

Ottawa, Wednesday, December 16, 1998

Reference No.: RE-98-001

IN THE MATTER OF a reference, under paragraph 34(1)(b) of the *Special Import Measures Act*, made by GIZEH Raucherbedarf GmbH, exporter, to the Canadian International Trade Tribunal;

AND IN THE MATTER OF an advice rendered by the Canadian International Trade Tribunal under section 37 of the *Special Import Measures Act*;

RESPECTING the dumping in Canada of filter tipped cigarette tubes, excluding those which bear the trademark or brand name of a finished or ready-made cigarette, originating in or exported from France and the Federal Republic of Germany.

ADVICE

The Canadian International Trade Tribunal hereby concludes that the evidence before the Deputy Minister of National Revenue discloses a reasonable indication that the dumping of filter tipped cigarette tubes, excluding those which bear the trademark or brand name of a finished or ready-made cigarette, originating in or exported from France and the Federal Republic of Germany has caused material injury or is threatening to cause material injury to the domestic industry.

Patricia M. Close
Patricia M. Close
Presiding Member

Raynald Guay
Raynald Guay
Member

Richard Lafontaine
Richard Lafontaine
Member

Michel P. Granger
Michel P. Granger
Secretary

Date of Advice: December 16, 1998

Tribunal Members: Patricia M. Close, Presiding Member
Raynald Guay, Member
Richard Lafontaine, Member

Research Director: Peter Welsh
Research Manager: John O'Neill
Researcher: Dominique Laporte

Counsel for the Tribunal: Shelley Rowe
Philippe Cellard

Ottawa, Wednesday, December 16, 1998

Reference No.: RE-98-001

ADVICE rendered under section 37 of the *Special Import Measures Act* respecting:

**FILTER TIPPED CIGARETTE TUBES, EXCLUDING THOSE WHICH BEAR
THE TRADEMARK OR BRAND NAME OF A FINISHED OR READY-MADE
CIGARETTE, ORIGINATING IN OR EXPORTED FROM FRANCE AND
THE FEDERAL REPUBLIC OF GERMANY**

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member
RAYNALD GUAY, Member
RICHARD LAFONTAINE, Member

STATEMENT OF REASONS

BACKGROUND

On October 19, 1998, on the basis of a properly documented complaint filed by CTC Tube Company of Canada Inc. (CTC), the Deputy Minister of National Revenue (the Deputy Minister) initiated an investigation into the alleged injurious dumping in Canada of filter tipped cigarette tubes, excluding those which bear the trademark or brand name of a finished or ready-made cigarette, originating in or exported from France and the Federal Republic of Germany.

On November 16, 1998, pursuant to paragraph 34(1)(b) of the *Special Import Measures Act*¹ (SIMA), counsel for GIZEH Raucherbedarf GmbH (GIZEH) referred to the Canadian International Trade Tribunal (the Tribunal) the question of whether the evidence before the Deputy Minister disclosed a reasonable indication that the dumping of the subject goods originating in or exported from France and the Federal Republic of Germany had caused material injury or retardation or was threatening to cause material injury to the domestic industry.

Section 34 of SIMA requires the Tribunal to provide advice on whether the evidence before the Deputy Minister discloses a reasonable indication that the dumping of the goods under investigation has caused injury or retardation or is threatening to cause injury. Paragraph 37(b) of SIMA provides that the Tribunal shall render its advice on the question without holding hearings, on the basis of the information that was before the Deputy Minister when he reached his decision or conclusion on that question. The Tribunal shall render its advice not later than 30 days after the reference is made.

The Deputy Minister defined the subject goods as follows:

filter tipped cigarette tubes, excluding those which bear the trademark or brand name of a finished or ready-made cigarette, originating in or exported from France and the Federal Republic of Germany.

1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47, s. 164.

The industry standard in Canada for regular length filter tipped cigarette tubes is 74 mm, while the standard for king size filter tipped cigarette tubes is 84 mm.

The filter consists of a plug of crimped acetate tow and a filter wrap made from paper with a minimum basis weight of 25.0 g/m². The paper tube portion is generally made from paper with a minimum basis weight of 23.8 g/m². The cigarette paper may be treated with a chemical such as citrate or phosphate to facilitate either a fast burn rate or a slow burn rate. The cigarette tubes generally appear white in colour, although the portion covering the filter may be made from paper which is either white or tan hue (solid or speckled).

Cigarette tubes are used by consumers to make finished cigarettes by inserting fine cut tobacco into the tubes, usually with the aid of a small machine or injector. The allegedly dumped imports are sold in boxes of 200 tubes under the brand name "Patriarch" or in boxes of 100 tubes under the brand name "Silver Tip." The boxes are generally packaged for wholesale distribution in cases containing 10,000 tubes in total, that is, 50 boxes of 200 tubes or 100 boxes of 100 tubes.

The complaint filed by CTC relates only to the distinct class of goods produced and sold by CTC, i.e. house brand or private label cigarette tubes. Cigarette tubes with the brand name of finished or ready-made cigarettes are made by producers such as Efka Canada Ltd., RJR MacDonald Inc. and Imperial Tobacco Limited, Division of Imasco Limited. These cigarette tubes are used in the production of ready-made cigarettes or sold to consumers that make their own cigarettes. These brand name cigarette tubes are sold at premium price levels compared to private label or house brand cigarette tubes. Accordingly, the Deputy Minister's investigation does not include cigarette tubes which carry the trademarks or brand names of finished or ready-made cigarettes sold in Canada, such as "Player's," "Export 'A'" or "Rothmans."

