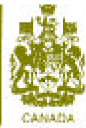
CANADIAN INTERNATIONAL TRADE TRIBUNAL



TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, April 21, 1992

Inquiry No.: NQ-91-006

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

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

F I N D I N G

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 December 19, 1991, and of a final determination of dumping dated March 18, 1992, respecting the importation into Canada of machine tufted carpeting with pile predominantly of nylon, other polyamide, polyester or polypropylene yarns, excluding automotive carpeting and floor coverings of an area less than five square metres, originating in or exported from the United States of America.

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 United States of America, excluding:

a) scrap machine tufted carpeting in all lengths, or

b) remnants of prime quality goods of nine feet or less in length,

sold as "off-goods" and imported for use in the manufacture of goods such as mats, runners or area rugs of an area less than five square metres, and

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c) custom designed machine tufted carpeting, which is made to order to the customers' specifications in respect of design, pattern and colour, manufactured using the patented Millitron dye technology and exported to Canada by Milliken & Company, and area rugs exceeding five square metres manufactured using the patented Millitron dye technology and exported to Canada by Milliken & Company,

has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

John C. Coleman
John C. Coleman
Presiding Member

Michèle Blouin
Michèle Blouin
Member

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

Michel P. Granger
Michel P. Granger
Acting Secretary

The statement of reasons will be issued within 15 days.

Inquiry No.: NQ-91-006

Place of Hearing:		Ottawa, Ontario
Dates of Hearing:		March 16 - April 2, 1992
Date of Finding:		April 21, 1992
Tribunal Members:		John C. Coleman, Presiding Member Michèle Blouin, Member Robert C. Coates, Q.C., Member
Director of Research:		Selik Shainfarber
Research Manager:		Douglas Cuffley
Research Officers:		Doug Kemp Doug Allen Paule Couët
Statistical Officer:		Robert Larose
Registration and Distribution Officer:		Pierrette Hébert
Participants:		G.P. (Patt) MacPherson and Suzette C. Cousineau
	for	Canadian Carpet Institute Kraus Carpet Mills Limited Harding Carpets Soreltex International Inc. Crossley Carpet Mills Limited Venture Carpets Ltd. Richmond Carpet Mills Peerless Carpet Corporation National Carpet, a Division of NCM Carpet Mills Inc.
		(Complainants)
		Peter A. Magnus and Gregory O. Somers
	for	The Carpet and Rug Institute Colorcarpet, Inc. Diamond Rug & Carpet Mills, Inc. JPS Carpet Corp. Mohawk Carpet Corporation
		(Exporters)

Peter A. Magnus,
James H. Smellie,
Diane E. Cornish and
Gregory O. Somers
for Queen Carpet
Shaw Industries, Inc.

(Exporters)

Peter A. Magnus,
Gregory O. Somers and
Diane E. Cornish
for Burlington Canada Inc.
Burlington Industries, Inc.

(Exporters)

Peter A. Magnus,
Gregory O. Somers and
Robert Murray
for Milliken & Company
Image Carpets, Inc.

(Exporters)

Robert Murray
for Salem Carpet Mills, Inc.

(Exporter)

Peter Clark and
Chris Hines
for Melmart Distributors Inc.
Buckwold-Western
W.G. McMahon Canada Inc.
Victory Carpet Corporation
Hollytex Carpet Mills, Inc.
Sunrise Carpet Industries, Inc.
Mannington Carpets

(Exporters)

Peter Clark and
Chris Hines
for Parbron International Inc.
Parco Distribution Sales Ltd.
Western Carpet Distributors of Canada Ltd.
Centura London Floor and Wall Fashions
Packer, Floor Coverings
L. Morency & Fils Inc.
Omni Floorcoverings Ltd.
Roger Sorel Tapis/Carpets Inc.
Centura Western Floor and Wall Fashions
Centura Vancouver Floor and Wall Fashions
Primco (PWL) Ltd.

(Importers)

James L. Shields and
Michael Lanos
for World Carpets

(Exporter)

Jean G. Bertrand and
Denis Gascon
for General Felt Industries, Inc. and Focus Carpet, division of General Felt Industries

(Exporters)

Kimberley L.D. Cook
for Jordans Rugs Ltd.

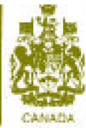
Bob Greenberg
for H & I Carpet Corporation of Canada Ltd.

Alan P. Slavner
for Robon Carpet and Manufacturing Ltd.

Yvon Olivier
for Jos. Olivier Ltée

Eric Adams
for Eraco International Trading Inc.

(Importers)

CANADIAN INTERNATIONAL TRADE TRIBUNAL

TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, May 6, 1992

Inquiry No.: NQ-91-006

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

Special Import Measures Act - Whether the dumping of the above-mentioned goods 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 the aforementioned goods from the United States of America has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	March 16 - April 2, 1992
Date of Finding:	April 21, 1992
Date of Reasons:	May 6, 1992
Tribunal Members:	John C. Coleman, Presiding Member Michèle Blouin, Member Robert C. Coates, Q.C., Member
Counsel for the Tribunal:	Brenda Swick-Martin
Director of Research:	Selik Shainfarber
Research Manager:	Douglas Cuffley
Research Officers:	W. Douglas Kemp Douglas Allen Paule Couët
Statistical Officer:	Robert Larose
Registrar:	Nicole Pelletier
Registration and Distribution Officer:	Pierrette Hébert
Clerk:	Mariette Gauvreau

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Harding Carpets
Soreltex International Inc.
Crossley Carpet Mills Limited
Venture Carpets Ltd./Tapis Venture Ltée
Richmond Carpet Mills
Peerless Carpet Corporation
National Carpet, A Division of
NCM Carpet Mills Inc.

(Complainants)

Peter A. Magnus and
Gregory O. Somers
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Colorcarpet, Inc.
Diamond Rug & Carpet Mills, Inc.
JPS Carpet Corp.
Mohawk Carpet Corporation

(Exporters)

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(Exporters)

Robert Murray
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(Exporter)

Peter Clark and
Chris Hines
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Hollytex Carpet Mills, Inc.
Sunrise Carpet Industries, Inc.
Mannington Carpets, Inc.

(Exporters)

Peter Clark and
Chris Hines
for Melmart Distributors Inc.
Buckwold - Western Wholesale Distributors
W.G. McMahon Canada Ltd.
Parbron International Inc.
Parco Distribution Sales Ltd.
Western Carpet Distributors of Canada Ltd.
Centura London Floor and Wall Fashions
Packer, Division of Cassidy Ltd.
L. Morency & Fils Inc.
Omni Floorcoverings Ltd.
Roger Sorel Tapis/Carpets Inc.
Centura Western Floor and Wall Fashions
Centura Vancouver Floor and Wall Fashions
Primco (PWL) Ltd.

(Importers)

James L. Shields and
Michael Lanos
for World Carpets, Inc.

(Exporter)

Jean G. Bertrand and
Denis Gascon
for General Felt Industries, Inc. and
Focus Carpet, A Division of General Felt Industries, Inc.

(Exporters)

for Kimberley L.D. Cook
Jordans Rugs Ltd.

Robert Greenberg
H & I Carpet Corporation
of Canada Ltd.

Alan P. Slavner
Robon Carpet and Manufacturing Ltd.

Yvon Olivier
Jos. Olivier Ltée

Eric Adams
Eraco International Trading Inc.

(Importers)

Witnesses:

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Chairman and Chief Executive Officer
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Executive Vice President
Chief Executive Officer
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Michael Wagner
National Sales Manager
Kraus Carpet Mills Limited

Gary Witt
Director of Finance
Kraus Carpet Mills Limited

Wayne R.G. Tuck, Sr.
Executive Vice President
Harding Carpets

Geoffrey P. Charnley
Corporate Secretary and Treasurer
Harding Carpets

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Chief, Financial Operations
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Robert Miller
Vice-President, Sales
Soreltex International Inc.

William D. Ring
Vice-President Finance
Crossley Carpet Mills Limited

J.A. Yvon Hébert
Chairman
Venture Carpets Ltd./
Tapis Venture Ltée

Bertrand E. Desautels
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Mark Shnier
Vice-President, Finance & Administration
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Arthur E. Collver
General Manager
Richmond Carpet Mills

Martin Wells
Branch Manager
G.E. Shnier Co.

