

Ottawa, Wednesday, October 17, 1990

Inquiry No.: NQ-90-001

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

**ARTICULATED FOUR-WHEEL DRIVE TRACTORS, COMMONLY KNOWN AS
MUNICIPAL TRACTORS, WITH OR WITHOUT WHEELS AND TIRES,
ORIGINATING IN OR EXPORTED FROM THE FEDERAL REPUBLIC OF GERMANY**

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 a preliminary determination of dumping dated June 19, 1990, and of a final determination of dumping dated September 17, 1990, respecting the importation into Canada of articulated four-wheel drive tractors, commonly known as municipal tractors, with or without wheels and tires, originating in or exported from the Federal Republic of Germany.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods from the Federal Republic of Germany has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

W. Roy Hines

W. Roy Hines
Member

Robert J. Martin

Robert J. Martin
Secretary

The Statement of Reasons will be issued within 15 days.

Ottawa, Wednesday, October 17, 1990

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Special Import Measures Act - Whether the dumping of the above-mentioned goods has caused, is causing or is likely to cause material injury to the production in Canada of like goods.

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods from the Federal Republic of Germany has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	September 17, 18, 19 and 20, 1990
Date of Finding:	October 17, 1990
Panel Members:	Sidney A. Fraleigh, Presiding Member Arthur B. Trudeau, Member W. Roy Hines, Member
Director of Research:	Selik Shainfarber
Research Manager:	Douglas Cuffley
Statistical Officer:	Nynon Burroughs
Registration and Distribution Clerk:	Pierrette Hébert
Participants:	Brian J. Barr and G.P. MacPherson for Trackless Vehicles Limited (Complainant) Guy J. Pratte and Geoffrey C. Kubrick for Holder of North America and Gebrüder Holder GmbH & Co. (Importers)

Witnesses:

Douglas Cadman
President
Trackless Vehicles Limited

Donald P. Broadbent
Marketing Manager
Trackless Vehicles Limited

Ed Bahula
Chartered Accountant

G. Wesley Cadman
Chairman
Trackless Vehicles Limited

A.J. (Art) Lake
General Superintendent - Services
City of London

Pat Dunbar
Vice-President, Sales
Craig Construction Equipment Limited

W. Horst Männecke
General Manager
Holder of North America

Dr. Hans Saur
General Manager
Gebrüder Holder GmbH & Co.
Germany
and President
Holder of North America

Jürgen Buschmann
Production and Sales Manager
Gebrüder Holder GmbH & Co.
Germany

Mike McLaughlin
Controller
Holder of North America

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Ottawa, Friday, October 26, 1990

Inquiry No.: NQ-90-001

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

**ARTICULATED FOUR-WHEEL DRIVE TRACTORS, COMMONLY KNOWN AS
MUNICIPAL TRACTORS, WITH OR WITHOUT WHEELS AND TIRES,
ORIGINATING IN OR EXPORTED FROM THE
FEDERAL REPUBLIC OF GERMANY**

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
ARTHUR B. TRUDEAU, Member
W. ROY HINES, Member

STATEMENT OF REASONS

SUMMARY

This is an inquiry to determine whether the dumping in Canada of articulated four-wheel drive tractors, commonly known as municipal tractors, originating in or exported from the Federal Republic of Germany, has caused, is causing or is likely to cause material injury to the Canadian production of these goods.

The complainant in this case, Trackless Vehicles Limited (TVL), accounts for well over half the total Canadian production of these municipal tractors. A second manufacturer, Bombardier Inc. (Bombardier), accounts for the remaining share of the Canadian production. Bombardier did not allege any material injury to its production of articulated four-wheel drive tractors nor did it wish to support the complaint. Based on all available information, the Tribunal is satisfied that TVL's production accounts for the major proportion of total Canadian production and that, for purposes of the *Special Import Measures Act* (SIMA), TVL constitutes the domestic industry.

TVL claimed that the German product, the C-500, was being priced at unprecedented low levels and that, as a result, it was experiencing a significant downturn in its sales volume and production, which, in turn, caused a reduction in profits, capacity utilization and employment. The evidence confirms that the complainant has suffered a deterioration in certain performance indicators over the past 18 months or so. However, the issue to be decided is whether dumping is the cause of this decline and, if so, to what extent. In this connection, the Tribunal noted that, since reaching a peak in 1987, the market for the subject goods has dropped by more than 30 percent, and during this period, both the complainant and the importer of the German product, Holder of North America (Holder), have experienced declines in their sales. It is clear to the Tribunal that the negative results reported by both the complainant and Holder reflect, in large measure, the natural effects of the market downturn that has occurred and that is still under way.

