



Ottawa, Friday, July 6, 1990

Inquiry No.: NQ-89-004

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

**REFILL PAPER, ALSO KNOWN AS FILLER OR LOOSELEAF PAPER, ORIGINATING
IN OR EXPORTED FROM THE FEDERATIVE REPUBLIC OF BRAZIL**

FINDING

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry consequent upon the issue by the Deputy Minister of National Revenue for Customs and Excise of preliminary determinations of dumping and subsidizing dated March 8, 1990, and of final determinations of dumping and subsidizing dated June 6, 1990, respecting the dumping in Canada and subsidizing of refill paper, also known as filler or looseleaf paper, originating in or exported from the Federative Republic of Brazil.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada and subsidizing of refill paper, also known as filler or looseleaf paper, originating in or exported from the Federative Republic of Brazil have caused, are causing and are likely to cause material injury to the production in Canada of like goods.

John C. Coleman

John C. Coleman
Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

Charles A. Gracey

Charles A. Gracey
Member

Robert J. Martin

Robert J. Martin
Secretary

The Statement of Reasons will be issued within 15 days.



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**REFILL PAPER, ALSO KNOWN AS FILLER OR LOOSELEAF PAPER, ORIGINATING
IN OR EXPORTED FROM THE FEDERATIVE REPUBLIC OF BRAZIL**

Special Import Measures Act - Whether the dumping and subsidizing of the above-mentioned goods have caused, are causing or are likely to cause material injury, or have caused or are causing retardation to the production in Canada of like goods.

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping in Canada and subsidizing of the aforementioned goods have caused, are causing and are likely to cause material injury to the production in Canada of like goods.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: June 11, 12 and 13, 1990
Date of Finding: July 6, 1990

Tribunal Members: John C. Coleman, Presiding Member
Sidney A. Fraleigh, Member
Charles A. Gracey, Member

Director of Research: Réal Roy
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for Fanco Products
Division of H.J.M. Enterprises Inc.

Bruce Pollock
for Hilroy
Division of Abitibi-Price

(Complainants)

Peter Clark
Peter Burn
Chris Hines
for Tilibra S.A. Comercio E Industria Grafica

(Exporter)

Witnesses:

Harvey Eiding
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Fanco Products Inc.
Division of H.J.M. Enterprises Inc.

Samuel Eiding
President
Fanco Products Inc.
Division of H.J.M. Enterprises Inc.

Bruce D. McIntyre
Executive Vice-President
Hilroy

Gordon B. Hicks
Vice-President, Sales & Marketing
Hilroy

João Machado Jr.
Export Manager
Tilibra Paper Products

A.J. Hartt
Buyer
K-Mart Canada Limited

Gabby Green
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Ottawa, Monday, July 23, 1990

Inquiry No.: NQ-89-004

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

**REFILL PAPER, ALSO KNOWN AS FILLER OR LOOSELEAF PAPER,
ORIGINATING
IN OR EXPORTED FROM THE FEDERATIVE REPUBLIC OF BRAZIL**

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
SIDNEY A. FRALEIGH, Member
CHARLES A. GRACEY, Member

STATEMENT OF REASONS

SUMMARY

This is an inquiry to determine whether the dumping and subsidizing of Brazilian refill paper, also known as looseleaf paper, have caused and are likely to cause material injury to Canadian production of this product. Revenue Canada, in its investigation, found that all imports from the Federative Republic of Brazil (Brazil) were dumped and subsidized; the average dumping margin was 32.5 percent and export subsidies equalled CAN \$0.05 per 100 sheets.

The domestic producers, Hilroy and Fanco Products Inc., Division of H.J.M. Enterprises Inc. (Fanco), account for virtually all Canadian production with Hilroy accounting for well over half. The Tribunal considers that each firm constitutes a major proportion of Canadian production. The Tribunal may consider material injury to either producer from the dumping and the subsidizing to be sufficient for a finding of material injury to Canadian production of the goods.