David Arditi
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Peerless Carpet Corporation

Robert L. Wilkinson
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Sales & Merchandising
Peerless Carpet Corporation

Christian Mangin
Coordinator - Marketing Services
and Trade Relations
Peerless Carpet Corporation

Pierre Fitzgibbon
Vice-President
Finance & Administration
Peerless Carpet Corporation

Ronald Halton
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David Crowther
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Bruce S. Lord
Senior Vice-President
Jordans Rugs Ltd.

W. Ernest Hebert
President
Western Carpet Distributors of
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George Lang
Vice-President
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Mannington Carpets, Inc.

Robert J. Livingston
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Alan P. Slavner
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Scott Duchesnay
Plant and Production Manager
Robon Carpet and Manufacturing Ltd.

Bruce Buckwold
Buckwold - Western Wholesale
Distributors

Michael W. Zima
Image Carpets Inc.

W.C. McAllister
Chairman of the Board and
Chief Executive Officer
Melmart Distributors Inc.

Dean Martin
President
Melmart Distributors Inc.

Jerry Dolan
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Hollytex Carpet Mills Inc.

John Shaheen
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World Carpets, Inc.

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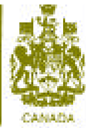
TRIBUNAL CANADIEN
DU COMMERCE
EXTÉRIEUR

Ottawa, Wednesday, May 6, 1992

Inquiry No.: NQ-91-006

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

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

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
MICHÈLE BLOUIN, Member
ROBERT C. COATES, Q.C., Member

STATEMENT OF REASONS

THE CONDUCT OF THE INQUIRY

The Canadian International Trade Tribunal (the Tribunal), under section 42 of the *Special Import Measures Act* (SIMA),[1] 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 December 19, 1991, and of a final determination of dumping dated March 18, 1992, respecting the importation into Canada of machine tufted carpeting with pile predominantly of nylon, other polyamide, polyester or polypropylene yarns, excluding automotive carpeting and floor coverings of an area less than five square metres, originating in or exported from the United States of America.

The notices of preliminary and final determinations of dumping were published in Part I of the January 4, 1992, and April 4, 1992, editions of the Canada Gazette, respectively. The Tribunal issued a notice of commencement of inquiry on December 19, 1991, that was published in Part I of the January 4, 1992, edition of the Canada Gazette.

As part of its inquiry, the Tribunal sent detailed questionnaires to Canadian manufacturers and importers of the subject goods requesting production, financial, import and market information, as well as other information, covering the period from January 1, 1988, to December 31, 1991. From the replies to the questionnaires and other sources, the Tribunal staff prepared public and confidential pre-hearing staff reports covering that period.

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

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

Public and *in camera* hearings were held in Ottawa, Ontario, starting on March 16, 1992. The complainants, the Canadian Carpet Institute (the CCI) and National Carpet, A Division of NCM Carpet Mills Inc. (National) were represented by counsel at the hearing. As well, Kraus Carpet Mills Limited (Kraus), Harding Carpets (Harding), Soreltex International Inc. (Soreltex), Crossley Carpet Mills (Crossley), Venture Carpets Ltd. (Venture), Richmond Carpet Mills (Richmond) and Peerless Carpet Corporation (Peerless) testified on behalf of the CCI. Opposing parties, which included the Carpet and Rug Institute (CRI) and several exporters, importers and distributors as listed previously, were also represented by counsel, for the most part.

On April 21, 1992, the Tribunal issued a finding that the dumping of the subject goods has caused, is causing and is likely to cause material injury to the domestic production of like goods.

THE PRODUCT

The product which is the subject of this inquiry is described in the preliminary determination of dumping as machine tufted carpeting with pile predominantly of nylon, other polyamide, polyester or polypropylene yarns, excluding automotive carpeting and floor coverings of an area less than five square metres, originating in or exported from the United States of America. The term "predominantly" is interpreted to mean the fibre which predominates by weight over any other single fibre.

Machine tufted outdoor carpeting, known as "artificial grass," is subject to the inquiry. Unfinished carpeting (unbacked) and carpeting which has been tufted, but which has not been dyed, and has no secondary backing and is commonly referred as "greige carpeting," are also subject to this inquiry.

The product definition excludes carpeting made for automotive floor covering and carpeting of an area less than five square metres such as mats, runners, tiles and samples. However, area rugs larger than five square metres are included in the inquiry.

The product definition also excludes oriental, machine- or hand-woven carpets and other carpets including braided, knotted, hooked and needle-punched mats and rugs. It also excludes carpets made of wool/wool blends or fine animal hair, cotton, acrylic and modacrylic, viscose and other man-made textile materials.

Machine tufted carpeting is produced in a variety of colours, textures, patterns and weights. The weight is determined by the density of the pile fibres and is measured in ounces. It varies between 16 and 90 oz./sq. yd. or 19 and 110 oz./sq. m.

The subject carpeting is produced on tufting machines. These machines are equipped with hundreds of needles and hooks which insert textile carpet yarn into a primary fabric backing to produce "greige" carpeting. The yarn may be left in loop form or the tip of the loop may be cut, resulting in loop pile greige carpeting or cut pile greige carpeting, respectively. Carpeting is tufted continuously, but cut from the machine piece

by piece. If the carpeting has been tufted with pre-coloured yarn, it is routed directly to the finishing line.

However, if the carpeting has been tufted with natural yarn, it is dyed and dried before going to the finishing line. By planting suitable yarns at tufting, different strengths of dye and a separate colour may be developed in the same dye bath, creating a patterned carpet. Chemicals may be applied at the dyeing or drying stage which help the carpet to resist staining in use, or enable spills and potential stains to be wiped up readily.

At the finishing line, a latex compound is applied to the back of the carpeting to secure the yarns forming the pile. A high-quality latex compound is then applied to a secondary backing of jute or polypropylene fabric. The secondary backing, which provides dimensional stability, is pressed to the back of the carpet, and it passes through an oven where the latex is dried to lock the tufts in place and to laminate the secondary backing to the greige. Cut pile carpeting is then sheared to create a uniform surface. The carpeting is then inspected, graded and cut, rolled and wrapped.

Residential carpeting is normally dyed at the plant, while commercial carpeting is normally produced with pre-dyed yarns to ensure uniform colours for large floor coverings. The rolls range from 60 ft. to 200 ft. in length, and from 6 ft. to 12 ft. in width. The standard roll size for most styles of carpeting is 12 ft. in width and 125 ft. in length.

THE DOMESTIC INDUSTRY

One of the complainants, the CCI, an association of Canadian manufacturers of carpeting and other textile floor coverings, stated that its members accounted collectively for more than 75 percent of all Canadian production of machine tufted carpeting. The co-complainant, National, represents more than 80 percent of the domestic production of machine tufted artificial grass carpeting.

The domestic manufacturers of machine tufted carpeting are located across Canada. Most are in Ontario and Quebec, but there are also firms in Nova Scotia, Alberta and British Columbia.

Of the larger companies producing tufted carpeting for the domestic market, five of them are vertically integrated, in that they spin, twist and heat-set their requirements. One company, through its parent company in Canada, also extrudes polypropylene filament and produces polypropylene yarn for its own use. Currently, the domestic industry sources the bulk of its fibre requirements from four major suppliers in Canada.

By expanding into upstream operations, the domestic industry has reduced its reliance on outside yarn processors and has minimized the risk of production interruptions and raw material shortages.

As the industry has increased its degree of vertical integration, it has also begun to exert greater direct control over the sales and service of the finished product. Increasingly, producers are investing in their own distribution centres and warehouses. Notwithstanding the tendency of some manufacturers to sell their product through their own distribution centres, domestic carpeting continues to be sold through independent

distributors and traditional sales outlets such as independent contractors and mass merchandisers. Carpeting may be purchased directly from the mill on a tender basis when bought as original equipment in buildings.

In the last few years, industry members have computerized their manufacturing operations and have made significant acquisitions or alterations to their respective manufacturing processes.

IMPORTERS AND EXPORTERS

CRI is a U.S. national association whose membership comprises U.S. manufacturers of carpets and rugs, including machine tufted carpeting subject to this inquiry. All U.S. manufacturers that export the subject goods to Canada are members of CRI. The U.S. manufacturers and exporters of tufted carpeting are located primarily in the States of Georgia and North Carolina, while other manufacturers are located in South Carolina and California.

