

Ottawa, Friday, October 13, 1989

Inquiry No.: NQ-89-002

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

BRASS REPLACEMENT KEY BLANKS ORIGINATING IN OR EXPORTED FROM ITALY AND PRODUCED BY OR ON BEHALF OF SILCA S.p.A. OF ITALY, ITS SUCCESSORS AND ASSIGNS

FINDING

The Canadian International Trade Tribunal has conducted an inquiry, under the provisions of subsection 42(1) of the *Special Import Measures Act*, consequent upon the issue by the Deputy Minister of National Revenue for Customs and Excise of a preliminary determination of dumping dated June 15, 1989, and of a final determination of dumping dated September 13, 1989.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Tribunal hereby finds that the dumping in Canada of brass replacement key blanks originating in or exported from Italy and produced by or on behalf of Silca S.p.A. of Italy, its successors and assigns, excluding "Color Plus" brass replacement key blanks, has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

John C. Coleman

John C. Coleman
Member

Kathleen Macmillan

Kathleen Macmillan
Member

Robert J. Martin

Robert J. Martin
Secretary

The statement of reasons will be issued within 15 days.



Ottawa, Monday, October 30, 1989

Inquiry No. NQ-89-002

BRASS REPLACEMENT KEY BLANKS ORIGINATING IN OR EXPORTED
FROM ITALY AND PRODUCED BY OR ON BEHALF OF SILCA S.p.A. OF
ITALY, ITS SUCCESSORS AND ASSIGNS

Special Import Measures Act - Brass replacement key blanks originating in or exported from Italy - Complainant sole Canadian producer - Margin of dumping 45 percent of normal value - Whether importation of dumped key blanks has caused, is causing or is likely to cause material injury to Canadian production of like goods or whether injury is due to poor delivery and service performance by the complainant - Whether material injury in the form of lost sales, price suppression, declining production and reduced profits.

DECISION: The Canadian International Trade Tribunal finds that the dumping of the subject goods has caused, is causing and is likely to cause material injury to Ilco Unican Inc.'s production in Canada of like goods. The increase in imports of the subject goods at dumped prices has caused Ilco Unican Inc. significant lost sales and profits. There is a likelihood of this injury being compounded in the future through price suppression, reduced production, lower employment and/or greater underutilization of capacity. An exclusion is granted for "Color Plus" key blanks as no comparable product is made in Canada.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	September 18, 1989
Date of Finding:	October 13, 1989
Date of Reasons:	October 30, 1989
Panel Members:	Arthur B. Trudeau, Presiding Member John C. Coleman, Member Kathleen Macmillan, Member
Director of Research:	Réal Roy
Research Manager:	Douglas Cuffley
Research Officer:	John O'Neill
Statistical Officer:	Robert Larose
Counsel for the Tribunal:	Donna Mousley
Registration and Distribution Clerk:	Molly C. Hay
Participants:	Peter Clark and Chris Hines for Ilco Unican Inc., Montréal, Quebec (Complainant) Richard G. Dearden and John P. O'Toole for Silca S.p.A., Italy (Exporter) Milos Barutciski for Klassen Bronze Limited, New Hamburg, Ontario (Importer)

Witnesses:

Aaron M. Fish, Chairman of the Board
Unican Security Systems Ltd.

Eddy Rosenberg, C.A., Vice-President,
Finance
Unican Security Systems Ltd.

Doug Straus, Product Manager
Home Hardware Stores Limited

Massimo Bianchi, Managing Director
Silca S.p.A.

Stewart Scoble, Managing Director
Silca Key Services Limited

Connie Klassen, Vice-President
Things Engraved/National Key of
Canada Ltd.

Don O'Shea, President
Mister Minit Canada Inc.