The complaint originated with Fanco but was supported by Hilroy. In 1989, Fanco lost its long-standing account with K mart Canada Limited (K mart) for the supply of refill paper when K mart awarded the business to Tilibra Paper Products (Tilibra) of Brazil. While there is some evidence that relations between Fanco and K mart were strained during late 1988 and early 1989, the Tribunal is satisfied that Fanco lost the business when it refused to meet a price demanded by K mart that was roughly equivalent to the landed price of Tilibra's refill paper. If factors other than price had been that important, K mart, a few months later, would not have made new purchases of refill paper from Fanco on its own account and for a subsidiary. Fanco reacted to the lost K mart sales by bidding aggressively for other business. It succeeded in winning two important accounts from its competitor, Hilroy.

Fanco argued that it had suffered material injury from the lost sale and price suppression caused by the dumping and subsidizing. The Tribunal agrees. K mart sales equalled over 5 percent of the Canadian market for refill paper. The Tribunal estimates the price suppression suffered by Fanco to equal approximately its average net annual income before taxes in the previous three years. In contrast, Hilroy's total sales of refill paper increased in 1989 and so did its profit margins. Hilroy's claim related essentially to the likelihood of material injury, not past and present injury.

Because Fanco constitutes a major proportion of Canadian production, the Tribunal finds past and present material injury to Canadian refill paper production.

The Tribunal also finds a likelihood of material injury to Canadian production. North America is the major market for this product and the Brazilian producers will likely continue to attempt to penetrate this market to utilize excess capacity during their off-season, which coincides with the production season in North America. The witness for Tilibra confirmed that his company sold refill paper at a loss as a way of inducing customers to buy other, more profitable, stationery products. The Tribunal considers that Tilibra and other Brazilian producers would have made other large sales in 1989 if they had come to the market sooner, bearing in mind the standardized, price-sensitive nature of these "loss-leader" goods. Lost sales and price suppression would be even more severe than in 1989 if anti-dumping and countervailing duties were not applied in the future.

The Tribunal concludes that the dumping and subsidizing of refill paper from Brazil have caused, are causing and are likely to cause material injury to Canadian production of these goods.

CONDUCT OF THE INQUIRY

The Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, conducted an inquiry following the issue by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) of preliminary determinations of dumping and subsidizing dated March 8, 1990, and of final determinations of dumping and subsidizing dated June 6, 1990, respecting the importation into Canada of refill paper, also known as filler or looseleaf paper, originating in or exported from Brazil.

The notices of preliminary and final determinations of dumping and subsidizing were published in Part I of the Canada Gazette of March 24, 1990, and June 23, 1990, respectively. The Tribunal's Notice of Commencement of Inquiry issued on March 14, 1990, was published in Part I of the Canada Gazette of March 24, 1990.

As part of the inquiry, the Tribunal sent detailed questionnaires to the Canadian manufacturers and known importers of the subject goods requesting production, financial and market information, as well as other information, covering the period from January 1, 1986, to March 31, 1990. From the replies to questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports covering that time, which was the period of review in this inquiry.

The record of this inquiry consists of Tribunal exhibits, including the public and protected replies to questionnaires, exhibits filed by the parties at the hearing, as well as

the transcript of all proceedings. All public exhibits were made available to interested parties while protected exhibits were provided to independent counsel only.

Public and *in camera* hearings were held in Ottawa, Ontario, starting on June 11, 1990. The participants, Fanco, the complainant, and Hilroy, a producer supporting the complaint, as well as Tilibra, a Brazilian exporter of the subject goods, testified and were represented by counsel at the hearing. Counsel for Fanco also called a witness from St. Louis Distributors, R.P.S. Distributors & Sales Ltd.

The Tribunal called two witnesses: a merchandise buyer for K mart, a large retailer of both domestically produced and imported refill paper; and the Merchandising Manager from Sotal Ltd., an importer-wholesaler of refill paper.

On July 6, 1990, the Tribunal issued a finding to the effect that imports of dumped and subsidized Brazilian refill paper had caused, were causing and were likely to cause material injury to Canadian production of like goods.

