



Ottawa, Friday, February 11, 1994

Inquiry No.: NQ-91-006 Remand (2)

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

REMAND - The Binational Panel (the 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 determination on remand of the Canadian International Trade Tribunal (the Tribunal) in Inquiry No. NQ-91-006 Remand. First, the Panel affirmed the Tribunal's determination on remand that dumping is likely to cause material injury to the production in Canada of like goods. Second, the Panel remanded the Tribunal's determination on remand that dumping has caused and is causing material injury to the production in Canada of like goods and directed the Tribunal, among other things, to undertake further steps with respect to the price analysis outlined in the Tribunal's determination on remand.

DETERMINATION ON REMAND: The Canadian International Trade Tribunal, under section 77.16 of the *Special Import Measures Act*, hereby finds, as a result of the Binational Panel's specific directions on remand, that the dumping of certain machine tufted carpeting originating in or exported from the United States of America has not caused and is not causing material injury to the production in Canada of like goods.

Kathleen E. Macmillan
Kathleen E. Macmillan
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 (2)

Tribunal Members: Kathleen E. Macmillan, Presiding Member
Michèle Blouin, Member
Robert C. Coates, Q.C., Member

Director of Research: Selik Shainfarber

Research Officer: Paule Couët

Economist: Simon Glance

Statistical Officer: Robert Larose

Counsel for the Tribunal: Hugh J. Cheetham



Ottawa, Friday, February 11, 1994

Inquiry No.: NQ-91-006 Remand (2)

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: KATHLEEN E. MACMILLAN, 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 determination on remand of the Canadian International Trade Tribunal (the Tribunal) in Inquiry No. NQ-91-006 Remand.³ In its finding dated April 21, 1992, and statement of reasons dated May 6, 1992 (Inquiry No. NQ-91-006), the Tribunal held 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.

On April 7, 1993, the Panel affirmed the Tribunal's finding except for two issues on which it 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, certain specific directions which included an analysis in detail of the staff'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. The Panel also remanded the Tribunal's finding that dumping was 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.

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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, January 21, 1994.
 3. *Machine Tufted Carpeting Originating in or Exported from the United States of America*, Inquiry No. NQ-91-006 Remand, Determination on Remand, May 25, 1993.

On May 25, 1993, the Tribunal issued its determination on remand in which it affirmed its finding that the dumping of certain machine tufted carpeting originating in or exported from the United States of America had caused and was causing material injury to the production in Canada of like goods. The Tribunal also affirmed its finding that the dumping of the subject goods was likely to cause material injury to the production in Canada of like goods.

In responding to the Panel's directions, the Tribunal conducted a new price analysis (referred to by the Panel as the 1993 Price Study) which was based on the pricing information found in CST Vol. 4, Public Staff Report at 1.46 to 1.48 and CST Vol. 6, Confidential Staff Report at 66 to 77. The 1993 Price Study compared the average Canadian selling prices of the two principal U.S. exporters, Shaw Industries, Inc. (Shaw) and Queen Carpet (Queen), with the average selling prices of four of the most stable and efficient Canadian producers. The results of the 1993 Price Study, and the conclusions that the Tribunal drew from it, were outlined in detail in the Tribunal's determination on remand.

On June 9, 1993, the Carpet and Rug Institute (CRI), on behalf of U.S. carpet producers, filed a challenge to the Tribunal's determination on remand. In written and oral submissions to the Panel, counsel for the CRI argued, in part, that results of the 1993 Price Study, and the conclusions drawn from it, were fundamentally flawed in that the analysis was based on erroneous data. Specifically, the analysis had used certain pricing information submitted by Shaw which had subsequently been amended by Shaw. The 1993 Price Study clearly used the original figures submitted by Shaw.

On January 21, 1994, the Panel issued its decision following review of the Tribunal's determination on remand. In its decision, the Panel affirmed the Tribunal's determination that dumping is likely to cause material injury to the production in Canada of like goods. The Panel remanded the Tribunal's determination that dumping has caused and is causing material injury to the production in Canada of like goods and directed the Tribunal, on remand, as follows:

1. To explain why it failed to use the corrected figures submitted by Shaw.
2. To conduct another price analysis using the corrected figures submitted by Shaw.
3. The Tribunal may also prepare a price analysis in which it deals separately with Shaw and Queen.