Larry Margets, General Manager
House of Knives Limited

James A. Bridge, President
Klassen Bronze Limited

Address all communications to:

The Secretary
Canadian International Trade Tribunal
20th Floor
Journal Tower South
365 Laurier Avenue West
Ottawa, Ontario
K1A 0G7



Ottawa, Monday, October 30, 1989

Inquiry No.: NQ-89-002

IN THE MATTER OF a finding of the Canadian International Trade Tribunal made on October 13, 1989, pursuant to subsection 43(1) of the *Special Import Measures Act* respecting:

BRASS REPLACEMENT KEY BLANKS ORIGINATING IN OR EXPORTED FROM ITALY AND PRODUCED BY OR ON BEHALF OF SILCA S.p.A. OF ITALY, ITS SUCCESSORS AND ASSIGNS

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
 JOHN C. COLEMAN, Member
 KATHLEEN MACMILLAN, Member

STATEMENT OF REASONS

SUMMARY

The Canadian International Trade Tribunal (the Tribunal), in this inquiry, must determine whether the dumping of brass replacement key blanks by Silca S.p.A. (Silca) of Italy has caused, is causing or is likely to cause material injury to the production in Canada of like goods. In its investigation, Revenue Canada found that the margin of dumping by Silca between January 1988 and March 1989 was in the order of 45 percent of the normal value.

The complainant, Ilco Unican Inc. (Ilco) of Montréal, is the sole Canadian producer of brass replacement key blanks and accounts for approximately one-half of total domestic sales. It claims material injury in the form of lost sales, price suppression, declining production and reduced profits.

The Tribunal sees a clear causal link between the dumping of key blanks by Silca since early 1988 and the injury to Canadian production. Ilco's loss to Silca of sales representing some three million key blanks per year was primarily attributable, in the Tribunal's view, to Silca's low price offerings and not to delivery and service factors as argued by the exporter and importer. The Tribunal observes that Ilco's service facilities far surpass those of Silca, which covers the Canadian market from a sales office in London, England.

In determining whether the injury was material, the Tribunal recognizes that, even after the dumping began, Ilco succeeded in increasing its overall sales, that it was able to maintain or even increase its prices, and that its loss of sales to Silca's product was largely offset by increased sales to other accounts. Nonetheless, the Tribunal finds that the dumping caused Ilco to lose orders which accounted for about 15 percent of Ilco's total production for domestic consumption and that the corresponding lost profits roughly equalled its average annual profits in the previous three years from key blank production sold domestically. The Tribunal, therefore, considers that the past and present injury is material.

The Tribunal also considers that there is a likelihood of material injury in the future. Imports from Silca tripled in 1988 over the average of the previous three years, resulting both in increased sales and a sizeable inventory accumulation of dumped goods. This latter factor, combined with little indication that the dumping will cease, could give rise to further lost sales and profits as well as other forms of material injury such as price suppression, employment losses and greater underutilization of capacity.

The Tribunal excludes from its finding of past, present and future material injury the Silca line of translucent plastic-coated "Color Plus" keys because no directly comparable product is made in Canada.

CONDUCT OF THE INQUIRY

The Tribunal, further to a Notice of Commencement of Inquiry issued on June 19, 1989, conducted an inquiry under the provisions of subsection 42(1) of the *Special Import Measures Act* (the Act) respecting brass replacement key blanks originating in or exported from Italy and produced by or on behalf of Silca S.p.A. of Italy, its successors and assigns. The inquiry follows the issue by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) of a preliminary determination of dumping dated June 15, 1989, and a final determination of dumping dated September 13, 1989.

The Notices of Preliminary and Final Determinations of Dumping were published in Part I of the Canada Gazette of July 1, 1989, and September 23, 1989, respectively. The Tribunal's Notice of Commencement of Inquiry was also published in Part I of the Canada Gazette of July 1, 1989.

As part of the inquiry, the Tribunal sent detailed questionnaires to the Canadian manufacturer and selected importers of the subject goods, requesting production, financial and market information, as well as other information, covering the period January 1985 to June 30, 1989. From the replies to questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports covering that period, which is the period of review in this inquiry. The Deputy Minister's investigation into dumping covered importations of the subject goods between January 1, 1988, and March 31, 1989.

The record of this inquiry consists of all Tribunal exhibits, including the public and confidential replies to questionnaires, all exhibits filed by the parties at the hearing, as well as the transcript of all proceedings. All public exhibits were made available to the parties and protected exhibits, to independent counsel only.