THE PRODUCT

The product that is the subject of this inquiry is described in the preliminary determinations of dumping and subsidizing as refill paper, also known as filler or looseleaf paper, originating in or exported from Brazil. The subject goods can be more specifically described as paper that is horizontally ruled or lined, with or without a vertically lined margin or, alternatively, that is graph ruled or blank and that generally has three to five punched holes for insertion into a ring binder. The subject goods can also be imported in a "knocked-down" condition, that is, either in bulk or without holes and lines.

Refill paper is sold in a wide variety of sizes, with different ruling and with various hole configurations. The sizes range from 3" x 5" to 8½" x 14" and the paper may be ruled with vertical lines; quad or graph ruled; ruled with columns or left blank. The predominant style is 8½" x 11" in size, ruled with horizontal lines and a vertical margin, and punched with three holes for insertion in a ring binder. In the United States, the predominant size is 8" x 10½" and it is primarily this size that is exported to Canada to compete directly with the 8½" x 11" refill paper manufactured domestically.

Refill paper also comes in a wide variety of sizes, ranging from 20 sheets to 1000 sheets per package. The most common sized packages are the 200 and 400 sheet packages, which, together, accounted for 59 percent of the market during 1986, 65 percent in 1987, 75 percent in 1988 and 86 percent during 1989. During the period of inquiry, except for 1986, imports of 200-sheet and 400-sheet packages represented close to 80 percent of the total imports of the subject goods.

The most common use of refill paper is in educational institutions. As such, the market for the goods is seasonal, with approximately 95 percent of sales being made for the back-to-school season, which runs from early August to mid-September. The producers start soliciting orders in late fall for delivery the next summer. By Christmas, most major purchasers have committed themselves for the upcoming season. Based on the orders booked, the manufacturers will start to produce refill paper in January or February, continuing production until August. Deliveries will begin in March or April

and will continue until August, with most of the goods being delivered from late June through August.

The subject goods often account for 50 percent or more of the total value of stationery products in a retailer's back-to-school program. Many retailers will pick their source of other school supplies such as coil books, stitched books, brief covers, dividers and binders based on the price of refill paper.

The market for refill paper is dominated by large retailers that use refill paper as a loss leader in their back-to-school program during August and September. Consequently, these merchandisers are very price conscious, as every penny saved reduces the loss suffered on this product. These large retailers account for over 80 percent of the market for the subject goods. The goods are also sold in stationery stores, drug stores, department stores and grocery stores.

The major cost factor in the production of refill paper is the price of tablet paper. The principal source of this fine paper product is Canadian paper mills, with competition coming from mills located in the United States, Scandinavia and Brazil. Tablet paper, like all bulk paper, is sold by weight and the price is set by world market conditions.

THE CANADIAN INDUSTRY

There are four active producers of refill paper in Canada. The two largest producers of the subject goods are Hilroy and Fanco, which accounted for the vast majority of total Canadian production of refill paper during 1989. The two other producers are Esselte Pendaflex Canada Inc. (Esselte) and Spiral Paper Products, Division of Belt Manufacturing Limited (Spiral).

A fifth manufacturer, Williams Paper Co. Inc., recently sold its refill paper equipment. DRG Stationery, a former producer, sold its refill paper equipment and ceased producing these goods in 1987.

Fanco was established in 1947 and is owned and controlled by the Eiding family of Montréal, Quebec. Fanco manufactures a full line of back-to-school stationery items such as refill paper, exercise books, dividers, report covers and ring binders in its plant in Montréal. Refill paper is the single largest selling item of its product line.

Hilroy, the largest Canadian producer of refill paper and other back-to-school stationery items, was founded in 1918 by a Mr. Roy C. Hill. The company operates as a division of Abitibi-Price Inc., which purchased Hilroy in 1968 from the Hill family. Abitibi-Price Inc. is controlled by the Reichmann family of Toronto through Olympia and York Developments Limited. Hilroy produces a wide range of products for the office, home and school markets including refill paper, figuring pads, exercise books, filing supplies, report covers, ring binders and art supplies. Hilroy has plants in Toronto, Ontario, and Joliette, Quebec. Refill paper is produced in its Toronto plant.

