



Ottawa, Friday, June 9, 1995

Inquiry No.: NQ-93-003 Remand

**SYNTHETIC BALER TWINE WITH A
KNOT STRENGTH OF 200 lbs OR LESS,
ORIGINATING IN OR EXPORTED FROM
THE UNITED STATES OF AMERICA**

REMAND - The Binational Panel (the Panel), in Canadian Secretariat File No. CDA-94-1904-02, acting pursuant to its authority under section 77.015 of the *Special Import Measures Act*, remanded, in part, the finding of the Canadian International Trade Tribunal (the Tribunal) in Inquiry No. NQ-93-003. The Panel affirmed the Tribunal's finding that the dumping of synthetic baler twine had caused and was causing material injury to the production in Canada of like goods and remanded to the Tribunal its finding that the dumping was likely to cause material injury to the production in Canada of like goods, with instructions to identify the evidence in the record that establishes the likelihood of injury or, failing that, to reopen the administrative record to obtain such evidence.

DETERMINATION ON REMAND: The Tribunal, pursuant to section 77.016 of the *Special Import Measures Act*, hereby finds that the dumping of synthetic baler twine with a knot strength of 200 lbs or less, originating in or exported from the United States of America, is likely to cause material injury to the production in Canada of like goods.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

Inquiry No. NQ-93-003 Remand

Tribunal Members: Arthur B. Trudeau, Presiding Member
Desmond Hallissey, Member

Director of Research: Réal Roy

Research Manager: Daryl Poirier

Counsel for the Tribunal: Joël J. Robichaud

Ottawa, Friday, June 9, 1995

Inquiry No.: NQ-93-003 Remand

IN THE MATTER OF a remand under Article 1904 of the *North American Free Trade Agreement* respecting:

**SYNTHETIC BALER TWINE WITH A
KNOT STRENGTH OF 200 lbs OR LESS,
ORIGINATING IN OR EXPORTED FROM
THE UNITED STATES OF AMERICA**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
 DESMOND HALLISSEY, Member

DETERMINATION ON REMAND

This determination on remand was undertaken in accordance with the Binational Panel (the Panel) decision in respect of its review¹ of the finding of the Canadian International Trade Tribunal (the Tribunal) in Inquiry No. NQ-93-003.² The Tribunal found that the dumping of synthetic baler twine with a knot strength of 200 lbs or less, originating in or exported from the United States of America, had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

The Panel affirmed the Tribunal's finding that the dumping had caused and was causing material injury to the production in Canada of like goods and remanded to the Tribunal its finding that the dumping was likely to cause material injury to the production in Canada of like goods, with instructions to identify the evidence in the record that establishes the likelihood of injury or, failing that, to reopen the administrative record to obtain such evidence. The Panel directed the Tribunal to complete its reconsideration and to issue its determination within 60 days of the date of the Panel's decision.

The Chairman of the Tribunal authorized Members Trudeau and Hallissey to hear and decide the remand pursuant to subsection 9(3) of the *Canadian International Trade Tribunal Act*³ in light of the fact that Member Blouin, who was involved in the original inquiry, ceased to be a member of the Tribunal on February 19, 1995.

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1. *Synthetic Baler Twine With a Knot Strength of 200 lbs or Less, Originating in or Exported from the United States of America*, Canadian Secretariat File No. CDA-94-1904-02, April 10, 1995.
 2. *Synthetic Baler Twine With a Knot Strength of 200 lbs or Less, Originating in or Exported from the United States of America*, Finding, April 22, 1994, Statement of Reasons, May 9, 1994.
 3. R.S.C. 1985, c. 47 (4th Supp.).

