



Ottawa, Tuesday, May 25, 1993

Inquiry No.: NQ-91-006 Remand

**MACHINE TUFTED CARPETING ORIGINATING IN OR EXPORTED
FROM THE UNITED STATES OF AMERICA**

REMAND - The Binational Panel, in Canadian Secretariat File No. CDA-92-1904-02, acting pursuant to its authority under section 77.15 of the *Special Import Measures Act*, remanded, in part, the finding of the Canadian International Trade Tribunal (the Tribunal) in Inquiry No. NQ-91-006. First, the Binational Panel remanded the Tribunal's finding that dumping has caused and is causing material injury. Pursuant to the remand, the Binational Panel directed the Tribunal to determine whether dumping, in and of itself, had caused material injury and to demonstrate the rational basis for such determination by detailed analysis, including specific analysis requested by the Binational Panel. Second, the Binational Panel remanded the Tribunal's finding that dumping is likely to cause material injury and directed the Tribunal to determine whether dumping, in and of itself, is likely to cause material injury (and whether such determination depends on the existence of dumping as a cause of past injury) and to demonstrate the rational basis for such determination by detailed analysis of the evidence on record.

DETERMINATION ON REMAND: The Canadian International Trade Tribunal, pursuant to section 77.16 of the *Special Import Measures Act*, hereby finds that the dumping of certain machine tufted carpeting originating in or exported from the United States of America has caused and is causing material injury to the production in Canada of like goods. It also finds that the dumping of the subject goods is likely to cause material injury to the production in Canada of like goods.

John C. Coleman

John C. Coleman
Presiding Member

Michèle Blouin

Michèle Blouin
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Michel P. Granger

Michel P. Granger
Secretary

Inquiry No.: NQ-91-006 Remand

Tribunal Members: John C. Coleman, Presiding Member
 Michèle Blouin, Member
 Robert C. Coates, Q.C., Member

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Ottawa, Tuesday, May 25, 1993

Inquiry No.: NQ-91-006 Remand

IN THE MATTER of a remand under section 77.15 of the *Special Import Measures Act*¹ respecting:

**MACHINE TUFTED CARPETING ORIGINATING IN OR EXPORTED
FROM THE UNITED STATES OF AMERICA**

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
MICHÈLE BLOUIN, Member
ROBERT C. COATES, Q.C., Member

DETERMINATION ON REMAND

This determination on remand was undertaken in accordance with the Binational Panel (the Panel) decision in respect of its review (CDA-92-1904-02)² of the finding of the Canadian International Trade Tribunal (the Tribunal) in Inquiry No. NQ-91-006.³ It was the Tribunal's finding that the dumping of certain machine tufted carpeting originating in or exported from the United States of America, excluding specific goods such as certain scrap carpeting, remnants of prime quality goods and custom designed carpeting, had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

The Panel has affirmed the finding of the Tribunal except for two issues on which it has remanded the finding with instructions. First, the Panel remanded the Tribunal's finding that dumping had caused and was causing material injury, and directed the Tribunal to determine whether dumping, in and of itself, had caused material injury and to demonstrate the rational basis for such determination by detailed analysis including, but not limited to, each of the following:

1. A detailed analysis of the 30 to 32 accounts involving lost sales allegations mentioned in the post-hearing briefs of the Tribunal and the Canadian Carpet Institute before the Panel, including an analysis of whether they are quantitatively (by volume) or qualitatively significant, and how, if at all, they reasonably support a determination of causation;

1. R.S.C. 1985, c. S-15.

2. *Machine Tufted Carpeting Originating in or Exported from the United States of America* (Injury), Article 1904 Binational Panel, Opinion and Order of the Panel, April 7, 1993.

3. *Machine Tufted Carpeting Originating in or Exported from the United States of America*, Inquiry No. NQ-91-006, Finding and Statement of Reasons, April 21 and May 6, 1992, respectively.

2. A detailed analysis of the Tribunal's price study in CST Vol. 4, Public Staff Report at 1.46 to 1.48 and CST Vol. 6, Confidential Staff Report at 66 to 77, and how, if at all, it reasonably supports a determination of causation. In this regard, the Tribunal should analyze: (1) how dumping margins and volumes found by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) relate to price movements identified in the Tribunal's study; and (2) how other non-dumping factors (both price and non-price) relate cumulatively to those price movements and/or lost sales or market-share shifts;
3. A detailed analysis of the Tribunal's finding of a \$0.13 decline in the domestic average price per square metre over the course of 1991, as indicated in CST Vol. 4, Public Staff Report at 1.214.82, and how, if at all, it reasonably supports a determination of causation.