The Deputy Minister estimated margins of dumping on sales to Canada during the period from July 1, 1997, to June 30, 1998. A comparison of the estimated normal values with the estimated export prices indicated that all of the imported goods reviewed were dumped. The weighted average margin of dumping was 75 percent of the estimated normal value of the goods.

The information before the Deputy Minister with respect to injury, when he made the decision to initiate the investigation, included a confidential complaint filed by CTC and an analysis of the complaint prepared by officers of the Department of National Revenue (Revenue Canada). CTC's complaint contained: (1) data on the domestic market for house brand and private label filter tipped cigarette tubes; (2) CTC's market share and the market share held by imports from GIZEH for 1996, 1997 and the first five months of 1998; (3) allegations of sales offers and price erosion suffered on sales to several specific customers; (4) information detailing reduced financial performance; and (5) information concerning production capacity and capacity utilization.

The market for house brand and private label filter tipped cigarette tubes consists of sales by CTC and Dynasty Tobacco Inc. from their domestic production, sales of cigarette tubes imported from the United States and sales of the subject cigarette tubes. The information available to the Deputy Minister indicated that the value of the market for house brand and private label filter tipped cigarette tubes was approximately \$7 million in 1997, an increase of approximately 7 percent over the value of the market in 1996.

Imports of the subject house brand and private label filter tipped cigarette tubes began entering Canada in August 1996 through Import-Export Multi-Concept Inc. (Multi-Concept). These goods were offered for sale to retailers at prices below the lowest prices for CTC house brand cigarette tubes at that time.

T&R Tubes Canada (T&R Tubes) started operations in May 1997 and appeared to succeed Multi-Concept in importing the subject cigarette tubes from GIZEH. CTC stated that these low-priced imports caused it to lower the price of its house brand and private label cigarette tubes to its customers in Canada. Imports of the subject goods increased significantly in 1997 compared to 1996, then decreased during the first five months of 1998. In its complaint to Revenue Canada, CTC provided a list of several customers, the brands of products sold to those customers and the selling prices for those brands. This information indicated that the selling prices declined between 14 and 20 percent during the period from April 1996 to June 1998. CTC also provided overall sales data which indicated that its average revenue per unit of sales of domestically produced cigarette tubes decreased by over 15 percent between August 1996 and June 1998.

In addition to the injury caused by price erosion, CTC claims that it lost sales to customers for which it did not reduce its selling prices. The lower selling prices and lost sales volume resulted in reduced gross profits in CTC's 1997 fiscal year² and the first three quarters of the 1998 fiscal year, compared to the 1996 fiscal year.³ CTC also cited underutilization of production capacity, lower return on investment and reduced cash flow as other indicators of the injury that it has suffered due to competition from low-priced dumped cigarette tubes.

The Tribunal is of the view that the information contained in the Deputy Minister's file provides a reasonable indication that CTC has suffered injury.

With regard to the issue of causality, CTC maintains that the low-priced competition began in August 1996, when Multi-Concept began importing the subject cigarette tubes. Low-priced imported cigarette tubes remained available in the Canadian market through Multi-Concept and, subsequently, T&R Tubes. Thus, the information in the Deputy Minister's file appears to connect the beginning of imports of the subject goods with the onset of price erosion and lost sales experienced by CTC. CTC's strategy of reducing prices to maintain sales appears to have reduced the flow of the subject imports, at least for the first five months of 1998. There is an apparent correlation between the increased presence of the subject imports in the Canadian market and the price erosion, lost sales and reduced financial performance experienced by CTC. In the Tribunal's view, this apparent correlation provides a reasonable indication that the dumping of the subject goods has caused or is threatening to cause injury. It is only through an inquiry, however, that the Tribunal will be able to explore fully the following questions: what are the like goods; what is the domestic industry; and has that domestic industry suffered or could it suffer injury and is there a causal link between the injury and the dumping? If it is called upon to inquire into this matter under section 42 of SIMA, the Tribunal will also examine the effects of other factors on industry performance.

On the basis of the information before it, the Tribunal concludes, pursuant to section 37 of SIMA, that the evidence discloses a reasonable indication that the dumping of filter tipped cigarette tubes, excluding those which bear the trademark or brand name of a finished or ready-made cigarette, originating in or exported from France and the Federal Republic of Germany has caused material injury or is threatening to cause material injury to the domestic industry.

Finally, the Tribunal notes that the subject goods are described as originating in or exported from France and the Federal Republic of Germany. The information before the Deputy Minister, which was reviewed by the Tribunal, indicates that the subject goods originate in France and are exported from the

2. CTC's fiscal year runs from October 1 to September 30.
3. Confidential Complaint to Revenue Canada, Appendix 2.

Federal Republic of Germany, i.e. the “goods” whether from France or the Federal Republic of Germany are one and the same goods. The Tribunal is satisfied that, for the purposes of sections 34 and 37 of SIMA, the evidence discloses a reasonable indication that the dumping of “the goods” in respect of which the Deputy Minister has caused the investigation to be initiated has caused or is threatening to cause injury. If the matter proceeds to an inquiry under section 42 of SIMA, however, the Tribunal will need to consider the question of what, in the circumstances, would be the scope of any finding of injury or threat of injury in respect of the subject goods as described by the Deputy Minister.

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