On May 5, 1995, the Tribunal issued a notice of reopening of inquiry.⁴ As part of this remand, the Tribunal sent questionnaires to the three largest known manufacturers of synthetic baler twine in the United States: Exxon Chemical Company (Exxon), Bridon Cordage Inc. (Bridon Cordage) and Poli-Twine Western, Inc. (Poli-Twine). The Tribunal requested information from these three manufacturers with respect to their production capacity and sales levels for synthetic baler twine for the calendar years 1992 and 1993, as well as production capacity and sales forecasts for 1994, as envisaged at the end of 1993. Information with respect to inventory levels at the end of 1992 and 1993 and with respect to any changes in conditions in the U.S. market over that two-year period that would affect these manufacturers' ability to supply the domestic and/or export market for synthetic baler twine was also requested. In addition, the Tribunal invited Poli-Twine Canada, a division of TecSyn International Inc. (TecSyn), to submit any relevant information that it might have with respect to demand and supply conditions for synthetic baler twine in the United States in 1992 and 1993 and any forecasts for 1994, as envisaged at the end of 1993.

From the replies to the above requests for information, the Tribunal's research staff prepared public and protected staff reports that were distributed to parties and their counsel. Counsel for TecSyn submitted written evidence and arguments in support of a finding of future injury, while counsel for Bridon Cordage and Bridon Pacific Limited submitted written evidence and arguments in support of a finding of no future injury. Parties were also given an opportunity to respond to each other's submissions. The notice of reopening of inquiry indicated that a hearing was not contemplated for this remand, and none was requested.

As indicated above, the Tribunal requested information from U.S. manufacturers and from TecSyn for the years 1992 and 1993, as well as forecasts for 1994. Any data received by the Tribunal that were compiled after March 29, 1994, the last day of the hearing in the inquiry, was not considered by the Tribunal, as this information would not have been available to it at that time. In the Tribunal's view, there is no basis in law that would allow it to consider any information that was compiled after that date. The Tribunal does not find any support in the cases to which counsel for Bridon Cordage referred for the proposition that it must take into account 1994 and 1995 data in this remand. To do so, in the Tribunal's view, would amount to a review, pursuant to subsection 76(2) of the *Special Import Measures Act*,⁵ of its finding of material injury. Such is not the case here.

Although the Tribunal decided to reopen the administrative record for the purposes of this remand, it remains of the view that there is evidence in the record of the inquiry that establishes that the dumping is likely to cause material injury to the production in Canada of like goods. The Tribunal is also of the view that there is further evidence in support of such a finding in the information that was received in response to its questionnaires.

REVIEW OF THE ORIGINAL RECORD

During the period reviewed by the Department of National Revenue (Revenue Canada), 100 percent of Bridon Cordage's exports to Canada were found to have been dumped at substantial margins (indeed the highest of all U.S. exporters). The dumping by Bridon Cordage was continuous and not limited to certain types of synthetic baler twine. In the Tribunal's view, this demonstrated a deliberate and determined intent on

4. Canada Gazette Part I, Vol. 129, No. 19, May 13, 1995, at 1622.

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

the part of that U.S. manufacturer to gain access to the Canadian market and showed a clear propensity to dump on its part that was not likely to change, in light of the evidence that was presented to the Tribunal.

The original evidence showed that imports from the United States into Canada had increased by 50 percent in 1992 over 1991 and by an additional 6 percent in 1993 over 1992.⁶ The cumulative increase in imports over the period from 1991 to 1993 was almost 60 percent. The magnitude of that increase in import volumes from the United States in such a short period of time demonstrated that the penetration of the Canadian market by U.S. manufacturers was not in any way accidental. The original evidence also showed that, in 1989, the United States replaced Portugal as the principal supplier of imported synthetic baler twine to Canada. Its market share increased from 24 percent of total imports in 1988 to 45 percent, 58 percent, 53 percent, 65 percent and 62 percent of total imports in the years from 1989 to 1993, respectively.⁷ The volume of those U.S. imports and the increase in their share of total imports from all sources over such an extended period of time were a clear indication that U.S. manufacturers had a longer-term interest in the Canadian market. Indeed, in the Tribunal's view, it was only following the initiation of a dumping investigation by Revenue Canada in 1993, before the booking season for 1994 sales, that interest in the Canadian market by U.S. exporters began to decline.

In addition to the rapid increase in imports from the United States, the evidence was clear from witnesses at the hearing that synthetic baler twine prices in the United States were higher than those in Canada.⁸ In the Tribunal's view, it was unlikely that U.S. manufacturers would continue to export product to Canada at prices lower than those prevailing in their domestic market, if there had been no excess capacity in the United States. The Tribunal, therefore, concludes that this behaviour on the part of U.S. manufacturers suggested that they possessed excess capacity.