The Tribunal further notes that it is clear from a review of tractor contracts awarded since early 1989 that Holder's ability to influence the market has been declining to the point where, at present, it is struggling simply to maintain its basic viability. The complainant has shown itself to be an astute competitor that has been better attuned to the needs of the marketplace. Over the past several years, the complainant has improved its tractor, making it today's undisputed market leader. In this connection, the Tribunal heard witnesses, representing several different major municipal tractor users, who testified that they would not purchase the Holder product because the operators of these machines had a clear preference for the complainant's machine that has a hydrostatic (automatic) transmission, which makes it easier to operate than the Holder machine with its manual transmission.

In light of the foregoing, the Tribunal concludes that Holder's actions have not caused and are not causing material injury to the complainant.

On the basis of the evidence submitted, the Tribunal is also satisfied that there is no likelihood of injury in this case. According to the testimony of witnesses for Holder, no further imports of the C-500 model are planned, given the current lack of market demand for this product in Canada. The Tribunal is also of the view that the relatively few remaining tractors in the importer's inventory, available for the Canadian market, can be absorbed without causing injury. Although a new model equipped with a hydrostatic transmission is being developed by the German exporter to replace the current C-500 model, the evidence shows that it is at least one or two years away from entering the Canadian market in any significant numbers. It is no more than speculation today to attempt to predict what effect this new tractor model will have on the Canadian market. The evidence indicates to the Tribunal that the complainant will continue to enjoy, in the immediate future, its present market predominance, albeit in a static or declining market.

CONDUCT OF THE INQUIRY

The Tribunal, under the provisions of section 42 of SIMA, has conducted an inquiry respecting the dumping in Canada of articulated four-wheel drive tractors, commonly known as municipal tractors, with or without wheels and tires, originating in or exported from the Federal Republic of Germany. This inquiry followed the issuance by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) of a preliminary determination of dumping on June 19, 1990, and a final determination of dumping on September 17, 1990. The Deputy Minister's investigation into dumping covered sales for export of the subject goods during the period from January 1, 1989, to March 21, 1990.

The notices of preliminary and final determinations of dumping, as well as the Tribunal's notice of commencement of inquiry issued on June 22, 1990, were published in the Canada Gazette.

As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian manufacturers and importers of the subject goods requesting production, financial,

import, marketing and other information, covering the period from January 1, 1986, to June 30, 1990. Questionnaires were also sent to various users of these machines to obtain copies of tenders, evaluation reports and contracts. From the replies to questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports covering the period of review in this inquiry.

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

Public and *in camera* hearings were held in Ottawa, Ontario, commencing on September 17, 1990. The participants, TVL, the complainant, Holder and Gebrüder Holder GmbH & Co. were represented by counsel at the hearing. In addition, counsel for the complainant called witnesses from the City of London and from Craig Construction Equipment Limited. The Tribunal also called witnesses from the City of Montréal and the City of Ottawa.

A finding that the dumped goods have not caused, are not causing and are not likely to cause material injury to the domestic production of the subject goods was issued by the Tribunal on October 17, 1990.

THE PRODUCT

The products that are the subject of the inquiry are described in the preliminary determination of dumping as articulated four-wheel drive tractors, commonly known as municipal tractors, with or without wheels and tires.

The subject tractors are also known as multiple tool carriers, ground service vehicles and sidewalk maintenance power units. The principal users of the subject tractors are municipalities, but other users include contractors, airport authorities and other private and institutional users.

Municipal tractors are usually not wider than 50 in. (127 cm), as they are primarily designed to fit municipal sidewalks. These tractors are articulated and, therefore, can be manoeuvred around sharp corners and operated in confined spaces. They are highly versatile, as they can be used with different attachments for a multitude of functions, such as snow clearance, grass cutting, ground and roadside maintenance, salting, and sweeping and sanding streets and roadways. These tractors can also accommodate more than one implement at a time. For example, a snowplow can be fitted to the front end and a salt spreader, to the rear of the same unit.

There are several types of tractors used by municipalities; however, two basic types are predominant: the multipurpose wheeled vehicles and the single-purpose tracked vehicles. The latter are designed essentially for sidewalk snowplowing. The tracked vehicles were not included in the product definition governing the class of goods under inquiry. Also, the various implements that can be attached to the subject tractors are not included in this inquiry.