Public and *in camera* hearings were held in Ottawa starting on September 18, 1989. The participants, Ilco, the complainant, Silca, the named exporter, and Klassen Bronze Limited (Klassen), a major importer of Silca products, were represented by counsel at the hearing. In addition, counsel for Silca called witnesses from National Key of Canada Ltd., Mister Minit Canada Inc. (Mister Minit) and House of Knives Limited.

The Tribunal also called a witness, a product manager from Home Hardware Stores Limited (Home Hardware), a large distributor of the subject key blanks, to testify on the marketing and purchasing of key blanks.

A finding was issued by the Tribunal on October 13, 1989. These are the reasons for that finding.

THE PRODUCT

The product which is the subject of the inquiry is defined in the Deputy Minister's preliminary determination of dumping as brass replacement key blanks originating in or exported from Italy and produced by or on behalf of Silca S.p.A. of Italy, its successors and assigns.

A replacement key blank is a product used for the duplication of keys. Major key blank manufacturers make thousands of different profiles¹ to match the keyway of specific locks. Although key blanks may have different model numbers depending on the particular producer, schedules are available which permit a producer's keys, whether imported or domestic, to be matched to the specifications of a particular lockset. Thus, imported and domestically produced blanks may be easily substituted for one another in most instances. However, most producers supply a range of low volume key blanks, sometimes referred to as "oddball" key blanks, some of which may not always be obtainable from more than one source because they are produced for a lock particular to a specific market or because the demand for a certain key blank is not sufficient to warrant production by a second supplier.

In Canada, key blanks are manufactured in brass, nickel silver, steel and die-cast zinc. However, the vast majority of key blanks sold for the Canadian replacement market are made of brass and generally have a nickel finish. In addition, many brass replacement key profiles are available with rubber or plastic heads, or with color-coded heads for easier identification of keys. Ilco's colored key, the "Unikis," is a two-part colored key which must be assembled by a store clerk using a special tool; on the other hand, Silca's colored key, the "Color Plus," a double-sided plastic-headed key, is supplied to the store as one piece.

The manufacturing process begins with a metal coil or strip, brass in the case of the subject goods, usually between 2 1/4 and 3 1/8 inches wide, which is punched into shapes of keys. These shapes or punchings are then stacked on rods to facilitate handling and feeding into the various machines used in the manufacturing process.

The punchings are washed in a solution of detergent to remove the grease film left by the blanking process, and the cleaned punchings are fed through a milling machine to make the specific grooves to fit the different types of locks. If backgrinding is required, as for some key blanks sold in the Canadian market, it is done at the time of milling.

The milled key blanks are then fed through a coining process where the identifying number and logo of the manufacturer or private label of the customer are inscribed with a die. The coined keys are then burnished in tumbling barrels and lacquered or electroplated with nickel, depending on the finish required. The finished blanks are then packaged and shipped to distributors, locksmiths, hardware stores and large buying groups in the key-cutting industry.

1. Profile is a term used to distinguish individual key blank characteristics.

THE DOMESTIC INDUSTRY

The complainant, Ilco, is a wholly owned subsidiary of Unican Security Systems Ltd. of Montréal.

Since 1986, Ilco has been the sole Canadian manufacturer of brass replacement key blanks. Ilco became a significant player in the Canadian market subsequent to its purchase in 1985 of the assets of Dominion Lock Company Ltd. (Dominion Lock). Dominion Lock had been manufacturing key blanks in Montréal since 1933, and, prior to going into receivership in 1985, was Canada's major manufacturer of key blanks. Following the acquisition of Dominion Lock, Ilco went through major changes as it moved its production facilities from its de Gaspé Avenue plant to the Dominion Lock facilities on Décarie Blvd., and further rationalized its Canadian production with its US affiliate located in Rocky Mount, North Carolina.

Besides manufacturing key blanks at the former Dominion Lock plant, Ilco also manufactures contract hardware, key-cutting machines and assembles push button locks, which represent a significant share of its total business. Ilco imports for distribution other Ilco products, such as key-cutting machines, from associated plants.