U.S. manufacturers expanded their penetration of the Canadian market by offering synthetic baler twine to Canadian purchasers at continually lower prices at a time when the Canadian dollar was falling in value. In normal circumstances, the deteriorating exchange rate between the U.S. and Canadian dollars over the period from 1991 to 1993 should have led U.S. manufacturers to increase their prices in Canadian dollars in order to obtain the same return in U.S. dollars. The evidence is clear that this did not occur. To the contrary, Bridon Cordage's average selling price to its major Canadian accounts continued to fall, when

6. Protected Pre-Hearing Staff Report, March 4, 1994, Tribunal Exhibit NQ-93-003-7 (protected), Administrative Record, Vol. 2 at 4.29.

7. Public Pre-Hearing Staff Report, March 4, 1994, Tribunal Exhibit NQ-93-003-6, Administrative Record, Vol. 1 at 61.30.

8. The testimony of Mr. Sidney O. Nicholls of TecSyn International Inc. was that baler twine prices were much higher in the United States than they were in Canada. See Inquiry No. NQ-93-003, Transcript of Public Session, Vol. 1, March 28, 1994, at 27. See also the testimony of Mr. Jerry Nolin of TecSyn, Inquiry No. NQ-93-003, Transcript of the In Camera Session, Vol. 1, March 28, 1994, at 35.

expressed in Canadian dollars. When expressed in U.S. dollars, the fall in price was even greater.⁹ This suggests to the Tribunal that Bridon Cordage's prices were calculated to maximize their Canadian sales volumes, which they did. In addition, those prices were dumped prices. But for the initiation of a dumping investigation and the subsequent imposition of anti-dumping duties, the Tribunal is convinced that the dumping would have continued.

In its inquiry, the Tribunal found that the domestic industry had been injured by dumped imports. It suffered price suppression and erosion, and loss of revenues and profits. Poli-Twine's physical, financial and human resources were stretched to the limit by the need to compete over an extended period of time with dumped prices of synthetic baler twine in the Canadian market. It was in a financially precarious position, facing a market in which purchasers of synthetic baler twine switched suppliers for as little as a few cents a pound. In other words, the Tribunal determined that the domestic industry was clearly vulnerable to continued dumping.

In light of the evidence from the inquiry, identified in the previous paragraphs, the Tribunal reaffirms its finding that the dumping is likely to cause material injury to the production in Canada of like goods.

REOPENING OF THE ADMINISTRATIVE RECORD

In the course of the remand investigation, the Tribunal obtained new information for 1992 and 1993, as well as for 1994, as forecast at the end of 1993, with respect to the capacity, capacity utilization and inventory levels of the three U.S. manufacturers of synthetic baler twine and with respect to the demand for synthetic baler twine in the U.S. market. In the Tribunal's view, the new evidence corroborates the testimony of witnesses in the inquiry and confirms the Tribunal's finding of likelihood of material injury.

Information provided by the three U.S. manufacturers of synthetic baler twine in response to the Tribunal's questionnaire as part of this remand shows that total U.S. sales (domestic and export) of synthetic baler twine accounted for only 75.2 percent of polypropylene extrusion capacity in 1992, 75.8 percent in 1993 and a projected 78.2 percent in 1994.¹⁰ This new information also shows that polypropylene extrusion capacity was forecast to increase by 7.5 percent over the period from 1992 to 1994 and by 3.9 percent

9. Bridon Cordage's weighted average selling price to major Canadian accounts, in Canadian dollars, fell by 5 percent between 1990 and 1993. See Protected Pre-Hearing Staff Report, revised March 16, 1994, Tribunal Exhibit NQ-93-003-7A (protected), Administrative Record, Vol. 2 at 4.119. Over that same period, the value of the Canadian dollar, expressed in U.S. dollars, fell from \$0.857 to \$0.775, a decrease of 9.5 percent. See Protected Pre-Hearing Staff Report, March 4, 1994, Tribunal Exhibit NQ-93-003-7 (protected), Administrative Record, Vol. 2 at 4.61. All other things being equal, and not taking into account any price increases which might ordinarily have been expected to occur over such a time span, Bridon Cordage's weighted average selling price to Canadian purchasers in 1993 should have been approximately 15 percent higher than it actually was in order for Bridon Cordage to obtain the same return as that achieved in 1990, when expressed in U.S. dollars.

