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Dumping and the Canadian Steel Industry

by John D. Allan*

I AM PLEASED TO have an opportunity to contribute to this conference on a subject of continuing interest and concern—the dumping of steel into Canada and the United States.

When we talk about dumping in the context of international steel trade, we should recognize that article VI of the General Agreement on Tariffs and Trade states that “[t]he contracting parties recognize that dumping . . . is to be condemned if it causes or threatens *material injury* to an established industry or materially retards establishment of a domestic industry”¹ in the territory of a contracting party.

It is important, therefore, that we recognize we are talking about injurious dumping. Without this essential element of dumping no action can be taken; indeed, in the minds of some, dumped imports which do not injure are beneficial in that they confer a welfare benefit on consumers. It is also important to recognize that the concept that injury must be observed is central to the application of other protective measures, such as action against subsidized imports or temporary relief from low cost imports.

With the increasing involvement of governments in trade, the question of subsidization has become increasingly important; indeed, it is receiving particular attention in the current GATT multilateral trade negotiations. Similarly, the evolution of many lesser developed countries toward industrial states capable of producing and exporting a variety of products, including steel, at low cost has been going on for some time. Actions taken by the Canadian and other governments with regard to low cost textile goods are indicative of emerging problems in this area. Thus, while significant factors influencing international steel trade continue to emerge, dumping remains a major perennial problem in the world steel industry due to demand-supply conditions and the cost structure of steel producers. Construction and capital goods, both primary markets for steel, are characterized by market cyclicity which is reflected in the demand for steel. When the business cycles of the major industrialized countries become synchronized, as occurred in the first half of this decade, then global steel supply can change from a condition of general shortage to one of massive oversupply in a relatively brief period of time.

High fixed costs, particularly for debt-financed, large scale steel plants, make it vital to maintain capacity-utilization rates. In times of lagging

* President, The Steel Company of Canada, Ltd., Toronto. This paper was delivered at the Canada-United States Law Institute's Conference on Steel Dumping into Canada and the United States, held September 29 & 30, 1978, at the University of Western Ontario, London.

¹ The GATT Antidumping Code was adopted following the Kennedy Round of trade negotiations. The Code's formal title is *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*, found in *Basic Instruments* 15th Supp. (Geneva, 1967).

domestic demand, sales into offshore markets may be welcomed at any price that will contribute to overhead. This situation is compounded when, in many countries due to legislation or contractual agreement, it is not possible to reduce the work force in line with reduced output, and labor then becomes an added element of fixed cost. The net result of market cyclicity and high fixed costs is large fluctuation in the international transaction prices of steel products as well as the adoption of predatory trading practices by exporters in steel surplus nations.

At this point, it might be helpful to pause and summarize a few of the main characteristics of the Canadian steel industry:

- (1) Excluding foundries, there are currently fifteen steel producers, employing directly about 50,000 people and having a combined production capacity of up to nineteen million raw steel tons.
- (2) In 1977, national steel output equalled 14.9 million raw steel tons, placing Canada eleventh among steel producing countries in the world. (See Appendix I for a list of the world's top twelve steel producing countries.)
- (3) Five integrated producers (Stelco, Dofasco, Algoma, Sidbec and Sysco) represent roughly eighty-seven percent of total capacity, the balance being made up by smaller, non-integrated producers. (Appendix II indicates the location of steel plants throughout Canada.)
- (4) The bulk of steelmaking capacity—better than eighty-five percent is privately owned, with government involvement limited to three active producers, namely Sysco in Nova Scotia, Sidbec in Quebec, and Ipsco in Saskatchewan.
- (5) Due to its geographic extent and to the relative absence of non-tariff barriers, the Canadian steel market is vulnerable to imports, particularly in its Western and Eastern regions. Steel imports as a percentage of apparent consumption have averaged 14.5% in the 1970's compared with nearly sixteen percent in the 1960's. Over the past five years, an average forty percent of steel imports have been sourced from the United States, with twenty-five percent each from the EEC and Japan. (See Appendix III.)
- (6) Normally, Canada runs a small negative steel trade balance, but last year, aided by a depreciated dollar, exports exceeded imports by 522,000 tons, or 4.5% of total shipments. A net surplus export position should be recorded again this year.
- (7) Of equal importance, however, is that Canada has a large negative balance in indirect trade of finished steel in the form of manufactured goods. In 1977, there was an \$11.1 billion trade deficit in finished goods, the bulk of which is represented by steel intensive machinery and equipment.