The Panel has also remanded the Tribunal's finding that dumping is likely to cause material injury and has directed the Tribunal to determine whether dumping, in and of itself, is likely to cause material injury (and whether such determination depends on the existence of dumping as a cause of past injury) and to demonstrate the rational basis for such determination by a detailed analysis of the evidence on record.

REASONS

The Tribunal considers the central issue in this remand to be the Panel's view that the Tribunal has not shown that the dumping, in and of itself, has caused, is causing and is likely to cause material injury because it failed to set forth "some rational analysis of domestic prices, import prices, the gap that in this industry would lead purchasers to switch (if the domestic price [was] not cut) and how dumping and other price factors related to any such gap."⁴ In order to address the Panel's concerns on this point, the Tribunal has reviewed the record and has identified pricing information on it that is capable of shedding more light on this question, and has conducted additional analysis of this information. In particular, the Tribunal has first directed its attention to the analysis and interpretation of the information on record relating to the Tribunal's price examination that is mentioned by the Panel in point 2 of the remand.⁵ The Tribunal thereafter addresses the other points raised in the remand.

PRICE ANALYSIS

The Tribunal notes that the price examination, to which the Panel referred, was based on responses to a Tribunal questionnaire in which domestic producers and importers were asked to list the sales volumes and values of each of their 10 largest accounts over the period from 1990 to 1991. The purpose of this examination was to provide a broad indication of the relative movements of U.S. and Canadian prices over the review period. As noted by the Panel, the examination has shown that average import prices were lower than average domestic prices in both 1990 and 1991.

4. *Supra*, note 2 at 24.

5. CST Vol. 4, Public Staff Report at 1.46 to 1.48 and CST Vol. 6, Confidential Staff Report at 66-77.

The amalgamated price data included in the original examination reflected a vast array of different carpet styles and qualities produced by numerous U.S. and Canadian manufacturers with different marketing strategies and, in some cases, significantly different operating efficiencies and cost structures. In reviewing this examination of prices on remand, the Tribunal considers that a revealing comparison of actual price movements of imported and domestic carpet can be derived from the same data by focussing on certain companies that are comparable, rather than on the full range of companies included in the original examination. To this end, as directed by the Panel, the Tribunal has conducted a detailed price analysis and has based it on a subset of the information contained in the original price examination. This subset focusses on sales to the 10 largest accounts of 2 exporters and 4 domestic producers.⁶

The two exporters selected were Shaw Industries, Inc. (Shaw) and Queen Carpet Corporation (Queen).⁷ During the review period, they were the most significant source of U.S. exports to Canada, accounting for 16 percent of total imports to Canada in 1990 and 23 percent in 1991.⁸ These two companies were also the prime focus of the domestic industry's allegations of lost sales, price erosion and suppression due to dumping. Evidence during the Tribunal's hearing indicated that these two exporters were among the most efficient U.S. producers and that they both offered a product range that serviced most major segments of the Canadian carpet market.

The four Canadian firms selected were Peerless Carpet Corporation (Peerless), Kraus Carpet Mills Limited (Kraus), Richmond Carpet Mills (Richmond) and Venture Carpets Ltd. (Venture). Together, they accounted for almost 49 percent of total sales from Canadian production in 1990 and 55 percent in 1991. Evidence adduced during the hearing indicated that these four firms were among the most stable and efficient Canadian producers. Indeed, counsel for Shaw and Queen submitted specific argument to this effect and invited the Tribunal to examine trends relating to these four firms. The evidence has also shown that these four producers serviced most major segments of the Canadian carpet market.

In total, the sales in Canada of the six firms included in this detailed pricing comparison accounted for about 43 percent of the total Canadian apparent market for carpets in 1991. The sales of the six firms to their respective ten largest accounts represented about 18 percent of Canada's carpet market in 1991. Thus, the scope of this price analysis is substantial in terms of its market coverage.