10. Public Staff Report, May 24, 1995, Tribunal Exhibit NQ-93-003(Remand)-3, Administrative Record, Vol. 1 at 5.12. Although U.S. manufacturers reported very high rates of total utilization of extrusion capacity, the Tribunal believes that its analysis should focus on the extrusion capacity that was actually devoted to the production of synthetic baler twine. This analysis shows that considerable excess extrusion capacity that could be used to produce synthetic baler twine existed in the United States.

from 1993 to 1994 alone. This increase in extrusion capacity was accompanied by an increase of 11.8 percent in total synthetic baler twine sales from 1992 to forecast 1994.

Accordingly, while capacity utilization attributable to the production of synthetic baler twine for both domestic and export sales increased marginally over the period, the residual extrusion capacity that could be used to produce synthetic baler twine remained high, at almost 24.8 percent in 1992, 24.2 percent in 1993 and a projected 21.8 percent in 1994. As an unknown volume of synthetic baler twine sales was stated to have been made from inventory, even the relatively low levels of capacity utilization quoted above are overstated. Furthermore, the confidential information regarding domestic U.S. sales, in conjunction with the information on U.S. polypropylene extrusion capacity, shows that the residual U.S. extrusion capacity that could be used to produce synthetic baler twine for export was even higher than noted above.¹¹

Counsel for Bridon Cordage argued that there was a lack of excess capacity and excess inventories in the U.S. market. It was contended that some U.S. production capacity formerly used to manufacture synthetic baler twine was diverted to the production of other goods. It was also submitted that the evidence showed that the U.S. market for U.S.-manufactured synthetic baler twine had grown since 1992 and was expected to continue to grow. Consequently, it was argued, these capacity constraints, coupled with a growing U.S. market, had contributed to reduce the interest in the Canadian market by U.S. manufacturers.

However, the evidence is clear that considerable excess capacity for the production of synthetic baler twine existed in the U.S. market throughout the period from 1992 to forecast 1994. The capacity constraints cited by counsel for Bridon Cordage are simply not supported by the evidence when considered in its proper perspective. Bridon Cordage's activities in the United States during 1993 were deteriorating, and this forced the company to export, even at dumped prices.¹² The new evidence clearly shows that 95 and 92 percent of U.S. exports of synthetic baler twine were directed to Canada in 1992 and 1993, respectively.¹³ Furthermore, the confidential evidence reveals that, at the end of 1993, there were plans to continue to export significant volumes of synthetic baler twine to Canada in 1994.¹⁴ The evidence also shows that export markets for synthetic baler twine in other parts of the world have been either impenetrable or of relatively low volume.¹⁵

11. Protected Staff Report, May 24, 1995, Tribunal Exhibit NQ-93-003(Remand)-4 (protected), Administrative Record, Vol. 2 at 0.10.

12. Protected Staff Report, May 24, 1995, Tribunal Exhibit NQ-93-003(Remand)-4 (protected), Administrative Record, Vol. 2 at 0.6.

13. Manufacturer's Exhibit A-2 (protected), Schedule II, Administrative Record, Vol. 10.

14. Protected Staff Report, May 24, 1995, Tribunal Exhibit NQ-93-003(Remand)-4 (protected), Administrative Record, Vol. 2 at 0.7.

15. Supplementary questionnaire responses by Bridon Cordage, Exxon and Poli-Twine show that Canada has been the principal, if not the sole, export market for synthetic baler twine manufactured by these companies. See Tribunal Exhibits NQ-93-003(Remand)-7.1, 7.2 and 7.3 (protected), Administrative Record, Vol. 4 at 4, 10 and 18, respectively. TecSyn's brief indicates that "there is very little potential for growth outside the traditional markets of Canada and the United States. It is virtually impossible for Poli-Twine Canada to export to European markets due to high tariff rates of duty of 12.5%." See Inquiry No. NQ-93-003, Manufacturer's Exhibit A-2 at 23, Administrative Record, Vol. 9.