Ilco's US affiliate also produces brass replacement key blanks and exports finished key blanks to Canada, as well as a large number of punchings for further processing. The US affiliate is part of a network of Ilco-related key blank manufacturing operations in the United States, Canada, Europe and Australia. Ilco has been identified as the world's largest producer of key blanks.

Ilco markets brass replacement key blanks through distributors that supply locksmiths, specialty kiosks, auto dealers and other outlets, and through large buying groups that supply affiliated merchants and hardware stores. The bulk of Ilco's domestic sales of the subject brass replacement key blanks is made in Ontario and Quebec.

Ilco has been the sole Canadian manufacturer of brass replacement key blanks since the only other manufacturer, Curtis Industries of Canada Limited (Curtis) of Rexdale, Ontario, ceased operations in 1986. Curtis currently supplies its customers in Canada with key blanks manufactured by its parent company in the United States.

Consequently, for the purpose of this inquiry, the complainant represents the "domestic industry" as defined by the GATT Anti-dumping Code.

IMPORTERS AND EXPORTERS

During the period under review, 1985 to 1989, brass replacement key blanks were imported principally from the United States, and, in growing volumes, from Italy. The vast majority of Italian keys have been supplied by Silca.

Silca is the largest manufacturer of key blanks in Europe and the second largest manufacturer in the world after the complainant. The major portion of the Silca key blanks were exported directly from Italy, while a certain amount of the subject key blanks were imported through two American firms - HPC Inc., Shiller Park, Illinois, and American Consumer Products Inc., Solon, Ohio. The latter, which is better known as Cole USA, also manufactures the "Color Plus" line under license from Silca.

Klassen is the largest importer of key blanks from Silca. Besides its key blank business, Klassen manufactures letters and signs which it distributes with other imported hardware products to hardware stores across Canada. With respect to the subject blanks, Klassen sells a "full service program" to the hardware stores. The full service program comprises the supply of a key-cutting machine, a key display rack, replacement parts for the machine, repair services and the replacement of miscut keys. The cost of this full service program is factored into the price of the blanks. Klassen also sells key blanks to Home Hardware without the full service program.

Other principal importers of Silca blanks include The International Key Company, which sells the subject blanks to locksmiths and hardware stores, and National Key of Canada Ltd. and Mister Minit Canada Inc., which sell the subject blanks directly to the consumers through their own stores, "Things Engraved" and "Mister Minit" respectively.

Curtis is the largest importer and supplier of brass replacement key blanks from the United States. Curtis offers a service program similar to Klassen's to hardware stores or mass retail chains such as Canadian Tire Corporation and Home Hardware. Cole USA, the other large supplier of US-manufactured key blanks, exports its product to various distributors in Canada.

THE COMPLAINT

Ilco claimed that the dumped goods had caused past and present material injury in the form of lost sales, price suppression, declining production and reduced profitability, and that continued dumping was likely to cause material injury in the future.

Counsel stated that the weighted average margin of dumping of 45.7 percent found by the Deputy Minister was significant, that Silca knew it was dumping and that the dumping was a conscious effort to gain market share in Canada. Counsel submitted that margins of dumping of this magnitude meant that Silca was exporting to Canada at approximately half the price at which it sold key blanks in its home market. This dumping caused Ilco to lose sales of at least three million key blanks, forced it to reduce production by approximately 15 percent and materially affected its profitability. Counsel further contended that the lost sales were, for the most part, high volume, long production run key profiles, which make an important contribution to overhead.

Counsel argued that the increase in imports of the subject goods during 1988 and the first six months of 1989 was substantial and that all of the shipments examined by the Deputy Minister were found to be dumped. Although a reduction in the level of imports is shown for 1989, this reduction is misleading as the importers accumulated large inventories of subject key blanks during 1988 and have subsequently been able, at least in part, to sell from stock during the first six months of 1989. The buildup in inventory of Silca key blanks, it was submitted, indicated that the injury already sustained by Ilco would continue in the future. Counsel further argued that there had been no evidence presented that the dumping would be discontinued if the Tribunal did not issue a finding of material injury.