The results of this pricing analysis are set out in Tables 1 and 2 below. As indicated in Table 1, both average domestic and average import prices declined between 1990 and 1991. Moreover, in 1990, average import prices were below average domestic prices by \$0.43. This price differential favouring U.S. imports remained relatively

6. Although the Tribunal, in its questionnaire, asked respondents to indicate their 10 largest accounts, Venture Carpets Ltd. only provided 8 accounts and Peerless Carpet Corporation provided 20. In each case, all the information provided in response to the question was used in the price study.

7. Shaw and Queen are also non-resident importers.

8. During the Deputy Minister's period of investigation, from January to March 1991, Shaw and Queen comprised about 30 percent of total exports examined by Revenue Canada.

constant in 1991, despite declining U.S. prices between 1990 and 1991, because Canadian prices fell by approximately the same amount as import prices over this period.

	<u>1990</u> (\$/m ²)	<u>1991</u> (\$/m ²)
Domestic	9.77	9.39
Imported	<u>9.34</u>	<u>8.98</u>
Gap (Domestic - Imported)	0.43	0.41

The Tribunal notes that the domestic⁹ and import¹⁰ prices listed in Table 1 are actual average market selling prices that include all price effects attributable to factors such as the recession, tariff declines and exchange rate movements. The prices also include, of course, the effects of dumping. In order to evaluate the importance of dumping vis-à-vis these other price factors, an average per-unit dollar value for dumping (the dumping value) has been estimated on the basis of the average prices for Shaw and Queen indicated in Table 1. First, the prices presented in Table 1 were netted back to their F.O.B. Dalton, Georgia, values. The dumping values were then derived using these F.O.B. prices and the weighted average dumping margins for Shaw and Queen, as determined by the Deputy Minister in his final determination, were adjusted downward to reflect the volume of undumped goods exported to Canada by these producers. The result was a combined weighted average dumping value of \$0.33/m² and \$0.35/m², in 1990 and 1991, respectively, as indicated in Table 2.

To estimate the dollar value of the non-dumping price factors, the analysis eliminated the effects of dumping from the actual average prices of imports in Table 1 by converting these prices to their "normalized" undumped values, as indicated in Table 2. The decline in these "normalized" undumped import prices, between 1990 and 1991, then reflects the combined influence of all price factors other than dumping. As may be derived from Table 2, this amounts to \$0.34/m².

9. The domestic prices indicated are weighted average prices. To arrive at a combined weighted average price for a given year, each firm's average selling price was weighted to reflect its share of the four firms' combined total sales from domestic production in that year.

10. A combined average weighted price for Shaw and Queen was calculated using an analogous method to that used for domestic producers.

Table 2		
COMPARISON OF AVERAGE DOMESTIC AND IMPORT PRICES		
	<u>1990</u> (\$/m ²)	<u>1991</u> (\$/m ²)
Import Prices		
Actual Price	9.34	8.98
Dumping Value (weighted)	<u>0.33</u>	<u>0.35</u>
"Normalized" Undumped Price	9.67	9.33
Domestic Price	<u>9.77</u>	<u>9.39</u>
Gap Between Non-dumped Import Price and Domestic Price	-0.10	-0.06

The key points revealed by this price analysis are as follows:

- Between 75 and 85 percent of the gap between average actual imported and domestic prices, in 1990 and 1991, was accounted for by dumping.
- The effect of dumping alone on average import prices (i.e. reductions of \$0.33/m² to \$0.35/m²) was as great as the effect of all other price factors combined between 1990 and 1991 (i.e. average reductions of \$0.34/m²).
- Canadian prices declined between 1990 and 1991 by an amount (\$0.38/m²) which more than offset the competitive effects of non-dumping price factors. However, despite this adjustment in Canadian prices, there remained a residual gap, which was largely accounted for by the margin of dumping.

The principal conclusion that the Tribunal draws from the above analysis is that Canadian and U.S. import prices were closely competitive over the review period, particularly if the effects of dumping are removed. The next question to address is how important would the price differential caused by dumping have been in causing Canadian buyers to switch some of their purchases from domestic to U.S. suppliers. In this connection, the Tribunal heard various witnesses testify that, in the high volume ends of the residential and commercial markets, carpet is increasingly viewed as a commodity which is sold almost exclusively on the basis of price. This means that small differences in price can lead to major shifts in supply sources. The existence of this commodity-type trend in carpeting was corroborated by evidence at the hearing, which showed that, in several cases, the domestic industry was increasingly unable to charge an appropriate price premium for higher-weight, higher-grade domestic product compared to lower-weight U.S. product. In some instances, it was obliged to sell higher-grade carpeting at down-market prices in order to compete with lower-grade

imported carpeting, reflecting the high substitutability of different grades of carpeting and the market's tendency to buy on the basis of price.