The Department of National Revenue for Customs and Excise (Revenue Canada) has identified more than 1,000 Canadian importers of the subject carpeting. These importers are either national or regional floor covering and carpet distributors, retailers or manufacturers. A few non-resident importers were also identified.

THE COMPLAINT

The complainants (the CCI and National) submitted that, based on the evidence in this case, the Tribunal should find that the dumping of the subject goods has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

According to counsel for the industry, the Canadian tufted carpeting industry has been, in many ways, an exemplary industry. Like the computer and jet aircraft industries, the tufted carpeting industry was only about 40 years old. Although it had a lower profile than these other industries, it too was created and driven by achievements in technology. Until recently, the industry had achieved higher than average rates of growth. Over the years, manufacturing costs had steadily come down through a variety of technological advances. As well, the industry had a good record on price performance, with the industry's selling price index rising more slowly, in recent years, than either the manufacturing sector as a whole or the textile sector. Indeed, carpet prices in Canada had advanced at a slower pace than those in the United States. The industry also had high labour productivity and sourced most of its raw materials in Canada.

Despite these achievements, the industry was now in serious difficulty. One reason for this had been the economic recession which substantially reduced the apparent market in Canada in both 1990 and 1991. However, the effects of the recession were not the cause of the injury that was the subject of the industry's complaint. The cause was the surge in U.S. imports since 1988. This surge had increased the U.S. share of the Canadian market by 33 percentage points over the past three years. An increase of this magnitude would have been astounding in a flat or growing market. In the shrinking market of 1990 and 1991, it had been devastating to the domestic industry.

The lost sales volume attributable to this surge in U.S. imports was estimated by the industry to be about 35 million square metres, amounting to about $315 million over the past three years. As a result of the loss of market share, industry production levels, employment and capacity utilization had plummeted. With fixed costs spread over lower production volumes, unit costs rose and margins were squeezed. Currently, most firms are operating at a loss and, on a combined basis, the industry lost $12 million in 1990 and $19 million in 1991.

The restoration of market share and production was an urgent priority for the industry. There was nothing to suggest that market demand was about to pick up quickly in Canada. The slump in non-residential construction showed no signs of abating. Although the last federal budget provided some support for new residential housing, this would not translate into demand for carpeting until the latter half of 1992 when houses started in the spring would be ready for occupancy. A positive injury finding was therefore crucial to the industry's prospects.

The preliminary determination of dumping by Revenue Canada involving the imposition of provisional anti-dumping duties as of December 19, 1991, had already begun to benefit the industry more strongly and quickly than expected. Witnesses for manufacturers supporting the complaint reported meaningful upturns in orders and levels of interest from their customers. These had translated into higher levels of plant loading, putting hundreds of employees back to work on a full-time basis. If dumping had not been causing injury, the provisional duties would not have had such an immediate positive effect.

Counsel for the industry noted that parties opposing the industry's complaint were attributing the industry's injury to a variety of factors other than dumping. One of these factors was the supposedly high value of the Canadian dollar against the U.S. dollar. However, an examination of Canada/U.S. exchange rates over a 40-year time span showed that, in the mid-1980s, the Canadian dollar had been exceptionally weak. At current levels, it was returning to its historic trading range against the U.S. dollar. It was wrong to blame the industry's injury on these exchange rate adjustments.

Another factor cited as causing injury to the industry was the progressive tariff reductions under the Canada-United States Trade Agreement (CUSTA) which lowered the landed Canadian price of U.S. goods each year. In counsel's view, the effects of tariff reduction had been overstated since U.S. imports had surged in 1989, 1990 and 1991, despite the relatively high tariffs that were still in place in those years, namely, 18, 16 and 14 percent respectively.

Finally, counsel for the industry submitted that Canadian carpeting could, in certain cases, command a premium in the marketplace based on "reputation" and "image." Even if some U.S. products enjoyed a price advantage over comparable Canadian products, the premium on Canadian products could allow Canadian mills to bridge the price gap. However, this could not be done if dumping was allowed to widen these gaps to unbridgeable proportions.

THE RESPONSE

Counsel representing CRI and several major exporters of machine tufted carpeting, including Queen Carpet Corporation (Queen) and Shaw Industries, Inc. (Shaw), submitted that the subject imports have not caused, are not causing and are not likely to cause material injury to the Canadian producers of like goods. They argued that any injury suffered by the Canadian producers was due to factors other than dumping.

The period under review in this inquiry straddled a recession that had occurred in both Canada and the United States. The impact of the recession on the apparent market for the subject goods had been a drop of 12 percent in 1990 over 1989, and a further drop of 9 percent in 1991 over 1990. The effect of the recession had been similar in both countries, manifesting itself in lowered commercial and housing construction starts, diminished consumer confidence, reduced discretionary spending, and an emphasis on cost cutting, rationalization, competitiveness and product focus. However, the U.S. market for the subject goods was more than 10 times larger than the Canadian market, U.S. import tariffs for the subject carpeting in 1988 were almost a third of Canada's tariffs, and raw material, labour and transportation costs were lower in the United States. It was in the context of the foregoing that the issues in this case had to be evaluated.

This inquiry was a paradigm for CUSTA which began to reduce both countries' import tariffs in 1989. CUSTA had caused Canadian import duties on U.S. goods to drop 6 percentage points since 1989, and the simultaneous rise in the Canadian dollar had the effect of lowering the price of U.S. goods by 11.6 percent. This increased the competitiveness of U.S. carpeting in Canada and contributed to the rise in U.S. imports which resulted in the Canadian industry's loss of market share.

The loss of market share by Canadian mills also resulted from CUSTA-related rationalization in the Canadian industry, including a shift in Canadian production to the United States by firms such as Peerless. In addition, there were closures and reorganizations of Canadian mills for internal financial and organizational reasons that had nothing to do with the dumping of the subject goods. Canadian mills that were affected by this included Peeters Carpets Ltd. (Peeters), Ozite Canada (1981) Ltd. (Ozite), Walker Mills (Walker), Crossley, Soreltex and Harding.

The testimony of Mr. Frank Wilson, a U.S. carpeting consultant, showed that U.S. products had a competitive edge without any dumping. In particular, raw material costs were substantially lower in the United States than those in Canada. This, combined with the effect of CUSTA duty reductions and the strong Canadian dollar, was the underlying issue in this inquiry. These factors resulted in a situation where U.S. normal values for the subject goods were consistently lower than Canadian prices.

Counsel for CRI reviewed the various examples put forward by the Canadian industry of Canadian accounts where dumping, especially by Queen and Shaw, had allegedly caused the domestic industry to lose sales volume or suffer price suppression. In many cases, the allegations were simply mistaken since no sales had been made to the accounts by, for example, Queen or Shaw. In other instances, where sales were made by Queen and Shaw, they were not made at dumped prices, but at prices equal to or greater than the normal values specified in the Final Determination of Dumping (Final Determination). Examples presented by Harding, Crossley and Soreltex also

showed that these Canadian mills were quoting prices at particular accounts which were substantially above the undumped price of the U.S. exporter. Indeed, in a number of instances, the undumped U.S. price was at or close to the standard cost of production of the Canadian manufacturer. These examples indicated that sales would have been lost and injury would have occurred to Canadian producers whether or not the Deputy Minister had found any dumping.

Finally, despite the imposition of provisional duties, Canadian prices and domestic industry margins remained low, as did U.S. selling prices in Canada. This showed that the provisional duties were not providing the industry with the "quick cure" that they claim.

Counsel for a number of Canadian distributors and certain U.S. exporters not represented by counsel for CRI, concurred with the foregoing and advanced arguments and evidence along similar lines to support a finding of no injury. They noted that paragraph 4, article 3 of the Anti-dumping Code (the Code) states that where injury is caused by factors other than dumping, the injury so caused should not be attributed to dumping. In this case, there were numerous factors other than dumping causing injury to Canadian producers. These included substantial volumes of undumped imports, a contraction in demand, the strong Canadian dollar, the tariff declines under CUSTA, imports of U.S. carpeting by Canadian mills, high levels of price competition among domestic producers themselves and certain marketing practices by Canadian mills which caused Canadian distributors to seek U.S. suppliers for their carpeting requirements.