I would like to now refer to Canadian antidumping legislation and procedures thereunder and indicate how this process has been applied in the case

of steel products. The pertinent legislation is the Antidumping Act of 1968² and Regulations thereunder,³ which came into force on January 1, 1969, replacing the antidumping legislation contained in section 6 of the Customs Tariff.⁴ The Act was drafted to reflect the basic concepts and principles of the GATT Antidumping Code.

Under the Antidumping Act, goods are deemed to have been dumped if the "normal value" of the goods exceeds the export price of the goods, with the margin of dumping being the amount by which the normal value exceeds the export price.⁵ Antidumping duties equal to the margin of dumping may be levied when it can be established that dumping "has caused, is causing or is likely to cause material injury to the production in Canada of like goods, or has materially retarded or is materially retarding the establishment of the production in Canada of like goods."⁶

One of the chief problems with the antidumping procedural system has been the time and expense involved, although administrative changes have recently been made to expedite the process. Briefly, the procedure is as follows. After initial enquiries, usually undertaken as a result of complaints by a Canadian producer, the Deputy Minister of National Revenue, Customs and Excise, issues a formal notice of investigation if in his opinion there is evidence of both dumping and injury.⁷ The question of dumping is investigated by the Antidumping Directorate of the Department of National Revenue, and if a preliminary determination of dumping is reached, provisional duties are imposed⁸ and the case is referred to the independent Antidumping Tribunal for public hearings on the question of injury.⁹ The Tribunal is required to make its finding within ninety days,¹⁰ and in the event that material injury is found to have been caused, the Deputy Minister must make a final determination of dumping and the margin of dumping.¹¹ There is a right of appeal to the Tariff Board within sixty days from the date of the decision.¹² In the past, this whole process has taken from one to two years, an undue period of time when international trading conditions change so rapidly. An action concerning the dumping of stainless flat rolled steel and alloy tool steel bars,¹³ initiated in 1972, illustrates how the outcome can be

² Antidumping Act, R.S.C. 1970, c.A-15, as amended by R.S.C. 1970 (2d Supp.) c.1 & c.10, S.C. 1970-71-72, c.43 & c.63.

³ Antidumping Regulations, SOR/69-18, as amended by SOR/69-123, SOR/71-126, SOR/72-191, SOR/72-369, SOR/72-370, SOR/74-581.

⁴ Customs Tariff, R.S.C. 1970, c.C-41, § 6.

⁵ Antidumping Act, R.S.C. 1970, c.A-15, § 8, as amended by R.S.C. 1970 (2nd Supp.) c.1 & c.10, S.C. 1970-71-72, c.43 & c.63.

⁶ *Id.* § 3.

⁷ *Id.* § 13(1).

⁸ *Id.* § 15(1)(a).

⁹ *Id.* § 16(1).

¹⁰ *Id.* § 16(3).

¹¹ *Id.* § 17(1).

¹² *Id.* § 19(1).

¹³ Stainless flat rolled steels originating in or exported from Sweden and alloy tool steel bars, not including high speed, AISI P-20 mould steel and die blocks, originating in or exported from Sweden and Austria (ADT-5-73), September 18, 1973.

affected by a lengthy process. In this instance, a notice of investigation was issued in April 1972, but it was not until June 1973, fourteen months later, that a preliminary determination of dumping was made and the case referred to the Antidumping Tribunal. By this time steel markets had strengthened significantly, and in an environment of maximum production utilisation the Tribunal found no material injury and terminated the proceedings. This outcome was cause for concern since it suggested that the industry was vulnerable to sporadic periods of dumping with no effective recourse to discourage this practice in the future.

Until recently, few antidumping cases concerning steel products were prosecuted under the Antidumping Act. The effectiveness of the legislation was felt to be limited by the complexity of the information required to be filed by the complainant, by the difficulty of providing evidence of dumping and of material injury, and by the time, expense and uncertainty involved in the process. However, several recent cases have been handled with relative dispatch, thereby restoring a measure of faith on the part of domestic steel producers in the antidumping process. Low priced imports of steel flowing into Canada in 1976 caused complaints to be registered by the industry concerning possible dumping of three categories of steel product; carbon steel bar size angles,¹⁴ stainless plate and sheet,¹⁵ and wide flange beams.¹⁶ In each case a notice of investigation was issued in March 1977, and a preliminary determination of dumping was made within six to seven months. Thus, within a comparatively short period of time provisional duties were imposed, providing the relief sought by Canadian producers of these product lines and also serving notice to others that effective dumping action would be taken. Subsequently, hearings by the Antidumping Tribunal resulted in findings of material injury, a final determination of dumping was made and antidumping duties were established.