REASONS

1. Use of Shaw's Original Figures

In the first remand, the Panel directed the Tribunal, among other things, to conduct a detailed analysis of the staff'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. These sections of the staff reports contained Shaw's original figures, as the staff reports were not amended during the course of the inquiry to reflect Shaw's amended figures. The analysis in the 1993 Price Study was based on the information in the staff reports. Neither the figures in these sections of the staff reports nor Shaw's amended figures were tested during the Tribunal's inquiry because the parties and the Tribunal did not focus on aggregate pricing data.

2. Pricing Analysis Based on Shaw's Amended Figures

When Shaw's amended figures are used, Shaw's average Canadian selling prices increase by some 50 percent compared to the 1993 Price Study for each of 1990 and 1991. The following table shows that, when Shaw's amended figures are combined with Queen's average Canadian selling prices, the result is that Canadian producers enjoy a substantial price advantage of some 22 to 23 percent over Shaw and Queen's combined prices, even when the effects of dumping are taken into account.

COMPARISON OF RESULTS OF PRICING ANALYSIS (\$/m ²)								
Year	<u>Average Price</u>			<u>Anti-Dumping Duty</u>		<u>Adjusted Undumped Price¹</u>		
	Producers	<u>Importers</u>		<u>Importers</u>		<u>Importers</u>		
		Original	Revised	Original	Revised	Original	Revised	
1990	9.77	9.34	12.02	0.33	0.42	9.67	12.44	
1991	9.39	8.98	11.42	0.35	0.44	9.33	11.86	
Differential Between Domestic Goods and Imports								
	<u>Original</u>		<u>Revised</u>		<u>Original</u>		<u>Revised</u>	
1990	0.43		-2.25		0.10		-2.67	
1991	0.41		-2.03		0.06		-2.47	
Premium of Imports Over Canadian Prices Based on Shaw's Amended Figures								
1990			23%				27%	
1991			22%				26%	
<p>Note: All values in the table are weighted average prices derived in a manner consistent with the 1993 Price Study as explained in the Tribunal's May 25, 1993, determination on remand.</p> <p>1. The sum of the average price and the value of the anti-dumping duty.</p>								

3. Separate Analysis of Shaw's and Queen's Pricing Information

The Panel's third direction gives the Tribunal the option of preparing a price analysis which deals separately with Shaw and Queen. The Tribunal is of the view that a price analysis based on a comparison of the average selling prices of the four Canadian producers used in the 1993 Price Study to Shaw by itself, or to Queen by itself, does not provide, in this case, a sample for U.S. imports of a sufficient size for the Tribunal to rely on the results of such an analysis. Further, as discussed below, the Tribunal also has concerns with respect to the amended figures submitted by Shaw. Therefore, the Tribunal has chosen not to prepare a separate analysis of Shaw's and Queen's pricing information.

CONCLUSION

The Tribunal notes that the Panel, at page 5 of its decision on review of the Tribunal's determination on remand clearly states that the Tribunal's finding of past and present injury, "will be acceptable only if its 1993 Price Study establishes the critical nexus between injury and dumping."

The Tribunal does not believe that Shaw's amended figures are reliable for the following reasons. First, the conclusions which follow from using Shaw's amended figures are inconsistent with much of the other evidence on pricing adduced during the Tribunal's inquiry relating to Shaw. Shaw presented itself as being among the most efficient and price-competitive producers in North America. Far from charging a premium for its products, the thrust of its case before the Tribunal was that its competitive advantages allowed it to generally underprice Canadian producers by substantial margins. It is difficult for the Tribunal to believe that the rapid and dramatic gains in market share by U.S. carpets, from 6 percent in 1988 to 39 percent in 1991, could have occurred if U.S. carpets were not aggressively priced against Canadian carpets.

As neither set of figures submitted by Shaw was tested by cross-examination or any other means during the Tribunal's inquiry, the Tribunal does not consider, in light of the Panel's directions, that either set of figures is sufficiently reliable to support a determination of past and present injury. In light of the Tribunal's concerns expressed above, the Tribunal is of the view that there is insufficient evidence before it in this determination on remand to allow it to conclude that the 1993 Price Study using Shaw's amended figures establishes the critical nexus between injury and dumping as directed by the Panel.

Therefore, as the Tribunal has been directed by the Panel to rely solely on the 1993 Price Study, the Tribunal has no option but to find in this determination on remand, that dumping, in and of itself, has not caused and is not causing material injury to the production in Canada of like goods.

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