The manufacturing process consists of fabricating cabs, engine frames and smaller parts from plate steel and tubing through a variety of machining, cutting, stamping, forming and welding operations. It also involves the subassembly of various components prior to final assembly. Engines, transmissions and other components are purchased from specialized manufacturers or their representatives. The final assembly of the components at the complainant's factory is completed on a multistation line and the complete vehicle is then test-driven.

THE DOMESTIC INDUSTRY

There are two Canadian manufacturers of the subject tractors: the complainant, TVL of Courtland, Ontario, which accounts for over 50 percent of total Canadian production, and Bombardier of Valcourt, Quebec, which began manufacturing the subject wheeled tractors in early 1989.

TVL began manufacturing the articulated tractor for municipal sidewalks and park maintenance in 1973. It featured an enclosed cab, a rear-mounted engine and hydraulically controlled front-mounted implements. In 1978, a more powerful version known as the MT-3 was introduced. The MT-3 gained widespread acceptance with cities and towns across the country. In 1985, the complainant introduced the MT-4 and, in 1988, the current model, MT-5. TVL does not manufacture any other product except the MT-5 and its attachments.

Bombardier, which only began manufacturing the subject wheeled tractors in 1989, has, however, been manufacturing the "tracked" vehicle for close to half a century. Bombardier's tracked vehicle was specifically designed to fit on sidewalks to remove snow. Although it does not have the versatility of the wheeled tractor, it is still in demand by large municipalities and others that use this machine exclusively, or almost exclusively, for snow removal. On the whole, however, the subject wheeled tractors are gaining increasing acceptance and are apparently replacing the tracked tractor in many municipalities.

Bombardier did not allege any material injury to its production of articulated four-wheel drive tractors nor did it support TVL's complaint. It also chose not to appear or participate at the hearing. Based on all available information, the Tribunal is satisfied that TVL's production accounts for the major proportion of total Canadian production at all relevant times for the inquiry, and that, for purposes of SIMA, TVL constitutes the domestic industry.

IMPORTER/EXPORTER

Holder of Greely, Ontario, is the sole importer of the subject German tractors. It imports the subject tractors from its parent company, Gebrüder Holder GmbH & Co. of Metzingen, West Germany. Besides servicing the Canadian market, Holder also services the US market from its base in Ontario.

The subject tractors are imported from Germany in "stripped" condition, i.e., without accessories and attachments. Normally, attachments and most accessories are purchased by Holder from North American sources.

MARKETING

Municipal tractors are generally sold through regional dealers or distributors that may have one or more regional offices. The activities of dealers include the sale of new and used vehicles, the servicing of those vehicles, and the sale of attachments and parts. The dealers are normally given a standard 20-percent trade discount off the list price to cover their operating expenses and to allow for a certain profit. The dealers are responsible for identifying, pricing and submitting tenders to the municipalities. Prior to the tender call, however, the dealers normally demonstrate the units to the municipality to familiarize the purchasing officials with the capabilities and specifications of their machine. Although tender specifications may be "tailored" to the design of a particular tractor model, the specifications, ordinarily, are left sufficiently open to elicit competitive bids. Tenders usually call for a single machine with two or three attachments, but, in some cases, tenders can call for as many as seven attachments.

The dealers normally establish the bid price. However, there were instances, especially in the past few years, where both Holder and TVL have participated with their dealers in establishing special discount prices on specific tenders. Although the tenders of most municipalities specify that they do not have to accept the lowest bid, or even any bid, in the majority of cases, the lowest bidder is awarded the contract, and dealers set their bid prices accordingly.

THE COMPLAINT

The complainant claimed that the German product was being priced at unprecedented low and unrealistic levels. This caused TVL to experience a significant downturn in its sales volume and production, which in turn caused a reduction in profits, capacity utilization and employment. TVL also contended that, since tender bids are made public, each low importer bid creates a price-suppressive effect and a pressure to reduce pricing on future bids.

Counsel for TVL contended that, beginning some time in late 1988 or early 1989, Holder underwent a change in its pricing policy in Canada and the United States. They noted that, in the years prior to this change in pricing policy, in contracts bid by both the complainant and Holder, the importer's prices had been consistently higher by substantial margins.