Furthermore, the evidence on record indicates that, in 1990 and 1991, the Canadian carpet market was experiencing a deep recession. In fact, 1991 was one of the worst years since the early 1980s for Canadian carpet sales, enhancing the importance of any underpricing in the market. Moreover, any underpricing due to dumping by U.S. exporters at the wholesale, distributor and retail levels would be magnified through normal commercial markups as the goods proceed to the final consumer.

Witnesses before the Tribunal testified that consumers were highly price conscious. This price consciousness of consumers was corroborated, as noted in the Tribunal's statement of reasons, by a survey of household behaviour covering carpeting purchases, which was submitted in evidence by counsel for U.S. exporters.¹¹ According to this survey, most consumers bought carpeting only when it was "on sale." Although the survey examined the behaviour of U.S. purchasers during 1990, its conclusions would appear to apply equally to the behaviour of Canadian consumers, especially in the recessionary conditions of 1991. In the face of this consumer behaviour and shrinking markets, it is obvious that everyone in the supply chain, from the manufacturers upwards, would have been sensitive even to small price differentials between themselves and their competitors.

Finally, the Tribunal notes that the estimated effects of dumping on price, as mentioned above, are conservative. The margins of dumping and the percentages of goods dumped by Shaw and Queen were determined by the Deputy Minister to be among the lowest for all U.S. exporters. There were some 59 other U.S. exporters shipping to Canada during the period of investigation, the majority of whom had weighted average dumping margins greater than Shaw and Queen, with some as high as 33 percent. Moreover, many of these other U.S. producers were clearly not as large and efficient as Shaw and Queen. All of these U.S. producers competed against all the Canadian producers. The Tribunal believes that it is reasonable to infer from these facts that, in many cases, Canadian producers had to contend with price differentials and dumping margins that were considerably greater than those revealed in this analysis.

INJURY ANALYSIS

The Tribunal has used two alternative methods to estimate the injurious effects of dumping on the four firms studied and, by extrapolation, on the domestic industry. The first method estimates revenue losses resulting from price erosion alone. The second method estimates revenue losses resulting from market-share losses alone.

The Tribunal notes that the methods employed in this section are intended to provide broad orders of magnitude for the quantity of injury suffered by the domestic industry, because of the effects of dumping on domestic prices and market shares. Under the first method described below, it is assumed that the industry would have been able to pass on the full amount of the average dumping value to its customers. The second method assumes that, given the recessionary conditions which existed in 1990 and 1991, the competitive nature of U.S. and Canadian prices, and the willingness of

11. CST Vol. 32, Exhibit B.B.B.-1, Appendix 3 at 3.

buyers to switch suppliers on the basis of price, a substantial proportion of the market-share losses suffered by domestic firms would not have occurred if U.S. carpet had not been dumped. In the opinion of the Tribunal, the resulting revenue and income losses under both methods, as detailed below, are so significant that, even if different assumptions were applied and the losses indicated in Tables 3 and 4 were reduced by half, the resulting injury from dumping would still be material.

Price Erosion

This dumping effects estimation method assumes that Canadian and U.S. import prices rise by the average (per unit) dumping value, as market shares are held constant. Revenue losses are then estimated by multiplying the industry's actual volume of sales in a given period by the average (per unit) dumping value. The resulting total represents the incremental revenue that the industry could have earned if domestic prices had been raised by an amount equal to the dumping value.

High and low revenue (and consequent net income) losses have been calculated, as set out in Table 3. The high-end estimates assume that rising carpet prices would not reduce the total carpet demand. The Tribunal considers revenue losses at the high end of the range to be realistic, as total carpet demand is not very responsive to price changes. Rather, carpet demand is driven by fluctuations in the level of residential and commercial construction and renovation activity. Nevertheless, the low-end revenue loss estimates have also been presented to indicate the sustained materiality of the injury under different demand assumptions.