A potentially dangerous precedent was established when, in response to complaints registered by the government of the province of British Columbia and several steel fabricators, the federal cabinet announced in February 1978, the remission of dumping duties collected on wide flange beams imported into Canada since September 1977, and the undertaking to continue the remission through June of 1978. It was the industry's opinion that this action was totally unjustified and served to undermine the protection provided by antidumping legislation. To the degree that it encouraged even larger volumes of dumped imports to beat the expiry date of the remission order, it added to the intensity and duration of the material injury to Canadian steel producers. Fortunately, the implications of this action were recognized by the govern-

¹⁴ Hot rolled carbon steel bar size angles, having each leg less than 3 inches in length, originating in or exported from Japan (ADT-13-77), December 30, 1977.

¹⁵ Stainless steel plate originating in the Federal Republic of Germany, Japan and the Republic of South Africa and stainless steel sheets, not including cold rolled sheet in grades AISI 409, AISI 410S and AISI 434, originating in the Federal Republic of Germany and Japan (ADT-14-77), January 13, 1978.

¹⁶ Wide flange steel shapes, etc., originating in the United Kingdom, France, Japan, the Republic of South Africa, Belgium and Luxembourg (ADT-12-77), December 29, 1977.

ment and the remission order was allowed to expire on schedule, and assurance was given that the temporary remission program would not be extended to other products.

Currently, special Canadian antidumping procedures have been established for steel products as a result of extraordinary measures recently taken by the United States Government and the European Commission to assist in eliminating injurious steel imports and restoring order to their domestic industries. In the United States, the Treasury Department has instituted the highly controversial reference or trigger price mechanism. In essence, trigger prices are designed to assist in the elimination of unfair competition from imports by accelerating antidumping action. Steel imported at prices below the published "trigger price" may be subject to accelerated or "fast track" antidumping investigation unless the importer can show within thirty days' time that there is no justification for such action.

Trigger prices were brought into force in the United States on February 21, 1978, and to date the Canadian steel industry has experienced no undue difficulty in complying with the regulations. From our viewpoint, the trigger price mechanism is a good start in establishing speedy antidumping action in the United States. There is still a great deal of debate on the methodology of establishing the trigger price level, but in the final analysis, a system whereby antidumping cases are processed within a short time frame is essential and much more equitable than import quotas which penalize current and future fair competition.

In similar fashion, the European Commission, by implementing the Davignon Plan, has acted to restore price stability in European steel markets by setting price minimums for domestic producers and, effective January 1, 1978, announcing a basic price system for imports. Under this system, steel imported at less than the basic price is subject to automatic antidumping investigation and the immediate imposition of provisional antidumping duties. The basic price system is intended to be a temporary measure until voluntary restraint agreements have been completed with the major steel exporters to the European Community.

In light of the measures taken by the United States and the European Community, there was considerable concern within the Canadian steel industry and the Canadian government that steel diverted from European and United States markets might flood into Canada, causing a drastic disruption of markets. Recognizing that normal antidumping procedures would be inadequate in such circumstances, the Minister of National Revenue announced early in 1978 the formation, within the Antidumping Directorate, of a special Steel Task Force. The Task Force is to monitor imports of steel into Canada and, where it is deemed to be warranted, initiate and conduct accelerated antidumping investigations which are to result in determinations respecting the application of provisional duties within a three month time period. Needless to say, the industry is encouraged that the government has seen fit to take measures to ensure that Canada does not become the repository of surplus international steel looking for a viable market.

Many developing countries (South Korea, Brazil, Mexico, Iran, etc.) have announced ambitious steel expansion projects as an integral part of their national industrialization plans. Much of this capacity may be justified on the basis of import displacement; however, to the degree that excess steel capacity is installed to serve export markets, the potential for damaging trade practices in periods of weak steel demand is increased. At this time, I think it is fair to say that Canadian steel producers are generally satisfied that existing antidumping legislation can provide adequate protection, provided the provisions are vigorously enforced. Procedures have been streamlined and it is hoped that the time deadlines will not be relaxed as international steel markets recover.