Counsel argued that, in 1988, to maintain Holder's competitiveness in Canada, its German parent company had granted price concessions to Holder. These concessions had clearly been passed on, in large part, to the Canadian market in the form of lower prices to distributors and to municipal purchasers. Counsel acknowledged that Holder and its distributors were not underpricing on every contract. The underpricing was sporadic and unpredictable, with a high bid for the C-500 on one contract in one region being followed by a low bid on another contract in another region. In these circumstances, TVL and its distributors felt obliged to err on the side of bidding aggressively on most contracts. Despite this, TVL had lost nine sales to the German tractors over the past 12 months, amounting to about \$600,000 in lost revenue for both

tractors and attachments. There was also a good chance of losing two other sales that were currently pending in Sault Ste. Marie, given Holder's low bid there. In numerous other cases, contracts had been won at prices that reflected substantial discounts by TVL distributors in combination, on occasion, with ad hoc additional manufacturer discounts by TVL.

Counsel contended that Holder's change in pricing policy over the past 18 months or so had disrupted the Canadian market and materially injured domestic production of the subject goods. Counsel further contended that, even if Holder had maintained its pricing policy, this was still materially injurious to Canadian production because Holder's standard list and dealer prices were dumped at the outset. This "systematic" dumping arose from the fact, as admitted during the hearing, that Holder's list prices were not adjusted to account for exchange rate fluctuations, nor were Holder's rising internal costs reflected in these price lists. As a result, Holder's list prices, both in the pre-1989 as well as in the post-1989 periods, were several thousand dollars lower than they would have been if the appropriate exchange rate and cost adjustments had been made.

Looking to the future, counsel noted that Holder still has a relatively large number of C-500s in inventory. It was evident, in counsel's view, that Holder was anxious to liquidate this inventory and would do so at "fire sale" prices. Moreover, although Holder witnesses testified that there was no intention, at this time, to import more C-500 models to Canada, the evidence showed that the German manufacturer had the capacity to produce more machines for the Canadian market if conditions warranted. Moreover, a new model, C-6000, was being developed that would represent a technical advance over the C-500 and would pose a serious threat of material injury to the complainant.

THE RESPONSE

Counsel representing German exporter and importer interests denied that Holder had changed its pricing policy in late 1988 or early 1989, as alleged. Holder has continued to apply, essentially, the same pricing policy that it had always applied to the Canadian market. Under this policy, the general rule was that tractors were sold to dealers at the standard list price less the normal 20-percent trade discount.

In Holder's view, it was the introduction by TVL in late 1988 of the new model MT-5 that started the chain of events that led to this complaint. This machine represented a substantial technical improvement over the MT-4, which it was designed to replace. Despite higher production costs, the MT-5 was initially introduced in October 1988 at the same price as the MT-4. Although a price increase followed in November 1988, this was evidently insufficient to cover full incremental costs, as shown by the fact that the MT-5 price had to be raised again in April 1989 by a greater amount. Prior to this last price increase, a substantial number of MT-5s had been sold at prices that, in effect, allowed TVL to buy market share. Holder's sales plummeted and its dealers began to complain.

Counsel noted, for example, that during the spring of 1989, Duke Equipment Ltd. (Duke), until then a Holder distributor in Ontario, sought price concessions from Holder in the face of intense competition from TVL. As indicated in Exhibit B-2.1, Holder refused to grant any price concession and, as a consequence, Duke relinquished its dealership in early July 1989.

Thus, despite the price pressure exerted by TVL, Holder maintained its general pricing policy. In the face of this, some Holder dealers had no choice but to offer discounts by, in effect, "eating their own margins." These were independent dealers over whom Holder had no control and Holder could not be held accountable for their actions.

Counsel submitted that the dealer discounting, which subsequently took place, was neither systematic nor national in scope. What transpired reflected nothing more than decisions by individual dealers reacting, as they saw fit, to local or regional competitive conditions having regard to the circumstances and specifications of particular contracts. To support the contention that this was not part of any coordinated strategy, counsel noted that there were no complaints regarding tenders west of Ontario, where both TVL and Holder have competing dealers; nor has Holder's dealer in Quebec, R.P.M. Tech Inc. (R.P.M.), been a source of difficulty to the complainant, which acknowledged in cross-examination that R.P.M. generally bids high.