Counsel stated that Silca and the importers of Silca products had not refuted any of the evidence presented regarding the alleged injury to Ilco, but had instead concentrated on impugning the credibility of the Canadian producer, its employees and agents with accusations and issues which they hoped would confuse the real issues. Counsel dismissed allegations of

uncompetitive activities by Ilco and its representatives since they were unfounded and, in any event, extraneous to this inquiry. Counsel argued that the legislation required the Tribunal to focus solely on whether the dumping had caused material injury to the Canadian production of like goods.

Counsel submitted that the real issue was that Silca's dumped goods had seriously undercut the price of key blanks in Canada, and that this price-undercutting had resulted in lost sales and material injury to Ilco. Counsel further suggested that the importers' claims of other motivating factors in their decision to purchase from Silca, such as better service and delivery schedules, did not negate the fact that the Silca key blanks were being sold at dumped prices, and that the evidence showed that price was indeed the paramount factor in Silca obtaining these orders. Counsel rejected the allegation that Silca was meeting domestic prices in Canada and stated that there was no evidence that Silca was indeed matching prices offered in Canada. Even if there had been price alignment, this was not an accepted justification for dumping. The fact was that importers did not source their requirements from the domestic producer, but that they purchased dumped products from Silca.

Counsel also claimed that the service problems which the importers alleged to have had with Ilco were exaggerated and unsubstantiated. They argued that the evidence showed that Ilco and its sales agent were quite active in attempting to resolve any service disputes, that back orders were not a significant problem and that, in any event, Silca's supply and service record showed more serious defects.

Finally, counsel rejected any possible exclusions from a material injury finding as Ilco produces a full line of replacement key blanks, including plastic-headed and colored keys which directly compete with Silca's "Color Plus" line of key blanks.

THE RESPONSE

Counsel for Silca claimed that the dumping found by the Deputy Minister had not caused, was not causing and was not likely to cause material injury to the production in Canada of like goods.

Counsel submitted that any injury suffered by Ilco was self-inflicted. First, counsel alleged that Ilco was contributing to any price suppression that was taking place on the Canadian market. Second, counsel alleged that Ilco's decline in capacity utilization appeared to be a result of its need to reduce inventories and of a decline in Ilco's exports of key blanks rather than the result of declining domestic sales, as domestic volumes actually increased slightly during the 1988-89 fiscal year. It was further alleged that any injury that Ilco was suffering was, at least in part, caused by an increase in the cost of labor, despite reduced production volume, and an increase in general, selling and administrative expenses. Furthermore, counsel contended that Ilco's market share losses reported for 1988 and 1989 went almost exclusively to non-subject imports.

Counsel alleged that Ilco had ulterior motives for initiating this case and that Klassen, not Silca, was the prime target. Counsel stated that Klassen represented the single largest amount of sales that Ilco claimed to have lost to Silca. They questioned how anyone could expect Klassen and Ilco to resume business in light of the threats made by Ilco and its decision in early 1988 to refuse to supply keys to Klassen. Counsel restated the assertion that Ilco had lost sales on its own account due to poor service and an indifferent attitude.

Counsel submitted that "Color Plus" key blanks should be excluded in the event of an injury finding. These keys are manufactured using a patented process, are available in a limited number of profiles, are sold using different marketing strategies and are dissimilar to the "Unikis" key blanks sold by Ilco.

Counsel for Klassen concurred with the submission made by Silca's counsel regarding the lack of material injury caused by dumped imports.

Counsel stated that Klassen and Ilco had a business relationship that extended back a number of years and that Klassen had tried to develop this relationship primarily to have multiple sources of supply. Over the years, the relationship soured as a result of poor service, an indifferent attitude on the part of Ilco and a lack of communication at a senior level between the two companies. The relationship was finally terminated by Ilco in January 1988, when it cancelled Klassen's outstanding orders and closed its account.

This relationship between Klassen and Ilco, it was submitted, had deteriorated beyond repair and if Silca were cut off as a source of supply, Klassen would purchase its requirements from other suppliers.

Regarding Home Hardware, counsel stated that Klassen had lost the warehouse program account in 1975 and, while it retained some of Home Hardware key blank business through the full service program, it had never stopped trying to regain that portion of the business that it had lost.