In my opinion, effective antidumping action should be preferred to other approaches, such as quotas, because only one determination arises, namely the imposition or non-imposition of dumping duties. It is, therefore, free from political and other encumbrances, such as the requirement that a contracting party to GATT taking escape clause action under article XIX, offer compensation to the affected trading parties. However, the fact that a number of recent private and governmental studies concerning the dumping of steel in the United States market reached contradictory conclusions is indicative of the complexity of the issue. Since much of the problem is caused by conflicting cost and price data, there would seem to be reason to support the proposal being advanced through the OECD that there be established a permanent committee to compile accurate data on national steel industries and to monitor world supply and demand conditions in steel markets. Such a body could improve the stability of international steel markets by establishing common policies to encourage fair trade, by providing a forum for consultation and settlement of disputes, and by encouraging the emphasis on domestic markets in justifying investment in steel growth.

While the subject of this conference is dumping, it is, of course, only one of a number of unfair trade practices prevalent in international markets. In practice, for example, it makes little difference to the domestic producer whether unreasonably low import prices are due to dumping or are due to some form of subsidy granted to the exporter. In this regard, a matter of potential concern to the Canadian steel industry is competition from government owned or controlled industries which now represent approximately seventy-five percent of world steel production capacity. Government owned firms tend to be shielded from the discipline of the marketplace and, characteristically, are treated as instruments of national policy. Employment, foreign exchange earnings, etc., will often take priority over profitability. Government financial assistance or subsidization may take many forms such as capital grants, guaranteed loans at preferential rates, exemption from taxation or direct underwriting of losses. Although a procedure is in place to provide for countervailing duties on products directly or indirectly subsidized for the export market, it has, as yet, not been applied to steel imports in Canada. One outcome of the Tokyo Round of multilateral negotiations is expected to be the adoption of a code governing subsidies and countervailing

duties, which could prove to be an international agreement equal in importance to the antidumping code adopted after the Kennedy Round of negotiation.

I now offer some observations as a practicing executive in the steel business.

Dumping of steel always has its roots in excess capacity, be it related to the situation at an individual company or a number of companies within one or more countries. Dumping of steel over an extended period or in large magnitude over shorter periods does not contribute to the financial well-being of any company involved in the practice, be it government owned or privately owned. Selling below cost or even on a contribution basis cannot be justified in the steel industry by any stretch of the imagination if the capital intensive investments involved (including those related to environmental controls) are to be justified on a sound economic basis. Thus, the corporate planners of every steel company in the Western world are on the spot and must recognize that markets cannot be bought and, more than ever, must be concerned with the supply-demand equation as it relates to their domestic markets as well as to international markets. Antidumping safeguards must continue to exist in the United States and Canada because there will be steel companies, particularly those owned by governments in various countries, whose expansion would envision participation in world steel markets well beyond their domestic base, no matter what the cost. Current trade problems in steel, however, will, we hope, minimize this type of approach.

The interesting question is whether or not corporate steel planners and decision-makers will be able to get the supply-demand curve to the point where it can be maintained within the limits that avoid large scale inflation of steel prices through constant shortages on one hand, and large scale dumping through constant excess on the other. This is a tall order, particularly when economic cycles are difficult to predict. If a steady momentum in economic growth, albeit slow, can be maintained in the Western world, then I believe steel has a chance of getting back into balance by the mid-to-late 1980's. There are a few factors working in favour of this:

- (1) Shutting down of obsolete plant is now much more acceptable. Large scale, modern, integrated steel plants, particularly as in Japan, have illustrated what the industry can do relative to improved costs, environmental control and quality. These plants are setting the technological base which will be required to remain competitive.
- (2) Financial requirements to construct new green-field, integrated, world-competitive steel plants are of a very high magnitude as compared to the past. This high capital cost, in addition to inflation and recent poor earnings records of steel companies, mitigates against rapid expansion of new capacity from a financial point of view.
- (3) Steel is volume-sensitive and the breakeven point is very high relative to capacity. Many expansion plans are on the back-burners awaiting greater utilization of present plant that would bring about better financial return.

- (4) Market growth for the many various steel products is undergoing readjustment and is becoming much more difficult to predict with certainty; a problem which was not the case in the past.

Some International Iron and Steel Institute charts produced for the 1977 Annual Meeting illustrate my points graphically. (See Appendices IV-IX.)