As indicated in Table 3, this method produces gross revenue losses of about \$5 million to \$9 million in 1990 for the four firms included in the price analysis. These revenue losses would have had a material impact on the four firms' "bottom-lines." Specifically, in the absence of dumping in 1990, their net incomes before taxes would have been higher than reported by about 55 percent to 65 percent. In 1991, net losses of about \$8 million would have been erased and turned into a small profit if average prices had been higher by an amount equal to the average dumping value.

Table 3				
ESTIMATED EFFECTS OF PRICE EROSION				
(fiscal years - \$ million)				
	Four Firms		Industry	
	1990	1991	1990	1991
Actual Revenues	256	258	510	409
Range of Revenue Loss				
Due to Price Erosion	5 to 9	4 to 9	8 to 16	6 to 14
Actual Net Incomes	14	-8	-15	-20
Range of Income Loss				
Due to Price Erosion	8 to 9	8 to 9	14 to 16	12 to 14

Table 3 also shows that, for the industry, the estimated reductions in gross revenues due to dumping were between \$8 million and \$16 million in 1990 and between \$6 million and \$14 million in 1991.¹² If these revenue losses had not occurred, the industry would have just about broken even in terms of the 1990 net income before taxes, compared to the \$15 million net income loss actually reported. In 1991, net income losses would have been reduced by over 60 percent from the \$20 million loss recorded. These revenues and income effects are material, in the Tribunal's opinion.

Market-Share Losses

In contrast to the previous method, this dumping effects estimation method assumes that Canadian producers would not have raised their prices while U.S. import prices increased by the amount of the dumping value. Rather, Canadian producers would have held their prices constant, thus enabling them to recapture market share previously lost to dumped imports. As shown in Table 4, the four firms in the price analysis lost 6 points of market share in 1990, and 2 points in 1991.^{13,14} These market-share losses translate into revenue losses for the four firms in the price analysis of about \$46 million and \$15 million in 1990 and 1991, respectively. These gross revenue losses would have meant losses of net income of about \$10 million and \$2 million in 1990 and 1991, respectively.

12. The revenue and income losses estimated in this section for the industry were calculated from information provided by 13 domestic firms which replied to the Tribunal questionnaire, namely: Peerless; Kraus; Coronet Carpets Inc.; Harding Carpets; Venture; Soreltex International Inc.; National Carpet, a Division of NCM Carpet Mills Inc.; Richmond; Crossley Carpet Mills Limited; Sterling Carpet Manufacturing Ltd.; Summit Carpet Industries Ltd.; Matting Technology Corporation; and Burlington Canada Inc. Five other domestic firms did not provide sufficient information to be included in the revenue and income loss estimates. They were Barrymore, Ozite Canada (1981) Ltd., Peeters Carpets Ltd., Walker Mills and Les Usines de Tapis St-Georges Inc.

13. As noted in the statement of reasons, Peerless purchased Barrymore in March 1990, with the expectation of acquiring Barrymore's market share. The changes in Peerless' market share have taken this factor into account. The market share calculations for Richmond also consider this producer as a separate entity. Although Richmond is an operating division of Gesco Industries Inc. (Gesco), which has another major importing division, G.E. Shnier Co., the Tribunal is satisfied that, for the purpose of its analysis, the two divisions are operated independently, as attested during the hearing by senior officials representing Gesco. Finally, as noted in its statement of reasons, the Tribunal was satisfied that neither Peerless, Gesco nor any other Canadian producer imported U.S. goods with a view to displacing their own domestic production. Hence, the market-share calculations used in this section are based solely on changes in market shares held by domestic production.

14. The 1991 market-share losses reported in this section for the four firms and the industry as a whole reflect declines from the market shares held in 1990. This is a conservative estimate of market-share loss since the four firms, as well as the entire industry, lost significant market share between 1989 and 1990. If 1989 were taken as the base year for 1991 market-share losses instead of 1990, the four firms would have lost about 8 points of market share instead of the 2 points used for the calculations in this section. For the industry as a whole, the lost market share would have been 26 points instead of 12.