Finally, counsel stated that, if the Tribunal issued a finding of material injury, his client believed that the imposition of anti-dumping duties would not be in the public interest and requested an opportunity, at a later stage, to address this point pursuant to section 45 of the Act.

CONSIDERATION OF THE EVIDENCE

The brass replacement key blanks sold on the Canadian market are primarily sourced from Canada, the United States and Italy. The Canadian manufacturer, Ilco, markets its products through distributors, while some of the importers sell to mass merchandisers or hardware stores and other importers sell directly to consumers through their own specialty retail outlets.

Locksmiths have traditionally been the major purchasers of replacement key blanks and represent the largest market segment served by Ilco's distributors. However, in recent years, large hardware chains, such as Home Hardware, Rona and Pro Hardware, have become the fastest growing part of the market. The major importers, such as Klassen and Curtis, have concentrated on this growing market segment, as well as serving other mass merchandisers, such as Canadian Tire and Woolco. Of less importance, but also significant, are the specialty retail shops, such as Mister Minit and Things Engraved, that are also establishing new stores in shopping malls across Canada.

Since acquiring the assets of Dominion Lock in 1985, Ilco has made significant investments and has rationalized its production. In doing so, it has been able to increase the average production run threefold. Also, Ilco, through an affiliate company, has access to a

brass conversion mill in North Carolina, from which it imports a large volume of punchings for further manufacturing in Canada. This integration provides Ilco with a cost advantage over other producers of key blanks.

In 1986, the brass replacement key blank market stood at 34 million pieces and Ilco, with the acquisition of Dominion Lock, accounted for approximately half of the total domestic sales.² Sales of imports from non-subject sources, principally the United States, which had a sizeable share of the market, increased by 40 percent over 1985. In that year, Curtis ceased production and began importing all its requirements from its parent company in the United States. Sales of the Silca product also experienced a significant increase between these two years, but their share of the total market for key blanks was well below 10 percent.

During 1987, demand for the subject product increased by 10 percent and reached 37 million units. Ilco increased its sales by 22 percent and thus gained market share. Some of this increase in sales came as a result of Klassen diverting a large proportion of its purchases from Silca to Ilco.

In 1988, the market continued to grow by a further 14 percent to reach 42 million units. Ilco's sales, on the other hand, only increased by 11 percent and, as a result, it lost some market share. During the same year, imports of the Silca product nearly tripled and this translated into a substantial increase in market share, mainly at the expense of imports from non-subject sources, principally the United States. Sales of imports from non-subject sources declined by 2 percent between 1987 and 1988. By the end of the year, substantial quantities of Silca keys were held in inventory.

During the first half of 1989, the market in units continued to grow by 2 percent over the same period in 1988, while Ilco's sales declined by 7 percent. Sales of imports from non-subject sources increased by 13 percent over the same period in 1988 and thus regained most of the share lost to Silca and some lost to Ilco. Importers of the Silca product, on the other hand, increased their purchases but experienced declining sales which, coupled with the inventories held at the end of 1988, resulted in very large quantities being held in stock at the end of June 1989.

The income statements provided by Ilco were prepared on the basis of its fiscal year ending on June 30, and thus are not directly comparable to the market data which were generated based on the calendar year. During the most recent fiscal period, 1988-89, Ilco reported some losses as production for domestic sales declined by approximately 20 percent and fixed costs were allocated over a smaller manufacturing base. The company made reasonable profits during the previous three fiscal periods on domestic sales from domestic production, although these profits fluctuated greatly from year to year.

Central to this inquiry are the events that unfolded between 1986 and 1989 regarding two large accounts, Klassen and Home Hardware.

2. From the replies to the questionnaires, comprehensive statistical tables were prepared covering the period from January 1, 1985, through June 30, 1989. However, the market data for the year 1985 were incomplete as sales by Dominion Lock for the first half of 1985 were not available. Therefore, the size of the apparent market for 1985, and the respective shares held by the Canadian producers and importers, could not be determined with precision.