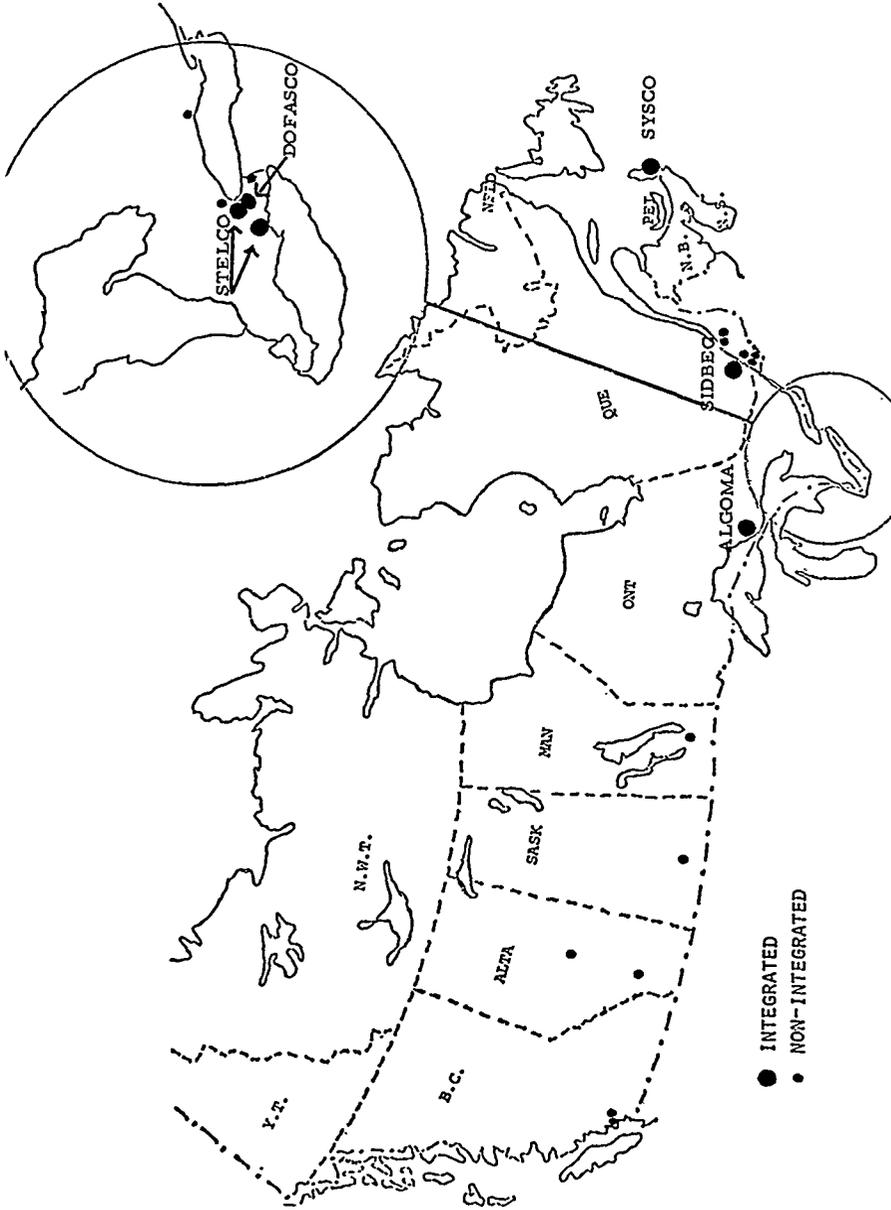
In conclusion, the extent of dumping is a function of the supply-demand curve of world steel. To prevent world steel trade problems and constant anti-dumping actions in the United States and Canada, the excess of supply must be brought down to a more reasonable figure. Responsibility for achieving this lies primarily with the planners and decision-makers in the steel industry, who must relate to the new realities and eliminate any cavalier approach to market availability. Expansion of steelmaking facilitates in any country must be based on demand that can be achieved primarily from the domestic market of that country and from any demand that can be achieved in international steel trade through fair and competitive practices. Disregard for such principles is irresponsible activity in my opinion, and should call for some penalty. That is why antidumping legislation and actions taken thereunder are good backstops in maintaining the planning discipline that is vital if reasonable orderliness is to be achieved in international steel trade, and if the steel industry in the individual countries of the Western world is to remain viable and efficient.