Esselte is a large Canadian manufacturer of office supply products that include, among many other products, refill paper, filing systems, desk accessories, Dymo tapewriters and ring binders. Esselte is controlled by Esselte Pendaflex Inc., of the United States, which, in turn, is owned by Esselte AB, a large Swedish company. Esselte produces its refill paper in its Vancouver plant.

Spiral is a division of Belt Manufacturing Limited, a privately owned and operated company with a paper conversion plant in Mississauga, Ontario. Spiral manufactures refill paper, exercise books, construction and manilla paper, figuring pads, coil notebooks and other ruled paper stock.

The three largest producers, Fanco, Hilroy and Esselte, sell their products directly to retailers, to wholesale distributors and to various government bodies.

The remaining producer, Spiral sells mainly to boards of education and other institutional customers although it does produce some poly-wrapped refill paper for retail sales.

Fanco submitted a formal complaint to Revenue Canada while Hilroy submitted detailed information supporting the complaint. Both Fanco and Hilroy made submissions to the Tribunal and all four Canadian producers submitted replies to the Tribunal's questionnaire.

IMPORTERS AND EXPORTERS

Importers of refill paper can be classified into two categories: importer-wholesalers and retailers.

Importer-wholesalers, until 1989, represented the majority of total imports and substantially all imports from Brazil. These firms import the subject goods and resell the product to smaller retail chains and stores.

Some large retailers, which account for the majority of refill paper sales in Canada, have imported refill paper directly from foreign exporters.

Mead School & Office Products, a division of Mead Corporation (Mead), of Dayton, Ohio, is a large American producer of paper products, including refill paper. Mead is a non-resident importer of refill paper in Canada, selling directly to retail chains and stores through a Canadian sales agent.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATIONS

The period of investigation selected by the Deputy Minister for the purposes of the preliminary and final determinations of dumping covered imports of refill paper between January 1, 1989, and October 31, 1989, while the subsidy investigation covered imports of the subject goods between January 1, 1988, and October 31, 1989.

As the Brazilian exporters did not respond to National Revenue's request for information, normal values were based on information provided by Fanco and Hilroy. Export prices were based on information received from importers of the subject goods.

The Government of Brazil submitted a response to National Revenue's request for information concerning subsidies granted to refill paper producers. However, it was not received in time to be verified before the final determination. Therefore, the amount of subsidy was based on information provided by Fanco and Hilroy.

The results of the investigations were that 100 percent of the goods were found to have been dumped by a weighted average margin of dumping of 32.5 percent and that 100 percent of the goods shipped to Canada during the investigation period benefited from export subsidies in an amount equal to CAN \$0.05 per 100 sheets.

ECONOMIC INDICATORS

The statistics prepared by the Tribunal's research staff were done by using a unit of 1000 sheets of refill paper. That unit was selected due to the absence of an industry standard unit and as the sheet count of most package sizes can be converted easily to the 1000 sheet unit.

Due to the limited number of domestic producers and the predominance of Fanco and Hilroy among those producers, much of the financial, capacity utilization and employment data provided to the Tribunal remain confidential.

Total production by Canadian producers increased from 2.8 million units in 1986 to 3.0 million units in 1987. Production fell to 2.9 million units in 1988 before rising to 3.2 million units during 1989.

The Canadian market for the subject goods remained fairly stable at approximately 2.8 million units during 1986, 1987 and 1988, before increasing somewhat during 1989. The market for refill paper, until 1989, was dominated by two of the four domestic producers; Hilroy and, to a lesser, but steadily growing extent, Fanco.

Imported refill paper did not represent a significant proportion of the Canadian market until 1989. During the period under review, imports from Brazil increased from 7246 units in 1986 to 8928 units in 1987, dropped to 7708 units in 1988 and jumped to 267,933 units in 1989. Imports from the United States, the sole other source of refill paper during the period of inquiry, grew from 245 units in 1986, to 133,078 units in 1989 and represented 3 percent, 79 percent, 69 percent and 33 percent of total imports during 1986, 1987, 1988 and 1989, respectively.

