

Ottawa, Friday, March 13, 1992

**Inquiry No.: NQ-91-005**

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

**FLAT WOODEN TOOTHPICKS ORIGINATING IN OR EXPORTED  
FROM THE UNITED STATES OF AMERICA AND PRODUCED BY  
OR ON BEHALF OF FORSTER MFG. CO. INC. OF WILTON, MAINE,  
ITS SUCCESSORS AND ASSIGNS**

**FINDING**

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry following the issuance by the Deputy Minister of National Revenue for Customs and Excise of a preliminary determination of dumping dated November 15, 1991, and of a final determination of dumping dated February 13, 1992, respecting the importation into Canada of flat wooden toothpicks originating in or exported from the United States of America and produced by or on behalf of Forster Mfg. Co. Inc. of Wilton, Maine, its successors and assigns.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of flat wooden toothpicks originating in or exported from the United States of America and produced by or on behalf of Forster Mfg. Co. Inc. of Wilton, Maine, its successors and assigns, has not caused, is not causing, but is likely to cause material injury to the production in Canada of like goods.

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Presiding Member

John C. Coleman  
John C. Coleman  
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.

**Inquiry No.: NQ-91-005**

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	February 17, 1992
Date of Finding:	March 13, 1992
Tribunal Members:	Robert C. Coates, Q.C., Presiding
Member	John C. Coleman, Member W. Roy Hines, Member
Director of Research:	Selik Shainfarber
Research Manager:	T.A. Geoghegan
Statistical Officer:	Margaret Saumweber
Counsel for the Tribunal:	Gilles B. Legault
Registration and Distribution Officer:	Pierrette Hébert
<b>Participants:</b>	Paul Dunnigan
for	Keenan Industries Limited
	<b>(Complainant)</b>
	Robert Faubert
	Cowling & Braithwaite Co. Limited
	<b>(Importer)</b>

Ottawa, Monday, March 30, 1992

**Inquiry No.: NQ-91-005**

**FLAT WOODEN TOOTHPICKS ORIGINATING IN OR EXPORTED  
FROM THE UNITED STATES OF AMERICA AND PRODUCED BY  
OR ON BEHALF OF FORSTER MFG. CO. INC. OF WILTON, MAINE,  
ITS SUCCESSORS AND ASSIGNS**

*Special Import Measures Act* - Whether the dumping of flat wooden toothpicks has caused, is causing or is likely to cause material injury, or has caused or is causing retardation to the production in Canada of like goods.

**DECISION:** The Canadian International Trade Tribunal hereby finds that the dumping in Canada of flat wooden toothpicks originating in or exported from the United States of America and produced by or on behalf of Forster Mfg. Co. Inc. of Wilton, Maine, its successors and assigns, has not caused, is not causing, but is likely to cause material injury to the production in Canada of like goods.

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Date of Finding:	March 13, 1992
Date of Reasons:	March 30, 1992
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for	Keenan Industries Limited

**(Complainant)**

Robert Faubert  
Cowling & Braithwaite Co. Limited

**(Importer)**

**Witnesses:**

Gervais Morier  
President  
Keenan Industries Limited

Hilda M. Eggiman  
Plant Manager  
Keenan Industries Limited

Tony Otten  
Marketing Specialist  
Michael J. Firestone & Associates

Robert Faubert  
President  
Cowling & Braithwaite Co. Limited

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Ottawa, Ontario  
K1A 0G7

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TRIBUNAL: ROBERT C. COATES, Q.C. Presiding Member  
JOHN C. COLEMAN, Member  
W. ROY HINES, Member

**STATEMENT OF REASONS**

**THE CONDUCT OF THE INQUIRY**

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act* (SIMA), has conducted an inquiry following the issuance by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) of a preliminary determination of dumping dated November 15, 1991, and of a final determination of dumping dated February 13, 1992, respecting the importation into Canada of flat wooden toothpicks originating in or exported from the United States of America and produced by or on behalf of Forster Mfg. Co. Inc. of Wilton, Maine, its successors and assigns.

The notices of preliminary and final determinations of dumping were published in Part I of the December 7, 1991, and February 29, 1992, editions of the Canada Gazette, respectively. The Tribunal issued a notice of commencement of inquiry on November 22, 1991, that was published in Part I of the November 30, 1991, edition of the Canada Gazette.

As part of the inquiry, the Tribunal sent detailed questionnaires to the Canadian manufacturer and importers of the subject goods requesting production, financial, import and market information, as well as other information, covering the period January 1, 1987, to September 30, 1991. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared confidential and public pre-hearing staff reports covering that period.

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

Public and *in camera* hearings were held in Ottawa, Ontario, on February 17, 1992. The complainant, Keenan Industries Limited (Keenan), was represented by counsel at the hearing, submitted evidence and made argument in support of an injury finding. A representative of Cowling & Braithwaite Co. Limited (C&B), an importer of the subject goods from Forster Mfg. Co. Inc. (Forster), of Wilton, Maine, appeared before the Tribunal, submitted evidence and made argument in support of a no-injury finding.