In the fall of 1986, Klassen agreed to buy a significant share of its total requirements of key blanks from Ilco. As a result, Klassen switched a large share of its purchases from Silca to Ilco but, at the same time, kept buying a significant portion of its total requirements from Cole USA. In June 1987, Silca made a package offer to Klassen, mainly for high volumes of the most popular blanks. The offered prices were, on average, on a landed value basis, at least 20 percent less than what it had cost Klassen for Ilco blanks already in its warehouse. In September 1987, Ilco advised Klassen that prices would go up as a result of an increase in the price of brass. In the same month, Klassen asked Silca to confirm the June offer, but for a somewhat larger quantity of high volume key blanks. The offer was subsequently confirmed for a total volume that exceeded the original volume by 30 percent and at prices which were the same, except for a group of high volume keys, where an extra rebate was given. In early December 1987, Ilco notified Klassen that it was increasing its prices effective December 1, 1987, and that the new prices would be effective for the remainder of Klassen's commitment. Shortly after Ilco's notification of price increases, Klassen placed a large order with Silca based on the prices confirmed in September. The Deputy Minister determined that the imports arising from this order were dumped.

In January 1988, after switching to the lower priced Silca blanks, Klassen made an attractive offer to Home Hardware for its warehouse program. Home Hardware has two programs for its member stores: the full service program, which is supplied by Curtis and Klassen, and the warehouse program, which includes close to 400 popular profiles and for which stock is kept at three different Home Hardware warehouses across Canada. This warehouse program was supplied exclusively by Ilco between 1985 and 1987. Included in the warehouse program is a private label program for the 23 most popular key blanks. Following the January offer, Home Hardware switched its private label program for the fiscal period 1988-89 from the Ilco to the Silca product. On May 31, 1988, Home Hardware placed with Klassen three purchase orders for its warehouses. The prices offered by Klassen, as obtained through evidence and as testified by the witness for Home Hardware, were well below Ilco's prices.

CONSIDERATION OF MATERIAL INJURY

The Tribunal has examined closely the events that took place in the marketplace during the period January 1, 1988, to June 30, 1989, and their impact on Ilco's performance. It notes that the switch by Klassen to Silca in December 1987 was well underway before the price increase announced by Ilco earlier that month. The evidence showed that Silca had made a very attractive offer to Klassen six months earlier. Silca's prices were, on average, substantially lower than Ilco's prices to Klassen which were set during the previous fall. The Tribunal believes that Klassen switched from Ilco to Silca largely because of price considerations, and that the low prices offered by Silca were made possible by the dumping, as found by the Deputy Minister. These low prices also made it possible for Klassen to subsequently secure large volume sales with a major hardware chain, Home Hardware.

Ilco's witness testified that the loss of sales to Klassen and Home Hardware represented approximately three million units or 15 percent of its production for the domestic market. The lost sales represented, for the most part, long production runs of high volume profiles which made a significant contribution to overheads. The panel asked the witness to quantify the impact of this loss in volume on its profits. The impact, as calculated by the witness, came to an amount very close to the annual average profits realized by Ilco on sales of the subject goods since its fiscal period 1985-86. In order to test the validity of that estimate, the Tribunal did a

sensitivity analysis using data in Ilco's income statement for the past fiscal period. Although the Tribunal's analysis found a smaller impact on profits than Ilco's own assessment, the lost profits calculated by the Tribunal were still of such magnitude as to demonstrate that the lost sales had a sizeable financial impact.

With regard to the complainant's claim of price suppression, the Tribunal cannot conclude that the dumping of the Silca blanks has caused a price suppressive effect in the marketplace. Ilco was able to maintain or even increase its prices for various groups of subject key blanks in February 1989. In examining the other indicators of injury, the Tribunal notes that, although Ilco suffered a serious decline in production and utilization of production capacity, it was able to maintain the number of employees directly involved in key blank production for the domestic market. The Tribunal also recognizes that, even after the dumping began, Ilco succeeded in increasing its overall sales and that its loss of market share to Silca was largely offset by increased sales to other accounts. Nonetheless, the Tribunal is persuaded that the dumping caused Ilco to lose orders, which accounted for about 15 percent of its total production for domestic consumption, and this resulted in a loss in profits which roughly equalled its average annual profits in the previous three years from key blank production sold domestically. The Tribunal finds that this resulting injury caused by the dumping of the subject Silca blanks was material.