During the inquiry period, Fanco purchased and installed new refill paper manufacturing equipment that increased its capacity significantly. Hilroy's capacity, on the other hand, remained constant during the four-year period. Productivity, as measured by the number of 1000-sheet units produced per person-hour, remained fairly constant for Hilroy during the inquiry period. Fanco, relying on its new equipment, increased its productivity during 1989, as compared to the previous two years.

US PRESIDENTIAL PROCLAMATION

On October 20, 1988, under section 301 of the *Trade Act* of 1974, as amended by the *Omnibus Trade and Competitiveness Act* of 1988, the President of the United States proclaimed punitive duties of 100 percent ad valorem on a variety of pharmaceutical products, paper products and consumer electronic products exported from Brazil. This action was taken in retaliation for Brazil's failure to provide process and product patent protection for US developed pharmaceutical products and fine chemicals. Refill paper was among the products affected by the retaliatory duties. This action effectively cut off access to the US market for Brazilian paper mills.

THE COMPLAINT

Although Fanco filed the original complaint with National Revenue, Fanco and Hilroy were the complainants in the proceedings before the Tribunal.

Fanco's Position

In its submissions to the Tribunal, Fanco alleged that the dumping and subsidizing of refill paper originating in or exported from Brazil has caused, were causing and were likely to cause material injury to the Canadian refill paper industry in general and to Fanco in particular. Fanco maintained that the loss of its largest refill paper account, K mart, to the dumped and subsidized Brazilian refill paper, and the price reductions it was subsequently forced to make to gain the Jean Coutu and Coles Bookstores accounts from Hilroy resulted in material injury in the form of lost sales, price suppression and lost profits.

Counsel acknowledged that there was some overlap in the claims of lost sales and price suppression that had been made by the two major Canadian producers, but said they had used their best judgment in selecting the accounts that would illustrate the injury being suffered. Counsel also stated that the calculations used to quantify the injury being suffered contained some estimates, but suggested that, overall, the different estimates cancelled each other out and produced "rough justice." The important factor, counsel stated, was that the Brazilian goods had been an increasing factor in the Canadian market since 1987, and had had a price suppressive effect, as evidenced by testimony during the public hearing.

Counsel for Fanco noted that K mart was Fanco's largest customer and that it had always offered K mart the best price possible. Counsel stated that there was a direct relationship between the cost of tablet paper and the list and net prices for refill paper, and that price was the most important factor in a customer's purchase decision. In response to the allegation that the relationship between Fanco and K mart's buyer may have deteriorated during the period in question, counsel stressed that, whatever the relationship, the determining factor in the loss of the K mart account was price. As evidence of this claim, counsel pointed to the fact that K mart's subsidiary, Bargain Harold's, purchased refill paper from Fanco in June of 1989 and that K mart, itself, was purchasing its 1990 refill paper requirements from Fanco.

Counsel pointed out that four or five customers represented approximately 50 percent of the Canadian market and that the largest 15 customers represented substantially all of the market. If one key retailer could purchase refill paper at dumped prices, it was just a matter of time before the others would follow. Counsel went on to state that customers needed the product at the lowest possible price to cut their costs on this loss-leader product.

Counsel contended that imports from Mead of the United States did not have a significant impact on the Canadian market. They stated that Mead was not much of a price threat. Its product was of a size that had gained little acceptance in Canada. Furthermore, one major customer had stated that he would not purchase refill paper from Mead. Counsel further stated that their client was not concerned about fair competition from imported products, but only with imports determined by the Deputy Minister to be dumped and subsidized.