Furthermore, the Deputy Minister's Final Determination would have a particularly adverse effect on Canadian independent distributors. The normal value regime that had been established did not provide an adequate trade level differential to enable distributors to compete with U.S. mills that sell directly to the retail level in Canada. This lack of trade level adjustment to normal values effectively would encourage U.S. mills to increase their levels of direct sales, thus threatening the viability of distributors. As Canadian independent distributors played an important role in the marketing of carpeting products produced in Canada, their demise would be harmful to domestic mills as well as contrary to the public interest.

Counsel for World Carpets, Inc., a U.S. manufacturer and exporter of the subject carpeting, concurred with the preceding arguments. They too noted examples where their client had been mistakenly identified by Canadian mills as the cause of lost sales at particular accounts. In their view, a causal connection between dumping and the injury to Canadian production had not been substantiated.

In a brief to the Tribunal, counsel for Jordans Rugs Ltd. (Jordans), a Western Canadian retailer and importer, submitted that injury to Canadian mills was not caused by the dumping of U.S. carpet in Canada. Jordans' brief listed numerous reasons for the domestic industry's difficulties, most of which parallel the points raised by other counsel.

Representations were also made by Jos. Olivier Ltée. As a member of a U.S. buying group of independent distributors, the firm's purchases from U.S. mills were made at the same prices as other U.S. distributors. Consequently, its imports of subject carpeting were not dumped nor did they cause material injury to the Canadian production of like goods.

Counsel for General Felt Industries, Inc. (General Felt), a U.S. exporter of the subject goods, argued that artificial grass carpet constituted a separate class of goods within machine tufted carpeting. The dumping margins found on imports of artificial grass carpeting were negligible and did not cause any injury to the two known domestic producers of artificial grass carpeting, National and Matting Technology Corporation (Matting Technology). Therefore, there should not be an injury finding for this subcategory of distinct goods.

REQUESTS FOR EXCLUSION

The Tribunal received a number of requests for exclusion of certain types of custom-made carpet, as well as for carpeting produced using various proprietary technologies. With respect to custom-made machine tufted carpeting, the President of CRI submitted that the Canadian market for these goods could not be fully supplied by Canadian carpet producers, in that they had not developed or demonstrated a manufacturing proficiency in the technology required to produce the type of custom goods produced in the United States. He suggested that any alleged injury to Canadian producers of custom goods could only be due to their higher production cost and to the smaller variety of patterns, colours and features that they offered.

For similar reasons, Burlington Industries, Inc. requested an exclusion for carpets sold under the trade names of Unibond and Duracolor. In both cases, the carpet is produced using patented technology and commands a price premium over conventionally backed and dyed carpets. Burlington Industries, Inc. argued that no Canadian producer manufactured or had the technology to manufacture a commercial product meeting the performance standards of either carpet.

Milliken & Company (Milliken) stated that its Millitron dying and etching technology creates unique, original products that have the appearance of woven carpeting. Such carpet was not manufactured by any other carpet producer in the world, except for those under direct license from Milliken. Only one Canadian carpet manufacturer was licensed to use the Millitron technology; however, this firm has not purchased the software and hardware necessary to update its technology to current standards. Milliken requested an exclusion for custom-designed machine tufted carpeting produced using the Millitron dye technology, as well as for area rugs manufactured using the same technology.

The witness for H & I Carpet Corporation of Canada Ltd. (H & I) submitted that there were numerous types of carpet manufactured in the United States that Canadian manufacturers are incapable of producing. This was primarily because the Canadian industry did not possess equipment such as 5/64 gauge graphics machines and various special tufting machines. He said that H & I imported many products that had copyrights on their designs which Canadian mills were not licensed to produce. H & I sought exclusions for products falling in these categories.

Eraco International Trading Inc. (Eraco) also sought an exclusion for its imports. The firm was servicing a clientele that was looking for product differentiation. Its imports were somewhat unique, not readily available from Canadian producers and did not compete with mainstream carpeting produced in Canada. Eraco also requested an exclusion for a Belgian-made printed product, which was being imported from the United States through the Belgian mill's U.S. distributor.

Image Carpets Inc. (Image) requested an exclusion for residential and commercial carpet produced from polyester fibre extruded from recycled polyethylene terephtalate (PET). In all performance characteristics, this carpet was equal to any other comparably constructed carpet. Image said that its fibre was not typical because it was recycled. A significant proportion of the raw material came from Canada and accounted for employment in the Canadian recycling industry. The Image carpet had not injured any party and should be excluded because similar carpet was not produced in Canada nor was it substitutable by domestically produced carpet.

Robon Carpet and Manufacturing Ltd. (Robon) requested an exclusion for scraps and/or remnants of tufted carpet. Robon makes bound floor mats and rugs using salvage or scrap tufted carpeting, and converts it into mats and rugs. It said that its imports were not like goods. The carpet industry had always priced salvage and scrap materials at a considerable discount from prime carpeting. Robon's U.S. competitors were buying scrap goods at the same low prices as Robon. Canadian mills and/or distributors could not or would not provide it with sufficient quantities of this product. Robon would become uncompetitive if a dumping duty were applied to its imports. The firm requested that the minimum of 5 square metres in the definition of the subject goods be raised to 12 or 15 square metres to exclude its imports from any positive injury finding.

PRELIMINARY ISSUES

Like goods

Under subsection 42(1) of SIMA, the Tribunal must inquire into whether the dumping of goods is causing material injury to "the production in Canada of like goods." Therefore, as part of its task in determining material injury to production in Canada, the Tribunal must determine what like goods are, within the meaning of subsection 42(1) of SIMA.

During the hearing, a preliminary issue was raised by CRI as to whether the product class of machine tufted carpeting could be broken down into the following subcategories based on the carpet's end-use: 1) residential, 2) contract residential, 3) commercial nylon, 4) commercial polypropylene, and 5) artificial grass carpeting.

The Tribunal ruled that it would hear evidence on the five subcategories of goods and reserved the right to regroup some or all of the subcategories for the purposes of an injury determination, depending on the nature of the evidence presented during the hearing. The Tribunal requested that the Deputy Minister provide separate margins of dumping for each of these subcategories of goods, and these are reported in Table 3 of this statement of reasons.

Counsel for exporters, importers and distributors did not present their final arguments on the basis of various subcategories, except in the case of artificial grass carpeting. The Tribunal, nonetheless, has reviewed the evidence as to whether there are different subcategories of "like goods" in this inquiry.

Subsection 2(1) of SIMA defines "like goods" in relation to other goods as:

> *(a) goods that are identical in all respects to the other goods, or*
> *(b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods;*

In the opinion of the Tribunal, carpet in each subcategory is not identical in all respects within the meaning of subparagraph 42(1)(*a*). Consideration must therefore be given as to whether the uses and other characteristics of carpeting in each subcategory closely resemble one another, including the degree of substitutability among carpeting in the different subcategories. The Tribunal finds that there are three subcategories of like goods in this inquiry, namely residential carpeting, commercial carpeting and artificial grass, for the reasons set out below.

The Tribunal is of the view that the uses and characteristics of residential and contract residential carpeting closely resemble each other and are, therefore, like goods. Residential carpeting is generally made out of the same fibres as contract residential, namely, nylon or polyester. Residential and contract residential carpeting have the same general use, namely carpeting that is sold for use in private homes.

The Tribunal is of the view that the characteristics and uses of residential and commercial carpeting do not closely resemble each other and are, therefore, not like goods for the purposes of this inquiry. While commercial carpeting is generally made of nylon, it is also made of polypropylene, which is not a predominant fibre in the residential market. Although residential and commercial carpeting have the same generic use, namely to cover floors, the specific uses of commercial and residential carpeting differ. Residential carpeting is used in private houses and apartments, while commercial carpeting is produced for use in offices or hotels and institutions including churches, schools and hospitals. While recognizing that commercial and residential carpeting are separate subcategories of goods, witnesses testified that there was a degree of overlap between commercial and residential carpeting to the extent that a homeowner may choose commercial carpeting for use in heavier traffic areas of a home such as the family room or recreation room. The Tribunal finds that while some overlap exists between commercial and residential carpeting, it is limited in nature.