On March 13, 1992, the Tribunal issued a finding that the dumping of the subject goods from Forster has not caused, is not causing, but is likely to cause material injury to Canadian production of like goods.

### **THE PRODUCT**

There are several types of toothpicks, including flat, round, frilled, coloured and plastic. The flat wooden toothpick is the most popular type in Canada and is the subject of this inquiry. Flat wooden toothpicks are made from white birch trees and normally measure about 2.20 in. in length, with a width of 0.10 in. at one end and a width of 0.05 in. at the tapered end.

The subject goods are sold predominantly by the manufacturer's agents to food and non-food chains as well as drugstore chains either on a direct basis or through the clients' warehousing system. The majority of sales by the manufacturer's agents are made through the clients' warehousing system. These orders are relayed by the agent to the factory and are then shipped to the customer's warehouse for shipment to individual stores.

The agent is responsible for ensuring that the manufacturer obtain and maintain the product listing with the chains. As well, the agent is required to promote the product along with the rest of the line through the chain stores. This is achieved through additional displays, increased shelf space, newspaper advertising, in-store features, etc.

The major market areas in Canada are Ontario, Quebec, the Maritimes and British Columbia. Sales are seasonal in nature, with the heavy selling months being May to July and November-December.

### **THE DOMESTIC INDUSTRY**

Keenan, the sole domestic producer of the subject goods, is a privately owned Canadian corporation located in Owen Sound, Ontario. Keenan is owned by Atkinson Five Enterprises Limited which, in 1989, was acquired by L. Tanguay (1986) (Tanguay) of Sherbrooke, Quebec. Keenan was established in 1896 by John Keenan. Initially, the firm produced and sold native hardwoods, hemlock and cedars. Over the years, this company has produced a variety of products, including basket veneer, wooden screen doors, splints, crutches and toothpicks.

At the present time, Keenan carries out production at its 17,500-ft. facility in Owen Sound where it produces the subject goods, florist sticks, cemetery wreaths, iron wreath holders and Christmas wreaths.

In order to provide its customers with a broad range of woodenware, Keenan imports frilled toothpicks, clothespins, round toothpicks, coffee stir sticks and skewers. Its parent company, Tanguay, also supplies Keenan with round minted toothpicks. These toothpicks are imported by Tanguay and are minted and packed at its plant located in Sherbrooke.

Keenan sells flat wooden toothpicks through the manufacturer's agents to the retail and institutional trade. Volume discounts and promotional allowances are offered by the company. Promotional allowances may take the form of extra store displays, advertising or whatever is most beneficial to the customer.

### **THE IMPORTERS**

C&B is a privately owned Canadian corporation engaged in the sale and distribution of food and non-food products in both private label and national brands. This firm was Keenan's Ontario distributor of flat wooden toothpicks and other woodenware under the Keenan name for about 20 years. The responsibilities of C&B included soliciting sales from all levels of the trade, warehousing the products for shipment to customers, invoicing for shipment and collecting accounts receivable.

The business relationship between C&B and Keenan was terminated in January 1991. As a result, C&B began importing flat wooden toothpicks from the U.S. producer, Forster, in 1991. It currently sells Forster toothpicks along with its other disposable tableware to the retail and institutional trade under its private label, "Goodtimes." Products marketed under the "Goodtimes" name include foam cups and plates, plastic drinking glasses, plastic cutlery, plastic drinking straws, paper napkins and flat and round toothpicks.

### **THE RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION**

The period of investigation selected by the Deputy Minister covered imports of the subject goods during the period September 1, 1990, to August 31, 1991.

In the final determination of dumping, the Deputy Minister indicated that 100 percent of the subject goods exported to Canada were reviewed, and importations by C&B, which represented 56 percent of the subject goods, were found to be dumped. The margins of dumping ranged from 16.6 percent to 17.1 percent with a weighted average margin of dumping of 16.9 percent. The remaining 44 percent of the goods were imported by Liberty Home Products Corp. (Liberty) at undumped prices.

### **THE COMPLAINT**

In argument, counsel for Keenan submitted that the dumping of the subject goods by Forster had resulted in the loss of business by his client in Ontario as well as in the Maritimes. This loss of business by Keenan was caused by C&B's artificially low prices which were made possible by the significant margin of dumping. This lost business resulted in a sharp decline in production, a significant loss of market share, increasing

inventory levels and a utilization rate that dropped to the lowest level in Keenan's history.

Counsel argued that while the material injury has been felt in Ontario and in the Maritimes, these low prices will spread to Quebec and the rest of Canada. This pattern has already materialized, as C&B's agent in Quebec is currently offering these low prices to Keenan's customers in that market. The effect of these dumped prices will have a serious impact on Keenan's production, sales, market share and utilization of capacity. In addition, Keenan's profits will decline to levels that will result in the delay of future investment plans.