Counsel pointed out that one Brazilian exporter, Tilibra, stated that it did not seek to sell refill paper alone, but that it was using this product to gain access to the Canadian market for its full range of stationery products. In fact, the exporter admitted that it was most enthusiastic about the K mart order. It had ignored one of its guidelines by accepting an order of which over 70 percent of the value was represented by refill paper, when normally it would not have accepted an order that was more than 30 percent refill paper. If the other Brazilian producers used the same strategy, counsel argued, over 50 percent of the market would be lost very quickly. This would result in the failure of their client, it being the smaller of the two major Canadian producers. Counsel alleged that Tilibra's K mart sale was part of a plan to diversify into other markets after it had been excluded from the US market.

Concerning the allegation that there was over-capacity in the Canadian market and it was this over-capacity that was causing any price suppression, counsel retorted that, in the refill paper industry, more modern equipment meant production could occur over a shorter period, thereby reducing storage costs while rapidly meeting your customer's demands. Moreover, depreciation was not a significant factor in the total cost of the product.

Counsel stated that, before the introduction of large volumes of Brazilian goods in 1989, there was no evidence of aggressive price cutting between Fanco and Hilroy to gain market share. Counsel went on to argue that the product was generic, the quality of the Brazilian paper was acceptable and that the market was very price sensitive.

In relation to future injury, counsel pointed out that the Brazilian exporter would like to sell to Canada, was enthusiastic about the sale to K mart and that other major customers were sure to follow K mart in purchasing the low-priced dumped goods unless an injury finding was made by the Tribunal.

Hilroy's Position

Counsel for Hilroy argued that the dumping and subsidizing found by the Deputy Minister had caused, were causing and were likely to cause material injury to Hilroy and the Canadian refill paper industry. Counsel emphasized that the injury that had been suffered was only the "tip of the iceberg" and that there was a likelihood that the dumped and subsidized goods would continue to cause material injury without the protection afforded by the implementation of anti-dumping and countervailing duties.

The refill paper market, counsel stated, was a two-tier market; a producers' market and a retail market. Refill paper was a feature product in the retail market. It was used to generate traffic in the stores and had to be priced attractively. Retailers drove hard bargains with suppliers to get the very best price available. Accordingly, the market was very price sensitive and vulnerable to dumped goods. If one retailer got lower priced refill paper, it could offer this feature product at a lower price. In response, other retailers would either start to purchase lower priced dumped goods or force Canadian producers to lower their prices.

Counsel stated that the injury suffered by his client was less direct than that suffered by Fanco. Nevertheless, Hilroy lost the Jean Coutu account in 1989 and the

Zellers's account in 1990, if not directly to Brazilian refill paper, then as a result of Fanco's price cutting after it lost the K mart sale to Tilibra. Counsel argued that K mart's decision to buy refill paper from Tilibra was price driven. Counsel also argued that Hilroy was suffering from price suppression in the refill paper market and from the loss of sales of related products that typically are won by the refill paper supplier.

Counsel noted that Mr. Machado of Tilibra had stated that Canada was a desirable market, and one that the Brazilian mills could supply easily.

In closing, counsel adopted the submissions made by Fanco's counsel regarding the non-threatening nature of competition from Mead and noted that there was no evidence of any accounts being lost to this supplier.

THE RESPONSE

Counsel for Tilibra stated that the complainants' cases were based on suppositions, hypotheses and assumptions, not on hard evidence. The coincidental presence of imports in the marketplace could not justify a finding of injury to the Canadian producers.

Counsel argued that the Tribunal had to consider three basic issues before reaching a decision. First, was there dumping and subsidizing? Second, had the domestic industry suffered material injury? Third, was there a causal link between the dumping and subsidizing and any material injury found? Counsel recognized that since the Deputy Minister found dumping and subsidizing, the Tribunal had to accept that conclusion. Counsel argued, however, that material injury, if it indeed existed, was self-inflicted and that there was no link between any injury being suffered by the domestic industry and the dumping and subsidizing as found by the Deputy Minister. Counsel argued that Fanco had lost the 1989 K mart order because of poor business relations and not price. In their view, Fanco was the "master of its own misfortune."

The intensified competition between Fanco and Hilroy, counsel alleged, was a desperate attempt to buy market share to justify capital expenditures. Counsel argued that the resultant price suppression could not be linked to Tilibra or any other Brazilian refill paper manufacturers.