The Tribunal finds that the differences between the nylon and polypropylene subcategories of commercial carpeting are not sufficient to lead to a finding that they are separate subcategories of like goods. The Tribunal finds that both subcategories of carpeting serve essentially the same end use, and their physical characteristics are not so different as to warrant separate consideration as like goods.

The Tribunal is of the opinion that artificial grass constitutes a subcategory of like goods for the purposes of this inquiry. The characteristics and uses of artificial grass and indoor machine tufted carpeting do not closely resemble one another. Artificial grass is made out of flat polypropylene yarn which is unique to artificial grass and cannot be compared to bulk continuous filament or stapled yarns used to produce indoor tufted carpeting. In addition, a special ultraviolet (UV) treatment is applied to artificial grass to protect it from degradation due to sunlight. This treatment is not applied to indoor tufted carpeting. Artificial grass is also generally lighter in weight than indoor tufted carpeting as it is produced in weights below 16 oz./sq. yd.

Unlike indoor machine tufted carpeting for use in commercial or residential applications, artificial grass is primarily designed for outdoor use, in part because of the UV treatment process. It cannot be considered a substitute for indoor tufted carpeting as it is generally not used indoors, and conversely indoor tufted carpeting could not be used in place of artificial grass outdoors because it would deteriorate under the sunlight.

Standing of the Domestic Industry

Having determined that there are three subcategories of like goods, the Tribunal must determine whether the collective output of the CCI and National represents a major proportion of the total domestic production of like goods.

The CCI and National accounted for over 75 percent of the domestic production of machine tufted carpeting, including artificial grass, in 1991. The Tribunal is therefore satisfied that the CCI and National represent a major proportion of the domestic production of machine tufted carpeting. The evidence on the production and sales of the members of the CCI and National shows that, even taken on the basis of each subcategory of goods, the CCI represents more than 70 percent of the domestic production of either commercial carpeting or residential carpeting, and that National represents more than 80 percent of the domestic production of artificial grass carpeting. The Tribunal is therefore satisfied that the CCI represents a major proportion of the domestic production of commercial carpeting and of residential carpeting and that National represents a major proportion of the domestic production of artificial grass.

ECONOMIC INDICATORS

In its examination of the Canadian market for machine tufted carpeting, the Tribunal looked at trends in production, imports and prices for machine tufted carpeting during the period from 1988 to 1991. As well, it reviewed changes in the structure and financial performance of the industry. The following table summarizes key economic indicators.

TABLE 1

Economic Indicators - Total Market

	1988	1989	1990	1991
Total Apparent Market (million sq. m)	88.9	90.4	79.5	72.1
Industry Market Share from Production (%)	94	87	73	61
Industry Market Share* from U.S. Imports (%)	1	2	3	8
Importer Market Share from U.S. Imports (%)	5	10	23	31
Importer Market Share from Non-Subject Countries (%)	0	1	1	0
Total Market Share from Imports (%)	6	13	27	39
Industry Export Sales (million sq. m)	6.8	5.9	5.1	5.0
Industry Net Income/(Loss) $000	32,251	19,859	(11,724)	(18,841)
Industry Capacity Utilization (%)	78	73	56	44
Industry Employment	3,114	2,941	1,991	1,549

* The major share of these imports in 1990 and 1991 was accounted for by Gesco, a large national distributor of the subject carpeting, which is supplied by several Canadian and U.S. mills. Gesco also owns a manufacturing division, Richmond, which supplies a relatively small share of its total carpet volume. As Gesco owns Richmond, its imports were included with imports by other Canadian producers. This topic is further discussed in the section Reasons for Decision.

Domestic demand for tufted carpeting peaked at about 90 million square metres in 1989, a marginal increase over 1988. It then fell sharply to 79.5 million square metres in 1990, followed by a further drop to 72.1 million square metres in 1991. Overall, this constituted a 19-percent drop in domestic demand.

Sales from domestic production dropped precipitously during this period, outpacing the market decline. In the four years from 1988 to 1991, the share held by domestic production fell from 94 percent to 61 percent. Peerless, the largest domestic carpet manufacturer, as well as Richmond and National, unlike most of the other industry members, managed to increase slightly their market shares from domestic production during this period, despite lower overall sales volumes.

The share held by imports displayed considerable growth at the expense of the domestic industry. The domestic carpet industry was responsible for a limited proportion of this rise, increasing its market share from U.S. imports from one percentage point in 1988 to eight percentage points in 1991, with the majority of the increase occurring in 1991. Imports of U.S. carpeting by parties other than the Canadian industry exhibited spectacular growth, moving rapidly from a 5-percent share to a 31-percent share of the market, with the greatest part of the growth occurring in 1989 and 1990. Imports from countries other than the United States remained negligible throughout the period under review.

The effect on the industry of dwindling market share was a rapid decline in its financial performance, with three consecutive years of declining profits or increasing losses. In 1988, the industry reported a net income of over $32 million. In 1989, its net profit level fell 38 percent to about $20 million. This was followed by an even more dramatic decline of 159 percent in 1990, moving the industry into a net loss position of nearly $12 million. The decline continued into 1991 with a further large drop of 61 percent, leaving the industry with a consolidated net loss of about $19 million.

Further reflecting the falling demand for domestically produced machine tufted carpeting, employment levels dropped steadily throughout the period, from about 3,100 to 1,550 workers. Similarly, the industry's utilization of capacity was nearly cut in half, from a high of 78 percent in 1988 to 44 percent in 1991.

There were 16 producers of machine tufted carpeting in Canada in 1988. During the next 3 years, 6 producers ceased production while 2 entered the industry, leaving only 12 firms producing the subject goods by the end of 1991.

In addition to its examination of the aggregate market for tufted carpeting, the Tribunal examined the residential, contract residential, commercial-nylon, commercial-polypropylene and artificial grass[2] segments of the market.

2. Artificial grass carpeting is a sub-set of the residential, contract residential and commercial polypropylene segments of the overall market.

The following table summarizes key indicators on the first four of the submarkets mentioned above.

TABLE 2

Economic Indicators - Submarkets

	1988	1989	1990	1991
Residential				
Apparent Market (million sq. m)	46.8	48.1	43.4	39.3
Industry Market Share from Production (%)	92	84	66	52
Industry Market Share from Imports (%)	1	2	2	10
Importer Market Share from U.S. Imports (%)	6	13	31	38
Importer Market Share from Non-Subject Countries (%)	0	1	1	0
Total Market Share from Imports (%)	8	16	34	48
Industry Gross Margin on Domestic Sales from Production ($000)	43,706	42,139	27,956	19,712
Industry Gross Margin on Domestic Sales from Production (%)	23	22	17	16
Contract Residential				
Apparent Market (million sq. m)	12.2	13.9	11.2	9.8
Industry Market Share from Production (%)	93	88	77	66
Industry Market Share from Imports (%)	0	1	3	5
Importer Market Share from U.S.Imports (%)	6	10	20	29
Importer Market Share from Non-Subject Countries (%)	0	1	1	0
Total Market Share from Imports (%)	7	12	23	34
Industry Gross Margin on Domestic Sales from Production ($000)	19,222	18,175	13,131	7,474
Industry Gross Margin on Domestic Sales from Production (%)	18	18	15	13

TABLE 2 (cont'd)

Economic Indicators - Submarkets

	1988	1989	1990	1991
Commercial Nylon				
Apparent Market (million sq. m)	15.8	16.8	15.2	13.2
Industry Market Share from Production (%)	95	91	83	78
Industry Market Share from Imports (%)	1	1	2	1
Importer Market Share from U.S. Imports (%)	4	7	15	20
Importer Market Share from Non-Subject Countries (%)	0	1	0	0
Total Market Share from Imports (%)	5	9	17	22
Industry Gross Margin on Domestic Sales from Production ($000)	29,390	28,848	21,819	18,750
Industry Gross Margin on Domestic Sales from Production (%)	25	24	19	19
Commercial Polypropylene				
Apparent Market (million sq. metres)	14.1	11.7	9.7	9.8
Industry Market Share from Production (%)	98	93	84	69
Industry Market Share from Imports (%)	0	2	8	14
Importer Market Share from U.S. Imports (%)	2	4	8	17
Importer Market Share from Non-Subject Countries (%)	0	0	0	0
Total Market Share from Imports (%)	2	7	16	31
Industry Gross Margin on Domestic Sales from Production ($000)	13,322	12,946	9,052	6,942
Industry Gross Margin on Domestic Sales from Production (%)	21	22	19	19

In 1991, the **residential** submarket constituted about 55 percent of the total market for machine tufted carpeting. Overall, the recession affected this segment of the market slightly less than the total carpet market, with total sales falling about 16 percent during the 4-year period. The share of this market segment held by domestic carpet producers

fell from 92 percent in 1988 to 52 percent in 1991.