The domestic industry lost about 14 and 12 points of market share in 1990 and 1991, respectively. Total industry gross revenue losses are estimated at about \$100 million for 1990 and \$80 million for 1991 (this represents about 16 percent of the total sales in both 1990 and 1991). These gross revenue losses would have meant losses of net income for the total industry of about \$20 million and \$15 million in 1990 and 1991, respectively.¹⁵

	Four Firms		Industry	
	1990	1991	1990	1991
Actual Market Share (%)	36	34	73	61
Loss in Market Share Since Previous Year (%)	6	2	14	12
Actual Revenues (\$ million)	256	258	510	409
Loss in Revenues Due to Market-Share Loss (\$ million)	46	15	100	80
Actual Net Income (\$ million)	14	-8	-15	-20
Loss of Income Due to Market-Share Loss (\$ million)	10	2	20	15

Other Price and Non-price Factors

In its remand, the Panel has asked the Tribunal to examine how other non-dumping factors (both price and non-price) relate cumulatively to price movements and/or lost sales or market shifts. As far as non-dumping price factors are concerned, the Tribunal notes that U.S. average import prices declined between 1990 and 1991 reflecting, as noted earlier, the effects of the recession, reduced tariffs and exchange rate movements. However, it is apparent that Canadian prices remained reasonably competitive with U.S. import prices in 1990 and 1991. This shows that Canadian producers were responding and adjusting to the prices set by their U.S. competition. These adjustments tended to offset any advantages conferred by non-dumping price-cost factors, but they were not sufficient to counter U.S. underpricing caused by dumping.

15. As indicated in note 12, five domestic companies did not provide complete financial responses to the Tribunal questionnaire. During the period of analysis, each of these companies, with the exception of Les Usines de Tapis St-Georges Inc., ceased operations. For purposes of the calculations in Table 4, the net changes in market shares for these five firms have been attributed to the remaining domestic producers.

The Tribunal notes that, in its statement of reasons, it assessed the extent to which a variety of non-price factors may have conferred advantages on U.S. imports. In readdressing this matter, it should first be stated that there are almost always other factors at play besides dumping, which also may be causing injury, in some measure, to Canadian production. The Federal Court of Appeal, in *Sacilor Aciéries*,¹⁶ noted that this was simply a matter of "common sense." In elaborating on this point, the Court stated:

*Such matters as efficiency, quality, cost control, marketing ability, accuracy in forecasting, good luck, and a host of others come to mind. It is the function of a specialised, expert tribunal such as this one to weigh and balance those factors and to decide the importance to be given to each.*¹⁷

Clearly, most of these other factors are not readily quantifiable, if at all. Assessing their importance is a matter of judgment by the Tribunal, based on the evidence before it.

The evidence adduced during the hearing, which pertains to these non-price factors, is almost exclusively in the form of testimony from witnesses representing different market viewpoints. The Tribunal, in accordance with the Panel's instructions, has further examined the administrative record of this testimony. Based on this reexamination, the Tribunal hereby confirms its finding that these non-price factors did not contribute in any substantial way to the injury suffered by the domestic industry, even when their effect is considered cumulatively.

The Tribunal has examined the hypothesis that the decline in tariffs under the *Canada-United States Free Trade Agreement*¹⁸ (the FTA), combined with other price changes, somehow enhanced the importance of non-price factors after 1989. The Tribunal can find no evidence to support this proposition. On the contrary, as noted above, the Tribunal's price analysis suggests that the domestic industry responded to the recession, FTA tariff declines and exchange rate movements by lowering its prices between 1990 and 1991. While detailed comparative price data are not available on record for 1989, there is no reason to believe that this process of price adjustment by the Canadian industry would not also have been occurring in 1989. In the view of the Tribunal, these downward price adjustments would have tended to offset any enhancing influences that CUSTA and other price factors might have had on non-price factors.

Lost Accounts

The Panel has also directed the Tribunal to reexamine evidence concerning some 30 to 32 allegations of lost sales by the industry. In its deliberations following the hearing, it became evident to the Tribunal that a high proportion of the industry's allegations of lost sales were incomplete or inaccurate in some way. The Tribunal's examination of the lost sales allegations was further complicated by the fact that many of the replies by U.S. exporters to these allegations, including the 32 mentioned in the remand, were narrowly restricted and finely circumscribed.

16. *Sacilor Aciéries v. The Anti-dumping Tribunal*, Federal Court of Appeal, Appeal No. A-1806-83, June 27, 1985.

17. *Ibid.* at 6.