Respecting future injury, counsel stated that the threat of low-priced imports would come from Mead in the United States, not from the Brazilian manufacturers. Counsel reiterated the testimony of their client that more profitable stationery products and not refill paper were priority exports for Tilibra. Furthermore, export subsidies on refill paper were being eliminated by the Brazilian government. Counsel also reminded the Tribunal that the Brazilian manufacturers, including some that had not sold to Canada, had attempted to negotiate a price undertaking with Revenue Canada, but these negotiations were rejected by Fanco.

In closing, counsel stated that the tests required for future injury had not been met and that any injury already suffered by the Canadian industry had been self-inflicted. Therefore, counsel stated, the Tribunal should find that the dumping and subsidizing of the goods had not caused, were not causing and were not likely to cause material injury to the production in Canada of like goods.

REASONS FOR THE DECISION

Central to this inquiry are the events that led to K mart purchasing its 1989 back-to-school season refill paper from the Brazilian exporter, Tilibra. In previous years, Franco and K mart had completed their negotiations and had come to an agreement by early December for the following year's supplies. By committing early and taking early deliveries with its own trucks, K mart always secured a good price from Franco. Franco also benefited through early plant loading and regular large sales. During the summer of 1988, it appeared to Franco that the price of tablet paper might increase significantly for the upcoming season. Franco informed K mart that it would have to make an early commitment to avoid the expected large price increase. In August of 1988, Franco obtained a written commitment from K mart for its upcoming 1989 back-to-school program, and it ordered tablet paper so it could guarantee the delivery price to K mart. During the fall of 1988, Franco contacted K mart to complete the details of its purchase order. At this time, K mart tried to obtain a reduction in the quoted price, which Franco refused. Negotiations continued into early 1989. Meanwhile, K mart was negotiating with Tilibra for the purchase of refill paper. Finally, in late January 1989, when K mart could not obtain its desired price reduction from Franco, it cancelled its order with Franco and ordered refill paper from Tilibra. When K mart told Franco that it would not be receiving the refill paper order for 1989, Franco was faced with finding new customers to use the inventory of tablet paper that it had purchased, on K mart's instructions, in anticipation of the K mart order. Franco began offering lower prices in the market and was able to attract two of Hilroy's former customers, Jean Coutu and Coles Bookstores.

In his testimony, Mr. Machado of Tilibra confirmed that he was actively seeking business in Canada. He said that his firm lost money selling refill paper, but had to supply it to capture the other, more lucrative school supply business. Despite Tilibra's general objective of limiting sales of refill paper to no more than 30 percent (in value) of total back-to-school sales, the sale of refill paper to K mart accounted for 70 percent of Tilibra's business with K mart in 1989. The Tribunal sees this large loss-making sale, coming so soon after Brazilian paper products had been excluded from the US market, as evidence that Tilibra wished to establish a "beachhead" in Canada for its full range of products and was prepared to buy its way in with refill paper.

The Tribunal has considered Tilibra's arguments that any injury suffered by the Canadian producers was self-inflicted or caused by problems in the relationship between Franco and K mart. While it is true that vigorous intra-industry competition was present in this market, it appears that the two major producers have developed a *modus vivendi* over the years. While Hilroy is the better known producer and its trade name commands a small price premium, and Franco is the more aggressive company, the competition between the two producers appears to have been quite orderly. The Tribunal received no evidence that Franco and Hilroy had engaged in price wars before the appearance of the dumped and subsidized Brazilian refill paper.

The Tribunal is satisfied that K mart bought Tilibra's refill paper almost entirely for reasons of price. While the relationship between Franco and K mart did deteriorate during late 1988 and early 1989, testimony during the public hearing persuaded the Tribunal that Franco would have been able to get the K mart order for the 1989 back-to-school season if it had met K mart's last price bid, which was roughly equivalent to the landed price offered by Tilibra. The Tribunal notes that, notwithstanding its

problems with Fanco, K mart, acting on its own account and through a wholly owned subsidiary, continued to buy refill paper from Fanco during 1989, and also bought other stationery products from Fanco that year. K mart is also purchasing its 1990 back-to-school program refill paper requirements from Fanco. While Revenue Canada's initiation of the dumping and subsidizing investigations against Brazilian refill paper suppliers in mid-December 1989, effectively shut Brazil out of the Canadian market for 1990, K mart could have gone to another Canadian supplier if it did not wish to deal with Fanco and really valued factors other than price.