At the gross margin level, the industry's financial performance in this segment of the market showed a steady decline, dropping from approximately 23 percent in 1988-89 to about 16 percent in 1990-91.

The **contract residential** submarket represented about 14 percent of the total market in 1991. This segment of the market increased by 14 percent in 1989 then collapsed, dropping 30 percent in the next two years. From 1988 to 1991, the market share held by sales from domestic production fell by 27 percentage points.

The trend in financial performance at the gross profit level in this segment was similar to that in the residential segment, hovering in the 18-percent range in 1988 and 1989, then dropping to about 13 percent by 1991.

The Tribunal examined the **commercial** submarket in terms of its nylon and polypropylene segments. In 1991, these represented about 18 percent and 14 percent, respectively, of the total market. Apparent demand in the nylon segment increased by 6 percent in 1989, then fell by 21 percent in the next two years. The share held by industry members fell by 17 percentage points between 1988 and 1991. Apparent demand in the polypropylene segment declined throughout the period, dropping 31 percent during the four years. The share held by sales of domestically produced carpet dropped 29 percentage points over the same period.

At the gross profit level, both segments of the commercial submarket fared similarly, with gross margins in the 21- to 25-percent range in 1988-89, falling to 19 percent in 1990-91.

In 1991, the **artificial grass** submarket represented 5 percent of the total market of the subject machine tufted carpeting. This type of carpeting is sold largely for outdoor use in both residential and commercial markets. In 1988 and 1989, domestic producers accounted for nearly 100 percent of the domestic market sales of artificial grass. In 1990, U.S. imports surged, taking 10 percentage points from the Canadian producers. In 1991, these imports took a further 28 percentage points of market share, all at the expense of Canadian production.

Revenue Canada reviewed the imports of carpeting from 61 exporters in the United States. During Revenue Canada's period of investigation, from January 1, 1991, to March 31, 1991, these exporters shipped 4.6 million square metres of the subject goods to Canada. Of these exports, 61 percent were found to have been dumped. The margins of dumping per exporter ranged from 1.9 percent to 51.3 percent with a weighted average margin of dumping of 11.97 percent.

Following a request made by the Tribunal, Revenue Canada determined the total weighted average margins of dumping for each of the market segments as indicated in the next Table.

TABLE 3

Margins of Dumping by Market Segments

Market Segments	Volume of Goods Found to be Dumped %	Margin of Dumping %
Residential	60	10.91
Contract Residential	68	11.20
Commercial Nylon	61	14.19
Commercial Polypropylene	61	11.87
Artificial Grass	47	7.29

REASONS FOR DECISION: RESIDENTIAL AND COMMERCIAL MARKET SEGMENTS

Under section 42 of SIMA, the Tribunal is required to determine whether dumped imports of the subject goods have caused, are causing or are likely to cause material injury to production in Canada of like goods. This determination breaks down into an examination of two issues. First, whether the evidence establishes that Canadian producers have suffered material injury. Second, whether the evidence establishes a causal link between the material injury and the dumped imports.

The Tribunal has found three subcategories of like goods in this case. Although evidence was adduced at the hearing, which helped the Tribunal to distinguish the three subcategories, none of the parties, with the exception of counsel representing one U.S. producer of artificial grass carpeting, made any distinction among the subcategories in advancing their arguments on the issues of material injury and causality.

However, the Tribunal has examined the effects of dumping on each of the three subcategories of goods. The Tribunal finds that, in terms of material injury, the margins of dumping and the industry performance indicators for both residential and commercial subcategories, as shown in Tables 2 and 3, reflect trends and orders of magnitude that parallel machine tufted carpeting considered as a whole. On the causal link between material injury and dumped imports, the issues that arise in this case are applicable to each subcategory of like goods. Accordingly, except as otherwise indicated, the Tribunal's analysis below addresses the issues of material injury and causality for machine tufted carpeting as a whole.

Material Injury

The information provided in response to the Tribunal's questionnaires, as well as additional evidence adduced at the hearing, has enabled the Tribunal to review the range of factors which give an indication of injury to the Canadian industry.

The Tribunal observes that the period from 1988 to 1991 was a time of dramatic change for the Canadian carpeting industry. Demand for tufted carpeting is closely tied to cycles in residential and commercial construction. In 1988 and 1989, high rates of construction activity in both residential and commercial sectors propelled domestic demand for the subject carpeting to approximately 90 million square metres. According to data provided by the CCI, this represented a historical high. These record levels of consumer demand generated corresponding unprecedented levels of production and sales for the domestic industry. As shown in Table 1, this translated into a healthy profit for the industry, as a whole, in 1988. The industry remained profitable in 1989, although at weaker levels than in 1988.

Over the next two years, the industry suffered substantial financial losses and domestic production fell, by 1991, to little more than half the level that it was in 1988. Indeed, according to CCI data, the 1991 volume of domestic shipments was some 10 percent below the level recorded during the severe recession of 1982. Similarly, sharp declines were experienced in employment and in the utilization of plant capacity during the four-year period under review.

It is not in dispute in this case that one of the factors that caused this reversal of fortune for the domestic industry is the recession which took hold in Canada in 1990. Residential housing starts and commercial construction activity declined sharply, causing, in volume terms, demand for tufted carpeting to fall substantially in 1990 and in 1991. By the end of 1991, the market had contracted to a volume of approximately 72 million square metres, about 19 percent below the 1988 level, as Table 1 indicates.

However, the decline in the domestic industry's production and sales volumes goes well beyond what can be attributed to the market shrinkage caused by the recession. This readily becomes apparent by examining what happened to the industry's share of the domestic market from 1988 to 1991. In 1988, 94 percent of domestic demand was supplied by production from Canadian mills. Imports from U.S. mills accounted for the remaining 6 percent of the market. According to CCI data, this market share profile broadly reflected the historical participation of U.S. tufted carpeting imports into Canada since the early 1970s.

By the end of 1989, this historical division of market share had become a thing of the past. Imports of U.S. tufted carpeting surged, more than doubling the sales volume and market share recorded in 1988. The market shrinkage which began in 1990 had no effect on dampening this surge in U.S. imports, as 1989 sales and share levels doubled again in 1990. As the recession grew deeper in 1991, U.S. carpeting sales continued to climb, both in absolute terms and as a percentage of the declining market. All told, from 1988 to 1991, the sales volume of U.S. imports into Canada increased by about 400 percent, as the U.S. share of the Canadian market soared from 6 percent to 39 percent. This 33-percentage-point rise in the share of U.S. goods drove the share of domestically produced goods down from 94 percent in 1988 to 61 percent in 1991. To illustrate the effects of this decline, if Canada/United States shares had stayed at 1988 levels, sales from Canadian production would have been higher than they actually were in the recession-reduced market of 1991, by about 23 million square metres.

In addressing the issue of material injury, the effects of changes in the composition of the domestic industry over the past four years should also be taken into account. At the beginning of the period in 1988, the industry comprised 16 firms. By the

end of 1991, 6 of these firms had disappeared because of plant closures or mergers. Two other firms were placed in receivership although they subsequently reorganized and are currently operational. The 6 mills which ceased operations represented, in 1988, about 28 percent of sales from Canadian production and approximately 26 percent of the total market. During the four-year period, 2 new small mills started up operations, but their impact on the market have been limited.

The Tribunal has heard several explanations for this attrition in the Canadian industry. These include external competitive factors such as those arising from dumped U.S. imports, matters relating to internal operating or management problems and industry rationalization relating to CUSTA. In the Tribunal's opinion, all of these factors played a role in the changes which took place. However, the fact remains that many of the Canadian customers, formerly supplied by the mills which went out of business, had to establish new relationships with alternate sources of supply. The evidence shows that the market share represented by this substantial pool of business went entirely to U.S. mills. In effect, the restructuring which took place created a major market opportunity which U.S. mills rushed in to fill.