18. Canada Treaty Series, 1989, (C.T.S.), signed on January 2, 1988.

The Tribunal notes that, in quantitative terms, these accounts, which were intended simply to be illustrative of the effects of dumping, were not significant. What is qualitatively significant about the 32 accounts is that almost all of them involve an admission of dumping of some sort by one or more U.S. exporters. However, the Tribunal's original analysis and its subsequent detailed analysis further to this remand indicate that, even where dumping has been admitted, the volumes of dumped goods and the margins of dumping involved are relatively insignificant.

The Tribunal notes that the allegations of lost sales were one of many factors considered by the Tribunal in its injury analysis. In commenting on this matter in its statement of reasons, the Tribunal simply stated that it was "satisfied that the information in the Final Determination supports the industry's allegations that sales were made to these accounts at dumped prices, and that as a consequence, the industry lost sales and/or had to reduce prices in many instances.¹⁹" However, as noted in the dissenting opinion of the Chairman of the Panel in this case, "the Tribunal did not base its decision on the specific claims of lost sales advanced in evidence by the Canadian industry."²⁰ The Tribunal has nothing more to say about the allegations relating to lost accounts.

Decline in Average Unit Prices

Finally, the Panel has asked the Tribunal to assess and explain the relevance, if any, of a \$0.13 decline in the industry's average unit revenues between 1990 and 1991, as reported in the Tribunal's staff report. Although this was not a matter addressed by the Tribunal in its statement of reasons, the Tribunal has examined this issue in accordance with the Panel's request. The Tribunal notes that this \$0.13 decline was derived from unit values that, in turn, were calculated from aggregate industry volumes and values of sales. The table in which it appears in the Tribunal's staff report was intended to depict revenues, costs of production and incomes for the industry as a whole, on a per-unit basis, and not price movements as such.

The numbers appearing in the price analysis reported herein are less aggregated and, hence, more likely to approximate actual price movements. Nevertheless, the Tribunal notes that the \$0.13 decline shown in the unit income statement is consistent with the downward price trend revealed for the four firms in the price analysis between 1990 and 1991. However, in the Tribunal's judgment, the values contained in the unit income statement, by themselves, do not reveal anything definitive about the effects of dumping compared to the effects of other factors in causing price declines.

FUTURE INJURY

The Tribunal confirms its finding that dumping is likely to cause material injury. In addition to the reasons provided in the finding, the Tribunal adds that, given the competitive nature of U.S. and Canadian carpet prices, it is clear that anti-dumping duties are necessary to help offset the advantage conferred by dumping. This advantage has helped U.S. carpet imports to surge into Canada in unprecedented volumes, despite ongoing weak market conditions in Canada, especially in 1990 and 1991.

19. *Supra*, note 3 at 26.

20. *Supra*, note 2 at 72.

This surge northward by U.S. producers at dumped prices reflects, among other things, soft demand conditions in the United States, large U.S. carpet manufacturing overcapacity, as well as the production imperative dictated by the need to keep huge U.S. plants, such as those owned by Shaw and Queen, operating round-the-clock to achieve maximum operational efficiencies. In the judgment of the Tribunal, these conditions are likely to persist for some time and to create the basic conditions that will lead to continued dumping in the future, in the absence of the price discipline imposed by anti-dumping duties.

The Tribunal further notes that CUSTA provided for a 10-year transition period, beginning in 1989, during which the Canadian industry could gradually adjust to lower tariffs. In the opinion of the Tribunal, the effect of continued dumping at the levels established by the Deputy Minister would be to virtually eliminate the remaining portion of this transition period. As the Tribunal observed in its statement of reasons, "[d]umping has further reduced the time required by the Canadian industry to make the necessary adjustments to compete effectively in a North-American free-trade environment."²¹

For greater certainty having regards to the specific direction in the remand, the Tribunal considers that this determination does not depend solely on the existence of dumping as a cause of past injury, for the reasons given above.

CONCLUSION

In conclusion, the Tribunal finds, in this determination on remand, that dumping, in and of itself, has caused, is causing and is likely to cause material injury to Canadian production of the subject goods.

John C. Coleman

John C. Coleman
Presiding Member

Michèle Blouin

Michèle Blouin
Member

Robert C. Coates, Q.C.

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Member

21. *Supra*, note 3 at 25.