclusions, while Iscor requested a country exclusion for South Africa. In light of the Tribunal's decision that Korea, New Zealand and Saudi Arabia have not caused material injury, it is necessary to address only the requests made by Shanghai Baosteel and Iscor.

The domestic producers argued that, based on the Tribunal's practice in relation to exclusions set out in Inquiry No. NQ-98-001,⁹⁷ none of the exclusionary factors are present in this case. They submitted that even the most common exclusion, a product exclusion, is only granted in exceptional circumstances, such as lack of domestic production. Regarding producer exclusions, the domestic producers submitted that the Tribunal considers the proportion of dumped goods and the impact of the margins of dumping. In respect of country exclusions, they argued that the conditions to grant these are not met, since, in this case, the proportion of dumped goods is very high, the margins of dumping are not insignificant, and all the subject countries contributed to the injury suffered by the domestic industry.

94. Exporter's Exhibit S-02/T-02/U-02, Tab 4 at 35, Administrative Record, Vol. 13.1; *Transcript of Public Hearing*, Vol. 5, 20 July 2001, at 914; *Transcript of Public Hearing*, Vol. 7, 24 July 2001, at 1322.

95. *Transcript of Public Hearing*, Vol. 2, 17 July 2001, at 390; *Transcript of In Camera Hearing*, Vol. 1, 16 July 2001, at 43-45.

96. *Transcript of Public Hearing*, Vol. 1, 16 July 2001, at 247; *Transcript of Public Hearing*, Vol. 4, 19 July 2001, at 698; *Transcript of Public Hearing*, Vol. 5, 20 July 2001, at 883; *Transcript of Public Hearing*, Vol. 6, 23 July 2001, at 1032.

97. *Stainless Steel Round Bar of Sizes 25 mm Diameter up to 570 mm Diameter Inclusive*, (4 September 1998).

It is well established that, pursuant to subsection 43(1) of SIMA, the Tribunal has discretion to grant exclusions, whether based on a country, a product or a specific producer.⁹⁸ However, the Tribunal will only do so in exceptional circumstances.⁹⁹

Shanghai Baosteel referred to the Anti-dumping Tribunal's decision in Inquiry No. ADT-9-81¹⁰⁰ and submitted that it should be granted an exclusion mainly on the basis of its lower margin of dumping and on the non-injurious effect of its exports.

Regarding the request for a producer exclusion made by Shanghai Baosteel, the Tribunal notes that the circumstances that could justify granting a product or producer exclusion are, for example, when an exporter is shipping a specific product that is not produced in Canada.¹⁰¹ In this connection, the Tribunal would consider factors such as whether there is any domestic production of substitutable or competing goods, whether the domestic industry is an "active supplier" of the product or whether it normally produces the product.¹⁰²

The Tribunal is of the view that nothing in the evidence indicates that Shanghai Baosteel manufactures a product which is not made by the domestic industry. Despite the low margin of dumping of Shanghai Baosteel's products, the evidence indicates that almost 60 percent of these goods were dumped. No evidence in support of the existence of exceptional circumstances has been presented.

In addition, the Tribunal does not have sufficient information on the record concerning the commercial practices of Shanghai Baosteel or the corporate relationships between that producer and other Chinese producers to be in a position to consider granting such an exclusion. Moreover, the evidence indicates that Shanghai Baosteel produces goods that are similar to those produced by other Chinese producers and that would not be readily distinguishable from those other goods. Therefore, in light of the evidence that the other two producers in China exported a large volume of dumped products to the Canadian market, the Tribunal is not prepared to grant an exclusion to Shanghai Baosteel.

Iscor submitted that a country exclusion for South Africa should be granted on the basis of the factors set out by the Tribunal in Inquiry No. NQ-99-001.¹⁰³ Iscor listed, among others, the following grounds in support of its request: the low and declining volume of imports from South Africa between 1998 and 2000; the fact that South Africa's prices were the same as the domestic average prices to the service centre sector in the year 2000; the fact that Iscor has only one customer, Macsteel, and that its sales are always made to order; self-imposed restrictions on the volume of its imports; Iscor's decline in production between 1998 and 2000; Iscor's allocation of its production to downstream application; and the focus on countries other than Canada for its export sales.

The Tribunal wishes to clarify that in *Cold-rolled Products*, having found no injury to the domestic industry, it was conducting an analysis of threat of injury and, consequently, was assessing additional factors, such as the evidence of self-imposed restrictions on the volume of exports, the availability of other export markets, and the existence of other incentives to make the resurgence of the dumped imports at injurious levels much less likely. In the present case, these last factors are not germane to considering the

98. *Certain Cold-rolled Steel Sheet* (1994), CDA-93-1904-09 (Ch. 19 Panel) at 54. See, also, *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA).

99. *Certain Hot-rolled Carbon Steel Plate* (27 June 2000), Inquiry No. NQ-99-004 (CITT).

100. *Countertop Microwave Ovens* (30 March 1982), Inquiry No. ADT-9-81.

101. See *Certain Steel Sheet Products*. See also *supra* note 97.

102. *Supra* note 97.

103. *Certain Cold-rolled Steel Sheet Products* (27 August 1999) [hereinafter *Cold-rolled Products*].

requests for exclusions, since the Tribunal has already found that the cumulated countries have caused material injury to the domestic industry and, hence, does not need to address the question of threat of injury from these countries.

The Tribunal notes, also, that Iscor is not the only exporter of the subject goods from South Africa. In this connection, the Tribunal does not have sufficient information on the record concerning the commercial operations of the other South African producers to be in a position to consider granting a country exclusion. Further, no evidence has been presented that the product from South Africa is unique or not commercially available from domestic producers. Consequently, the Tribunal is of the view that Iscor has not convinced the Tribunal that there exist exceptional circumstances in this case to warrant granting a country exclusion to South Africa.

CONCLUSION

Pursuant to subsection 43(1) of SIMA, the Tribunal hereby finds that:

- (a) the dumping of hot-rolled steel sheet products originating in or exported from Korea, New Zealand and Saudi Arabia has not caused material injury or retardation and is not threatening to cause material injury to the domestic industry; and
- (b) the dumping of hot-rolled steel sheet products originating in or exported from Brazil, Bulgaria, China, Chinese Taipei, India, Macedonia, South Africa, Ukraine and Yugoslavia, and the subsidizing of the aforementioned goods originating in or exported from India have caused material injury to the domestic industry.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

Ellen Fry
Ellen Fry
Member