### **THE RESPONSE**

The representative of C&B indicated that poor economic conditions in Canada over the past 18 months has been the primary cause of volume declines as well as of lost customers by Keenan. C&B has had a very modest impact on the domestic market to this point in time, and the loss of business by Keenan has been quite minimal. With respect to the firm's pricing policies, C&B's decisions have been made in the past and will be made in the future based on long-term business strategies. If this causes the firm's selling price to be, at times, lower than its competitors find comfortable, then these competitors must decide whether they want to compete for this business.

### **THE REASONS FOR DECISION**

Under section 42 of SIMA, the Tribunal is required to determine whether the dumping of flat wooden toothpicks, as found by the Deputy Minister, has caused, is causing or is likely to cause material injury to the production in Canada of like goods.

The Tribunal notes that, for almost 20 years, C&B was Keenan's exclusive Ontario distributor of flat wooden toothpicks and other woodenware products. In late 1990, the principals of Keenan decided to sever this relationship as they had become dissatisfied with sales levels achieved by C&B for subject goods as well as with the lack of sales growth of the new products introduced by Keenan to expand its woodenware line. Although a one-month notice of termination is typical for this industry in this situation, C&B requested, and Keenan granted, a three-month extension. The reason for this action was to minimize disruption in C&B's sales program during the heavy buying period of Christmas.

In terminating the services of C&B, Keenan had arranged to retain the services of a new distributor, Michael J. Firestone & Associates (M.J.F.), which was initially scheduled to begin representing Keenan in October 1990. By granting the extension to C&B, Keenan deferred the M.J.F. arrangement until January 1991.

According to the evidence, it was during this three-month period that C&B began offering dumped Forster product in Canada. Specifically, the evidence shows that, while C&B continued to be Keenan's exclusive distributor in Ontario between October 1990 and January 1991, it took advantage of the situation by undercutting Keenan and offering Forster products to Keenan's Ontario customers.



Keenan began to realize what was happening in January, when its new distributor, M.J.F., began calling on customers. M.J.F. was advised by many customers that Keenan's prices were no longer competitive, and one major Ontario account delisted it as a supplier. As a consequence, Keenan began to lower its prices and offer rebates to customers in Ontario.

Although some smaller accounts were lost through price reductions and rebates, Keenan managed to retain or recapture its large accounts until mid-1991, when a major account in Ontario switched to C&B. In obtaining this account, C&B undercut Keenan's reduced price by over 20 percent. In June 1991, Keenan lost a large account in the Maritimes to C&B. This event was particularly troublesome to Keenan as it showed that C&B was capable of undercutting its prices for all its accounts across Canada.

The selling of dumped goods by C&B affected Keenan's performance. Market data show that the first nine months of 1991 were relatively good, with sales being 11 percent higher than for the comparable period in 1990. However, Keenan did not share in any of this market growth. Its sales declined over the period as did its market share; there was a decline in production, inventories climbed and utilization of capacity dropped to its lowest level during the inquiry period. However, profit levels did not decline due to the major cost-cutting program which was implemented by Keenan in late 1990.

The Tribunal has no doubt that dumped imports were responsible in part for Keenan's unfavourable results in 1991. However, there were other factors at play. About half the market share lost by Keenan in 1991 was the result of undumped product brought in from Forster by Liberty. While Keenan did experience declines in production and utilization of capacity, and inventories increased, this was largely attributable to the sharp decline in Keenan's export sales. On balance, the Tribunal considers that the injury inflicted to date has not been of a material nature.

However, it is the view of the Tribunal that the degree of injury to Keenan will become material if the dumping is allowed to continue. In arriving at this conclusion, the Tribunal notes the testimony provided by the President of C&B who stated that his firm's primary goal is to capture market share. He indicated that subject goods represent a very small proportion of his total business and he is prepared to price the subject toothpicks, in effect, as a loss leader in order to sell accounts a wider range or package of goods. To this effect, he has set his 1992 prices substantially below his 1991 prices in order to entice accounts away from Keenan.

The Tribunal notes that, ordinarily, the imposition of provisional duties would be expected to raise market prices to some degree. However, this has not happened in this case. Indeed, C&B's 1992 prices are substantially lower than its 1991 prices despite the imposition of provisional duties in November 1991. This suggests that C&B may well be selling the subject goods at a loss, confirming the aggressive pricing strategy outlined in the testimony of the witness for C&B. It suggests that the prices could be even more aggressive and Keenan's injury more severe in the foreseeable future if anti-dumping restraint measures are not in place.

## **THE CONCLUSION**

In view of the foregoing, the Tribunal finds that the dumping of flat wooden toothpicks originating in or exported from the United States of America and produced by or on behalf of Forster Mfg. Co. Inc. of Wilton, Maine, its successors and assigns, has not caused, is not causing, but is likely to cause material injury to the production in Canada of like goods.

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