The complainant's main difficulties appeared to be with the situation in the Maritimes as reported to it by its dealer in that region. As far as this situation was concerned, the evidence showed that, in a number of instances, the TVL dealer did not have all of the facts and, hence, had misperceived what had actually transpired. For example, the TVL dealer reported very low bids on two separate occasions without apparently realizing that the C-500s being offered by the Holder dealer were, in fact, used vehicles. Moreover, in a recent 1990 sale of a C-500 to the City of Dartmouth, the TVL dealer did not submit a tender.

On the basis of reports from its dealers, as well as its own market soundings, TVL evidently concluded that the reaction by some Holder dealers in some isolated cases represented a coordinated strategy by Holder to underprice the market. This conclusion was clearly erroneous and led to an overreaction by TVL for which Holder could not be blamed. Any price suppression that ensued was simply self-inflicted.

Counsel further submitted that the decline in TVL's 1990 fiscal year performance was caused by factors other than dumping. TVL's production and capacity utilization fell primarily because of a substantial contraction in the total market for tractors. If this market downturn had not occurred, fiscal year 1990 would have represented a record high year for sales by TVL. A higher cost structure also restrained TVL's profitability. This stemmed from expenses related to a substantial expansion program that TVL undertook in 1988 in anticipation of market growth that never materialized. Margins were also affected by general, selling and administrative expenses that were higher than had been the case in previous years. The net effect of these factors on TVL's performance far exceeded the net effect of the alleged injury claimed by TVL. Moreover, the amount of injury claimed was overstated, in counsel's view, because it included injury suffered not by TVL, but by its dealers, as well as injury to a part of TVL's business, namely, tractor attachments, that were not subject goods. If adjustments were made for these factors, then the total amount of the alleged injury to the production of subject goods was really minimal.

Regarding the complainant's contention that Holder's standard list prices were set at dumped levels, counsel stated that the onus was on the complainant to adduce evidence to show how this had caused injury. No such evidence was brought forward. What the evidence showed was that this case stemmed from complaints by TVL's dealers that Holder had undercut its price lists.

Addressing the issue of whether there was a threat of future injury in this case, counsel noted the testimony of Holder's President that the sole purpose of the price concessions granted to Holder in 1988 was to keep the company viable, not to disrupt the Canadian market. The testimony also showed that Holder had no intention of importing anymore C-500s into the Canadian market because of the lack of demand for this tractor model. As far as the new model, C-6000, was concerned, the witness for Holder indicated that this machine would not be ready for the Canadian market for about one year. Given the usual lag time for market acceptance of a new product, it would probably take a further year before the C-6000's effect on the market could be estimated, according to counsel. Moreover, the presently estimated price level for the C-6000 was substantially higher than for the C-500. In these circumstances, the C-6000 could hardly be considered to represent an imminent threat to the Canadian production of the subject goods. The facts of the matter were that over the next two years or so, the complainant basically had the tractor market to itself.

ECONOMIC INDICATORS¹

During the period under review, domestic sales, which include both sales made to dealers and direct sales to end users made by the producers and importers, averaged approximately 100 units per year. Market demand peaked in 1987, but has since been declining. During 1988 and 1989, it declined by more than 20 percent in comparison with 1987. During the first six months of 1990, it declined further by close to 25 percent.

In 1986 and 1987, the market was almost equally shared by both the complainant and Holder. However, in 1988, TVL increased its sales in a declining market and took market share away from Holder. In that year, a Swedish-made tractor, Linexa, was first introduced to the Canadian market, and it also took some market share at Holder's expense. In 1989, in the midst of the continuing market decline, Bombardier launched its BM-50 wheeled tractor, which took market share from both TVL and Holder. TVL's 1989 loss of market share offset its 1988 gain, so its market share was back down to approximately the level that it had held in 1986 and 1987. In contrast, by the end of 1989, Holder's share was less than half of what it had been three years earlier.

During the first six months of 1990, with the market still declining, both the Bombardier and the Swedish product basically receded from the marketplace. This allowed TVL to increase its share to slightly more than it had been in its 1987 peak year. Holder also increased its share during this six-month period, but it still represented only slightly more than 50 percent of what it held in 1986 and 1987. In summary, during the period covered by this review, the market shares held by TVL and Holder, which started more or less at parity at the beginning of the period, have moved in opposite directions, resulting in TVL's present market share predominance.