Fanco also claimed that, besides losing the K mart sale, it suffered significant price suppression due to the availability of dumped and subsidized Brazilian imports in Canada. The Tribunal has carefully reviewed the cost and price evidence submitted at the hearing, which was tested by cross-examination and questions from the Tribunal members. They are satisfied that, during 1989, Fanco was not able to pass on increased costs to its customers. This price suppression was of the same magnitude as the average net income before taxes earned during the previous three years. The Tribunal concludes that the injury suffered by Fanco due to the lost sale to K mart and the price suppression experienced due to dumped and subsidized imports was material in nature.

The other major producer, Hilroy, faced different circumstances in 1989. Hilroy lost two accounts to Fanco that can be indirectly attributed to dumped and subsidized imports, as Fanco aggressively sought new accounts to replace K mart's business. However, Hilroy was able to increase its overall sales of refill paper, and the two lost sales did not have a material impact on its performance during 1989. The evidence presented by Hilroy indicates that, for the most part, it held its prices during 1989, and indeed improved its margins over the previous two years. Hilroy's condition in 1989 was markedly better than it was during the 1986 to 1988 period. Indeed, in argument, counsel conceded that Hilroy's claim of material injury was essentially limited to the future. The Tribunal thus finds that Hilroy did not suffer material injury in the past or the present.

Of the two producers, which appeared before the Tribunal, Fanco was the only one to demonstrate a clear indication that material injury had been suffered from the dumped and subsidized imports. Fanco and Hilroy, taken together, account for almost all of the Canadian production, and Hilroy alone for well over half. The Tribunal, therefore, considers that either Fanco or Hilroy, taken separately, account for a major proportion of the Canadian industry. Consequently, the Tribunal finds that the dumped and subsidized imports of refill paper from Brazil have caused past and present injury to the production in Canada of like goods and that this injury is material.

Concerning the future, the Tribunal considers it very likely that Canadian producers of refill paper would suffer material injury from dumped and subsidized goods from Brazil were these not subject to anti-dumping and countervailing duties. While the punitive duties imposed by the US proclamation of October 1988 have recently been removed by the US administration, North America is the main market for refill paper and the Brazilian producers will, in all likelihood, continue to have a strong interest in both the Canadian and US markets. In any event, Tilibra's witness, Mr. Machado, pointed out that Brazilian producers had plenty of production capacity to meet the North American back-to-school rush because their school year was different. Mr. Machado conceded that if there were no anti-dumping or countervailing duties, his firm would

continue to supply refill paper to the Canadian market at a loss in order to be able to make sales of more profitable stationery products.

The renewed loss of one major account, such as K mart, which represented over 5 percent of the Canadian market in 1989, would have serious repercussions on a producer's financial performance. The standardized, price-sensitive nature of these loss-leader goods makes it likely that more large retailers would switch to the Brazilian product. These further lost sales would result in significant price suppression and lower profits for all Canadian producers as they struggled to keep their remaining customers. The Tribunal believes that only timing prevented further damage being done to the Canadian industry in 1989. Brazilian refill paper was not offered directly to large accounts until the tail-end of the 1989 back-to-school buying season, when most customers were already committed to other suppliers. The Tribunal is convinced there is a clear likelihood of material injury from dumped and subsidized imports of Brazilian refill paper.

CONCLUSION

The Tribunal concludes that the dumping and subsidizing of refill paper originating in or exported from the Federative Republic of Brazil have caused, are causing and are likely to cause material injury to Canadian production of these goods.

John C. Coleman
John C. Coleman
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Charles A. Gracey
Charles A. Gracey
Member