APPENDIX I

1977 RAW STEEL PRODUCTION BY COUNTRY (million tons)

USSR	161.7
USA	124.7
Japan	112.9
West Germany	43.0
China	25.8
Italy	25.7
France	24.4
United Kingdom	22.6
Poland	19.7
Czechoslovakia	16.6
Canada	14.9
Romania	12.6

APPENDIX II
STEEL PLANT LOCATIONS



APPENDIX III

CANADIAN STEEL
(thousand net tons)

<u>YEAR</u>	<u>IMPORTS</u>	<u>EXPORTS</u>	<u>IMPORTS AS % OF CONSUMPTION</u>	
1958	971	275	23.9%	
1959	910	362	18.2%	(a)
1960	836	755	18.9%	
1961	670	526	14.1%	
1962	625	609	12.2%	(b)
1963	719	799	12.3%	
1964	1,137	784	16.1%	
1965	1,736	610	21.1%	(a)
1966	1,221	673	15.9%	
1967	1,165	751	16.1%	
1968	1,094	1,103	13.4%	(b)
1969	1,600	707	18.2%	(a) - Stelco strike year
1970	1,076	1,310	12.2%	(b)
1971	1,574	1,210	16.4%	
1972	1,761	1,174	16.9%	(a)
1973	1,861	990	15.8%	
1974	2,739	1,011	20.7%	
1975	1,340	861	12.3%	
1976	1,136	1,426	10.8%	(b)
1977	1,207	1,729	11.1%	

(a) Canadian supply shortage vs. domestic demand.

(b) Canadian supply in balance or in excess of domestic demand.

APPENDIX IV

WESTERN WORLD APPARENT STEEL CONSUMPTION
(year to year percentage change)

	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977 (est.)</u>
Western World total	+ 14.2	- 0.7	- 16.0	+ 5.6	+ 3.8
of which:					
Industrialized countries,	+ 14.4	- 4.0	- 18.8	+ 6.9	+ 2.6
Developing countries	+ 12.4	+ 25.1	+ 1.0	+ 0.3	+ 9.8

APPENDIX V

INDUSTRIALIZED COUNTRIES APPARENT STEEL CONSUMPTION
(year to year percentage change)

	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977 (est.)</u>
North America	+ 13.6	- 2.9	-23.4	+ 10.8	+ 8.8
Oceania	+27.8	+14.7	-32.7	+ 4.4	+ 5.8
EEC	+ 9.1	- 4.5	-18.0	+13.4	- 3.2
Europe	+ 9.4	+ 7.2	-14.3	+ 0.2	+ 2.7
Japan	+26.1	-12.2	-14.0	- 3.6	+ 0.6
South Africa	+14.1	+ 8.1	+18.8	-23.3	-17.6
Canada	+13.3	+11.5	-17.0	- 3.6	+ 2.5

APPENDIX VI

WESTERN WORLD APPARENT STEEL CONSUMPTION
(million metric tons)

	<u>1977 (est.)</u>	<u>1978 (forecast)</u>	<u>% change</u>
USA	140	145	+ 3.6
Japan	66	68	+ 3.0
EEC	110	114	+ 3.6
Other	<u>133</u>	<u>144</u>	<u>+ 8.3</u>
<u>Total</u>	449	471	+ 4.9

APPENDIX VII

ADDITIONAL STEEL CAPACITY
TOTAL CAPACITY ESTIMATES:
WESTERN WORLD
(million metric tons)

1973			500
	4 years	+ 65	
1977			625
	8 years	+ 75	
1985			700
	annual growth rate		
	1.5%		

APPENDIX VIII

ADDITIONAL STEEL CAPACITY
(million metric tons)

Munich estimate (1974 to 1985)	240
Current estimate (1974 to 1985)	142 (-41%)

of which:

Already installed	
(1974 to 1977) (4 years)	64.5
Projected	
(1978 to 1985) (8 years)	77.5

APPENDIX IX

ADDITIONAL STEEL CAPACITY
PROJECTED ADDITIONS:
WESTERN WORLD 1978 TO 1985
(million metric tons)

EEC	9.1
Other Western Europe	4.9
North America	9.1
Latin America	17.4
Africa	1.6
Middle East	6.7
Far East	26.9
Oceania	<u>1.8</u>
<u>Total</u>	77.5