Many arguments were advanced to explain the injury suffered by Ilco. Witnesses for Silca and the importers claimed that Ilco's intimidating and anti-competitive behavior was the reason for Ilco losing sales or customers. However, the Tribunal is not persuaded that it is for this reason that purchasers of these key blanks, such as Klassen and Mister Minit, switched to the Silca product. The alleged intimidating phone calls or letters by Ilco's Chairman began after Klassen had switched to the Silca product and after the Deputy Minister had initiated the anti-dumping investigation.

The Tribunal also doubts the claims made by various witnesses that it is because of poor service on the part of Ilco and its representatives that they switched to the Silca product. The Tribunal is not convinced that Silca, with one sales representative located in England for the total North American market, can provide a better service than Ilco, which is located in Canada and has a customer service force of about 25 people across Canada. Silca's delivery times were typically a month longer than Ilco's. The Tribunal notes that importers appeared to readily excuse delivery and quality problems by their foreign suppliers, and even go to considerable effort to accommodate their longer delivery times, payment requirements and transportation constraints. Significantly higher standards were expected of the domestic manufacturer.

There was also general agreement among witnesses that quality was not an issue. Both the imported and domestic products are of equal high quality.

With respect to the future, there is every indication that, if Silca's dumping of key blanks continues without the imposition of anti-dumping duties, material injury will persist. Silca has demonstrated, through its aggressive pricing and the recent establishment of a warehouse in Cleveland, Ohio, for the North American market, that it is serious in increasing its presence in Canada. Imports from Silca tripled in 1988 over the average of the previous three years, resulting both in increased sales and a sizeable inventory accumulation of dumped goods. This buildup, combined with little indication that the dumping will cease, could give rise to further lost sales and profits, as well as other forms of material injury such as price suppression, employment losses and greater underutilization of capacity. Therefore, the Tribunal is satisfied

that, if the dumping of the Silca blanks continues unabated, it will likely cause material injury to the production in Canada of like goods in the future.

The Tribunal was asked to exclude translucent plastic-coated "Color Plus" keys in the event of a finding of material injury. Such keys are identified in Silca's catalogue as "Silca Color" keys and described as being double-sided, plastic-headed keys available in four colors. Counsel for Silca argued that these color-coded key blanks were dissimilar to the "Unikis" color-coded key blanks manufactured by Ilco, were manufactured using a patented process, were only available in a limited range of profiles and were marketed differently from ordinary key blanks. Various witnesses also testified that the "Color Plus" and the "Unikis" blanks were not comparable, citing both customer and store clerk resistance to the "Unikis" key.

The "Unikis" colored plastic-headed key manufactured by Ilco comes in two pieces, the blade and the colored head, which must be assembled by a store clerk using a special tool; by contrast, the "Color Plus" blank can be taken off the display rack and cut in the same, fashion as any other blank. The plastic head of the "Unikis" blank is molded in Montréal, while the blades are manufactured both in Canada and the United States.

On the basis of the evidence, the Tribunal considers that the Silca line of translucent plastic-coated "Color Plus" keys should be excluded from this finding because no directly comparable product is made in Canada.

During the course of this inquiry, Klassen indicated that it wished to make representations pursuant to subsection 45(2) of the Act, concerning whether the imposition of anti-dumping duties would be in the public interest. Parties interested in making representations should submit them, in writing, to the Secretary of the Tribunal by November 27, 1989.

CONCLUSION

In light of all the evidence, the panel concludes that the dumping in Canada of brass replacement key blanks originating in or exported from Italy and produced by or on behalf of Silca S.p.A. of Italy, its successors and assigns, excluding "Color Plus" brass replacement key blanks, has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

Presiding Member: Arthur B. Trudeau
Arthur B. Trudeau

Member: John C. Coleman
John C. Coleman

Member: Kathleen Macmillan
Kathleen Macmillan