The Tribunal cannot accept the contention that U.S. manufacturers would have been constrained, as a result of capacity limitations, from participating in the Canadian market after 1993. The only real impediment to U.S. participation in the Canadian market in the booking season for 1994 was the initiation of the dumping investigation by Revenue Canada in 1993.

In the Tribunal's view, while the evidence shows a small increase in domestic U.S. sales of U.S.-manufactured synthetic baler twine from 1992 to forecast 1994, there is little evidence that U.S. demand for this twine will continue to grow.¹⁶ In fact, there is persuasive evidence that U.S. government policies will negatively affect the demand for synthetic baler twine in the United States for years to come (e.g. additional land set-asides, stricter controls on pesticides and increased designation of wetlands for conservation).¹⁷

With regard to inventory levels, counsel for Bridon Cordage argued that the evidence demonstrates that inventories of synthetic baler twine declined by 39.2 percent from 1992 to 1993.¹⁸ The implication was that this inventory reduction reflected an inability on the part of U.S. manufacturers, even though they were producing at full capacity, to meet demand from current production. The Tribunal did not find any evidence to support that argument. Lower than normal inventory levels at the close of each calendar year are not necessarily reflective of strong demand conditions in the market for synthetic baler twine. To the contrary, the evidence clearly shows that manufacturers begin building inventories in September of each year in preparation for, and anticipation of, sales in the next shipping season.¹⁹ Accordingly, expectations of stronger-than-normal demand conditions in the next year's shipping season would be reflected in a higher-than-normal buildup of inventories at year's end.

It could also be argued that a reduction in inventory levels at a time of the year when manufacturers normally build up inventories reflected a recognition by manufacturers that demand for synthetic baler twine would be weak in the next shipping season. Furthermore, low inventory levels at the end of the calendar year cannot be interpreted as a sign of strong demand, since manufacturers do not ship synthetic baler twine in the fall. The evidence is quite clear that the normal shipping season for synthetic baler twine is the April-May period and that in-season shipping takes place in June, July and August.²⁰ Furthermore, manufacturers of synthetic baler twine do not normally carry any significant levels of inventory throughout the year. Synthetic baler twine is a seasonal commodity. Inventories are rapidly built up in the fall in anticipation of the shipping season and are depleted just as rapidly when shipments to customers begin. In the end, the Tribunal concludes that the evidence on inventory levels at the end of the calendar year is inconclusive, at best.

In summary, the new evidence shows that forecast polypropylene extrusion capacity in the United States in 1994 was far in excess of U.S. manufacturers' projected sales of synthetic baler twine in that year. The new evidence also shows that Canada was the principal, if not the sole, export market for U.S.-manufactured synthetic baler twine and that some U.S. exporters intended to continue exporting

16. The evidence is unclear on the likely demand for sisal twine in the U.S. market.

17. Tribunal Exhibit NQ-93-003(Remand)-7.2 (protected), Administrative Record, Vol. 4 at 12-13.

18. Public Staff Report, May 24, 1995, Tribunal Exhibit NQ-93-003(Remand)-3, Administrative Record, Vol. 1 at 5.13.

19. Inquiry No. NQ-93-003, Transcript of Public Session, Vol. 1, March 28, 1994, at 18.

20. *Ibid.* at 18-19.

synthetic baler twine to Canada in 1994. The Tribunal finds that this additional evidence confirms the Tribunal's finding of April 22, 1994, that the dumping of synthetic baler twine, originating in or exported from the United States, was likely to continue and to cause material injury to the production in Canada of like goods.

CONCLUSION

The Tribunal, therefore, finds that there was evidence in the record of the inquiry that established that the dumping of synthetic baler twine with a knot strength of 200 lbs or less, originating in or exported from the United States of America, was likely to cause material injury to the production in Canada of like goods. The Tribunal also finds that the new evidence that was received as a result of the reopening of the administrative record for this remand confirms this finding.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Desmond Hallissey

Desmond Hallissey
Member