This was business that the existing Canadian mills endeavoured to, and had the capacity to, take on. Indeed, despite the closures, combined Canadian mill capacity declined only slightly from 1988 to 1991 and remained, throughout the period, sufficient to supply Canadian demand. Moreover, the equipment of closing mills was specifically acquired, in some cases, by existing mills in anticipation of supplying former accounts of the closing mills. Substantial investments were also made to acquire market share, as in the case of Peerless' takeover of Barrymore in 1990. Despite the large investment made, Peerless' post-acquisition market share increased by only a fraction of what Barrymore's business had represented.

U.S. imports not only took the market share represented by the 6 mills which ceased operations, they also took market share from the remaining firms. More particularly, the 10 Canadian carpet producers, who were operating in 1988, and that are still operating, witnessed their sales from domestic production decline by about 36 percent. This was almost double the percentage decline of the market caused by the recession. As a consequence, the share of sales from domestic production by these 10 firms dropped from 68 percent of the market in 1988 to 53 percent in 1991.

Another factor to consider in evaluating the decline in the industry's performance, during the 1988-91 period, is the increase in imports of U.S. carpeting by Canadian mills and their related distribution arms. Over the four-year period, sales of U.S. carpeting by the Canadian industry rose from 1 percent of the market in 1988 to 8 percent in 1991. The largest single portion of the increase is attributable to increased imports by Gesco, a division of which is Richmond. However, another division of Gesco, G.E. Shnier Co., is one of the largest distributors of floor coverings in Canada, and it generates the majority of Gesco's revenues. In the Tribunal's view, Gesco's import activities can be explained, in large part, by the competitive needs and interests of its distribution division. To this extent, Gesco's situation is unique among Canadian producers.

Another substantial proportion of the increase in U.S. imports is attributable to a Canadian carpet mill, Coronet Carpets Inc., which is not a member of the CCI. Nearly all of the remaining relatively small increases in U.S. imports are attributable to Peerless and Soreltex. These firms both acquired U.S. mills during the period under review. In

the Tribunal's view, their increased sales of U.S. carpeting obviously reflect some natural rationalization of marketing and production between their Canadian and U.S. operations and a desire to maintain market share in Canada in the face of heavy competition from U.S.-owned and U.S.-controlled mills.

There is no evidence to suggest that Canadian mills were importing U.S. goods as part of a strategy to reduce their Canadian production. In any event, imports of U.S. goods by Canadian mills represent only a portion of their loss of market share. Specifically, when sales from imports are added to sales from domestic production, the share of the Canadian market of the 10 continuing companies still shows a substantial decline from 1988 to 1991, falling from 69 percent to 61 percent.

In summary, the Tribunal finds a significant increase in import market share during the period under review. The corresponding loss in market share experienced by domestic producers since 1989 resulted in substantial underutilization of domestic capacity and major reductions in employment. The low production levels have put upward pressure on unit costs, as fixed costs have had to be spread over a declining production base. This is a particularly acute problem in a high, fixed-cost, capital-intensive industry such as the carpeting industry. The combination of cost-inefficient production levels and falling prices has squeezed industry margins, resulting in substantial and growing industry losses over the past two years. In view of the foregoing, the Tribunal concludes that the significant increase in U.S. imports since 1989 has caused and is causing material injury to domestic producers. The Tribunal finds that the industry has been materially injured in both the residential and commercial subcategories, as evidenced by the information provided under Economic Indicators.

Causality

The Tribunal must next consider whether there is a causal link between the material injury experienced by Canadian producers of like goods and the dumped imports. Paragraph 4, article 3 of the Code[3] (and related footnote 5) addresses the issue of causality as follows:

> *It must be demonstrated that the dumped imports are, through the effects ... of dumping, causing injury within the meaning of this Code. There may be other factors[5] which at the same time are injuring the industry, and the injuries caused by other factors must not be attributed to the dumped imports.*
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> *5. Such factors include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.*

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3. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, signed in Geneva, Switzerland, on December 17, 1979, GATT BISD 265 (1980).

The above provision of the Code requires that the dumped imports be a cause of material injury. The dumped imports do not have to be the "only" cause of material injury. The Code requires the investigating authority to conduct an objective examination of the relevant economic factors; to distinguish between the dumped imports and the other factors that may be causing material injury; and to ensure that injury caused by other factors is not attributed to dumped imports.

After reviewing the evidence in this case, the Tribunal concludes that the dumped imports from the United States have been, and are, a cause of material injury to the domestic industry. In the Tribunal's opinion, the dumping has been a cause of the significant increase in U.S. imports, the serious loss of market share by the domestic industry, the erosion and suppression of domestic prices, and the consequent material declines in all industry performance indicators. This conclusion does not deny the fact that dumping is one of several factors interacting in this case to injure the domestic industry. The Tribunal's assessment of these various factors, including dumping, is set out below.

One of the reasons advanced by U.S. exporters and Canadian importers and distributors to explain the surge in U.S. imports following 1988 was that the carpeting industry was a fashion industry and that U.S. mills were fashion leaders. Witnesses testified that U.S. mills offered more styles, designs and colours than Canadian mills. They stated that price was only one factor among many to be considered, and it was not the most important factor in their decision to buy U.S. products.

Considerations of style have undoubtedly played a role in many purchasing decisions over the past four years. The Tribunal is, however, not persuaded that this factor has played a major role in the surge in U.S. imports. The ability of U.S. mills to offer a wider product range existed prior to 1989, when U.S. carpeting imports began to grow rapidly. Up until 1988, Canadian carpeting satisfied the tastes of the vast majority of Canadian consumers. There is no reason to believe that Canadian carpeting suddenly lost its appeal following 1988. Indeed, the witnesses from Sears Canada Inc. (Sears) and Alexanian Carpet testified that Canadian-produced carpeting has met and continues to meet the fashion and style needs of Canadian consumers.

Canadian carpet mills may have lagged somewhat in the introduction of new styles, such as textured saxonies and berbers, and in the introduction of branded fibres such as the Dupont "Stainmaster." For instance, Canadian industry witnesses acknowledged that "Stainmaster" fibre was available in the spring of 1987, about six months after such fibres were introduced in the United States. However, in most cases, these styles and new fibres, or their equivalents, were either available from Canadian mills by 1988 or soon thereafter. Therefore, in the Tribunal's view, the significant increase in U.S. imports is not explained by these considerations.

A number of Canadian distributors and dealers attributed the significant increase in U.S. imports to certain marketing practices and programs of Canadian mills. They stated that, beginning in the early 1980s, some important Canadian mills began to shift their marketing philosophy to direct distribution of their own in-house labels through mill-owned distribution centres. Currently, all of the major Canadian mills sell their brand-labelled products in this manner, with the exception of Kraus and Soreltex. As a result of this shift, independent distributors stated that they were effectively cut off from distribution of the Canadian mills' labels. Canadian mills continued to offer them

unbranded carpeting to which they could affix their own private distributor label. However, this did not provide them with the product differentiation and market recognition available only through exclusive distribution arrangements with mills on their in-house labels. As this was available from U.S. mills, many distributors and dealers turned to them.

The marketing program known as "Fashion Showplace," begun by Peerless in the mid-1980s, was cited by a number of witnesses as an example of how Canadian mills had alienated distributors and dealers. Under this program, Peerless substantially reduced what had been a wide dealer base by granting only a limited number of its former dealers exclusive rights to market its mill-labelled products.

Another reason cited by some distributors and dealers for their preference for buying from U.S. mills was the fact that U.S. mills had no minimum order limits. For example, U.S. mills were prepared to sell to Canadian buyers, without charging a premium, quantities as small as one roll of a low turnover colour, or even a cut from a roll. In contrast, to get the best price from Canadian mills might require, in some cases, the purchase of several rolls. On slow-moving products, this imposed an inventory cost and burden on the buyer that could be avoided by buying from a U.S. mill.