1. The annual market figures indicated in this section are updated from the staff report to reflect Holder's revised sales figures submitted in Exhibit B-13. Holder's revised sales figures were provided on a September 30, year-end fiscal basis. However, Holder's fiscal year-end figures were considered to represent sales for the corresponding calendar year (i.e., fiscal year 1989 corresponds to calendar year 1989) so they could be added to the other respondents' calendar year figures to approximate the total market for each of the calendar years during the period under review.

As for domestic production during the period under review, TVL increased its production in units by 37 percent between fiscal year 1987 and fiscal year 1988. During fiscal year 1989, however, TVL reduced its production by 12 percent in comparison with fiscal year 1988. Again, during fiscal year 1990, as a result of lower sales in both domestic and export markets, TVL reduced its production by 34 percent as well as its total plant employment by 15 percent, in comparison with fiscal year 1989. Bombardier, which began production of the subject wheeled tractors in early 1989, has not been very successful to date in either the Canadian or US market. Most of the units produced during the first 18 months of operation remain in inventory with its dealers or at the plant.

The profits realized by TVL on domestic sales of the subject tractors, during the period under review, compare unfavorably, on a percentage basis, with the Canadian manufacturing industry as a whole. TVL's profitability declined between fiscal years 1987 and 1988 by five percentage points and again between fiscal years 1989 and 1990 by a further nine percentage points.

REASONS FOR DECISION

In presenting its case, the complainant stated that the dumping began to affect its performance, more or less, during the second quarter of 1989, which coincided with the beginning of its 1990 fiscal year. The complainant submitted evidence to show that since that time, its production, employment and profitability have declined. This evidence was not the subject of dispute in the case. It is, therefore, accepted by the Tribunal that the complainant has suffered a deterioration in certain important performance indicators over the past 18 months or so. The issue that must be decided is whether dumping is the cause of this decline and, if so, to what extent.

In this connection, the Tribunal notes that the evidence shows that, since reaching a peak in 1987, the market for the subject goods has been contracting. This contraction has been strongest over the past 18 months, during which sales (to distributors and end users), reported by manufacturers and importers, fell by more than 30 percent. The magnitude and sharpness of this decline undoubtedly have intensified the competitive conditions that prevail in the market. The entry, in 1989, of Bombardier into this declining market, while only partially successful, certainly did not lessen these competitive pressures.

The timing, extent and duration of this market downturn do not appear to have been anticipated by any of the principal market participants. For its part, the complainant embarked on a major expansion and modernization program in 1987, which resulted in increased efficiency, as well as in more capacity to meet a level of market demand that has not yet materialized. The financing charges, incurred for the investments made, have increased its costs and contributed, to some extent, to the pressures that it has felt on its operating margins.

The evidence shows that, coinciding with this market decline during calendar year 1989, the complainant's tractor sales dropped by 26 percent. Total revenue on domestic sales fell by 33 percent during its 1990 fiscal year. Employment levels were also reduced during this period. As for Holder, its sales dropped by 47 percent during its fiscal year ending September 30, 1988, in comparison with its 1987 fiscal year, and by a further 43 percent during its fiscal year 1989 in comparison with its fiscal year 1988.

From October 1, 1989, to June 30, 1990, there has been no real improvement in Holder's reported sales volumes. It is clear to the Tribunal that the negative results reported by both the complainant and Holder reflect, in large measure, the natural effects of the market downturn that has occurred and that is still under way.

The complainant alleged that some time in late 1988 or early 1989, Holder changed its pricing policies, resulting in a proliferation of low bids by Holder and/or its dealers. In considering this allegation, the Tribunal reviewed 74 tractor purchases that were made over the past 18 months. This evidence reveals that, of 50 contracts awarded in 1989, 38 were awarded to TVL, 6, to Holder, 3, to Bombardier and 3, for the Linexa product. Holder and the complainant (directly or through their dealers) competed head on for sales in only 17 cases. Of these, Holder won 4. Of those won by the complainant, 4 involved awards that went to the complainant's dealers despite the fact that they had made higher bids. In 9 other cases, municipalities purchased the complainant's machine directly, without going through the tendering process. No such direct purchases were made of the Holder machine during 1989. For the seven months ending August 1990, there were 24 contracts awarded, of which 17 were awarded to TVL, 4, to Holder, 2, to Bombardier and 1, for a non-articulated tractor made in Switzerland. The evidence shows 10 instances where the complainant and Holder went head-to-head on tenders. Of these contracts, Holder won 2 and Bombardier, 1. Of the 7 won by the complainant, 4 were awarded to its dealers despite the fact that their bids were higher than those of Holder.

As a whole, the sales and bids reviewed by the Tribunal do not disclose any systematic, deliberate or coordinated effort by Holder and its dealers to deviate from past pricing policies with a view to underbidding the market. At most, the evidence suggests certain limited instances of aggressive pricing by Holder and its dealers that reflect, essentially, their perceptions of local competitive conditions. On the other hand, even if it were held that Holder, to some extent, did alter its past pricing policies, the evidence strongly suggests that this had a very limited effect on its ability to win sales from the complainant. This is exemplified by the number of cases where the complainant's machine was purchased despite being bid at higher prices than Holder's machine. The many instances where Holder was not given an opportunity to compete, that is, where municipalities purchased the complainant's machine directly, without tender, are also indicative that if Holder changed its pricing policies, this change was relatively ineffectual. Be that as it may, the Tribunal is of the view that the complainant overreacted to the situation, particularly following the loss of seven units in a period of slightly more than one month around September 1989 and, thereby, exacerbated whatever difficulties Holder's actions presented. This led, for example, to several instances where the complainant and/or its dealers offered discounts on bids, though, in retrospect, none turned out to be necessary because Holder did not even submit a bid.

In sum, the preponderance of the evidence presented in this case shows that Holder's ability to influence the market has been declining for at least the past two years to the point where, at present, it is struggling simply to maintain its basic viability. The complainant has shown itself to be an astute competitor that has been better attuned to the needs of the marketplace. Over the past several years, the complainant has improved its municipal tractor so that, today, it is the undisputed market leader. In this connection, the Tribunal heard witnesses, representing several different major municipal tractor users, who testified that they would not purchase the C-500 Holder product because the municipal operators of these machines had a clear preference for the MT-5. The most common reason for favoring the MT-5 was its hydrostatic (automatic)

transmission that made it easier to operate than the C-500 with its manual transmission. However, there were also other reasons given, including lower operating costs for the MT-5, as well as better performance by the complainant and its dealers on parts and service. It is abundantly clear from the testimony of these witnesses, as well as from other facts of this case, that the complainant is, by far, the dominant force in this market and has been for at least the past two years or so. While Holder may have been the cause of some difficulties to the complainant, it is difficult, in the circumstances, to see how Holder could have caused material injury to the complainant.

The Tribunal further notes that while the essence of the complainant's case dealt with alleged deviations from standard pricing by Holder and its dealers, the allegation has also been made that Holder's standard list prices are dumped at the outset and that this has had a price-suppressive effect on the market. It is clear that Holder's list prices are lower than they would be if there were no dumping. However, as discussed above, the evidence shows that Holder's pricing practices have not had a significant effect on its ability to win sales over the past two years, during which it has become a relatively marginal player in the market. In these circumstances, it is difficult to see how Holder's "dumped" list prices could have affected the market in a way that is materially injurious to the complainant. Moreover, the Tribunal notes that the complainant's own submissions in this case suggest that Holder's standard list prices and the normal dealer discounts off these list prices were not a source of difficulty for the complainant and its dealers.

On the basis of the evidence submitted, the Tribunal is also satisfied that there is no likelihood of injury in this case. There are currently less than 15 new Holder C-500 tractors in inventory and, according to witnesses for Holder, no further imports of this model are planned, given the current lack of market demand for this product in Canada. Since about half of the Holder tractors in inventory may be expected to be sold in the United States (based on historical Canadian/US Holder sales ratios), the Tribunal is of the view that the number of units available for the Canadian market can be absorbed without causing material injury.

The evidence also shows that the C-6000, the new model equipped with a hydrostatic transmission, that is being developed to replace the C-500 is at least one or two years away from entering the Canadian market in any significant number. Holder witnesses have stated that this model will be priced well above the C-500. Whether or not this is the case, it would be highly speculative at this point in time to attempt to assess what effect, if any, this new model will have on the market, generally, and on the complainant, specifically.

The foregoing evidence indicates to the Tribunal that the complainant has been enjoying a certain market predominance, and should continue to do so, albeit in a static or declining market. Holder, on the basis of all the evidence produced at the hearing, does not appear to present a significant threat of material injury at this time.

CONCLUSION

In light of the foregoing, the Tribunal concludes that the dumping of articulated four-wheel drive tractors, commonly known as municipal tractors, with or without wheels and tires, originating in or exported from the Federal Republic of Germany has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

W. Roy Hines

W. Roy Hines
Member