The Tribunal has no doubt that differences in marketing practices contributed, in some measure, to source shifting to the United States, although again the Tribunal is not persuaded that these factors were primarily responsible for the surge in U.S. imports. As with the fashion-related factors, these marketing and service issues were present in the market before 1988 or 1989. For example, exclusivity and small order service was already available from U.S. mills, and Canadian mill-owned distribution had been in place for many years. Canadian industry witnesses also testified that minimum order prices were negotiable and that these requirements had been relaxed in recent years.

The Tribunal observes that Peerless' "Fashion Showplace" program was almost fully implemented on a national scale by 1989. Although it significantly reduced Peerless' dealership outlets, the program appears to have been successful in increasing Peerless' sales in areas where it was implemented, at least until 1989, when U.S. carpeting imports began to grow rapidly. The Tribunal further notes that the "Fashion Showplace" program provided the very exclusivity that Canadian distributors and dealers were seeking from Canadian mills. Exclusivity programs are also offered by other Canadian mills such as Harding and Kraus, each with its own unique terms and conditions.

The Tribunal heard considerable evidence from several witnesses regarding the relative cost competitiveness of Canadian and U.S. mills and the role that this may have played in the swift U.S. penetration of the Canadian market from 1989 onward. The essence of this evidence is reflected in the testimony of a Georgia-based carpeting consultant, Mr. Frank Wilson, who was subpoenaed by counsel for U.S. exporters to report on a number of cost-competitiveness studies that he had done on certain Canadian and U.S. mills. According to Mr.Wilson, U.S. mills were more cost efficient than Canadian mills, especially in the low-end commodity products, primarily because U.S. mills were able to achieve much greater economies of scale. U.S. mills also achieved cost advantages because they were more vertically integrated than Canadian mills, operating their own yarn mills, extrusion equipment and carpet-backing facilities. Mr. Wilson also noted that labour costs were higher in Canada than those in the United States, as were costs for raw materials such as fibres, yarns and latex. In his view, the

raw material cost disadvantage was a particularly difficult competitive hurdle, given the raw material cost intensity of carpet manufacturing.

The Tribunal observes that, in 1991, the U.S. market for machine tufted carpeting was approximately 1.1 billion square metres, more than 15 times the size of the Canadian market. In a market of that magnitude, it is possible for some U.S. mills to achieve enormous economies of scale. The Tribunal heard evidence that U.S. mills such as Shaw and Queen have dedicated whole plants to the operation of a single yarn system, running on a 24-hour, 7-days-a-week basis. It is against this background that the Tribunal reviewed the evidence on the cost competitiveness of U.S. mills. The benchmark for Mr.Wilson's evaluations is a model mill reflecting the highest standards of efficiency in the U.S. carpeting industry. According to Mr. Wilson, only the top 25 percent of U.S. mills can achieve or surpass the standard set by the model. The Tribunal, therefore, does not find it surprising that many Canadian mills do not meet this standard.

The Tribunal also notes that Mr.Wilson's knowledge of the Canadian industry is deeper and more current in regard to higher-cost, premium-priced Canadian mills such as Harding and Crossley. He has done no studies on mills such as Kraus, Richmond and Venture and has only examined Peerless in recent years in a limited way in connection with a study focused on Peerless' U.S. subsidiary, Galaxy. The Tribunal is satisfied that the performance differences observed in comparing the higher-cost Canadian mills against the leading U.S. mills would undoubtedly be narrowed if the comparison were made against the more efficient Canadian mills. In the Tribunal's view, the cost advantages would not be as wide if the standard applied reflected the efficiencies of the average U.S. mills rather than the better U.S. mills. It is not only the largest and most efficient mills, such as Shaw and Queen, that are exporting to Canada. Canadian mills are competing against a wide cross section of U.S. producers representing over 60 U.S. mills, according to the Deputy Minister's Final Determination.

In addition to the foregoing cost considerations, the evidence shows that deregulation of the U.S. trucking industry, in the early 1980s, enabled U.S. exporters to ship to Canadian destinations at very competitive freight rates. For example, Queen indicated that it could ship from Dalton, Georgia, to Toronto or Montréal for only marginally more than it costs to ship from Montréal to Toronto, even though the Dalton shipment is about three times the distance.

Nevertheless, the Tribunal finds no evidence that, in the years prior to 1989, any major changes occurred to alter the manufacturing, transport, raw material and other cost advantages that were already enjoyed, at that time, by some U.S. mills. Prevailing tariff rates, at 20 percent in the years prior to 1989, tended to offset such advantages, in whole or in part, by raising the landed cost in Canada of U.S. goods. The low value of the Canadian dollar against the U.S. dollar also provided a degree of protection by increasing the Canadian selling price of U.S. goods exported to Canada. Although the Canadian dollar was still relatively weak at the beginning of 1988, it was on a strengthening trend which had begun in 1986. This trend accelerated through 1988 and by January 1989, the protection previously afforded from exchange rate differentials had been substantially eroded.

In the opinion of the Tribunal, it was to be expected that U.S. carpeting imports would begin to grow in 1989, the first year of CUSTA. CUSTA kindled the interest of U.S. mills in the Canadian market. It was apparent that, given their economies of scale

and other cost advantages, U.S. mills would be very competitive in the Canadian market, as the 20-percent tariff protection was progressively eliminated over the 10-year phase-out period under CUSTA. The Tribunal considers that it was primarily this event which altered the equilibrium that had previously existed in the Canada-United States carpeting trade. The Tribunal's view is reinforced by evidence showing that, on many occasions since 1989, the most senior executives in the Canadian carpeting industry expressed more or less similar views in statements to shareholders, industry studies and media releases.

The Tribunal is of the view that the "push" provided by the tariff declines under CUSTA was magnified by the continued strengthening of the Canadian dollar against the U.S. currency. Between January 1988 and December 1991, the Canadian dollar increased an average of about 12 percent against the U.S. dollar, reaching peaks after the implementation of CUSTA that represented 15-year highs. This had an effect equivalent to reducing tariff protection much faster than was contemplated under CUSTA.

The Tribunal reviewed the internal price lists submitted by Queen. These illustrate the effect that tariff declines and exchange rates have had on the price of U.S. carpeting sold in Canada. These lists indicate that U.S. carpets generally increased in price in the U.S. market between July 1989 and January 1991. However, when these U.S. prices are converted to the Canadian dollar equivalent, carpeting of the same style number that is sold in the United States as well as exported to Canada shows a substantial decline in price. This evidence explains why Canadian carpeting industry executives have repeatedly pointed, over the past three years, to the combined competitive effects of CUSTA and to the dollar as a cause of serious concern.

The Tribunal heard some witnesses testify that price was not a factor in their decisions to purchase U.S. goods. The Tribunal observes that the high end of the market may not be as price sensitive as the lower end of the market. However, witnesses on both sides of this case testified that a substantial proportion of the market comprised commodity-type carpeting, where price was the primary, if not the only, consideration. Moreover, even in the middle-to-high end of the market, as the Tribunal's witness from Sears noted, during a recession, price takes on added importance for consumers. Indeed, a recent national survey of carpeting purchases by U.S. households, submitted in evidence by Shaw, indicates that while price is one of several factors influencing the purchasing decision, most consumers only buy carpet "on sale."

The Deputy Minister's period of investigation in this case covered U.S. exports to Canada from January 1 to March 31, 1991. U.S. industry witnesses testified that this three-month period was one of the worst quarters in the history of the U.S. carpeting industry. U.S. domestic demand plummeted by some 20 percent compared to the previous quarter, as the recession and the Gulf War shattered consumer confidence. This intensified domestic competition among U.S. mills, as well as increased the importance of export markets as a means of maintaining efficient levels of plant loading. Although the market improved somewhat in subsequent quarters, demand for 1991, as a whole, declined by 5 percent compared to 1990, and even the most efficient U.S. mills were only marginally profitable during the year.

The Tribunal notes that in the face of a soft home market, and despite poor market conditions in Canada, U.S. exports to Canada continued to climb. The Tribunal is satisfied that, except for the dumping, U.S. imports of the subject goods would not have penetrated the Canadian market as deeply or as rapidly as they did. The Tribunal

finds that the volume of dumped goods and the margins of dumping are significant. The weighted average margin of dumping of almost 12 percent equals the percentage change in the value of the Canadian dollar against the U.S. dollar over the past four years.

The Tribunal is convinced that, while CUSTA tariff declines and the strong Canadian dollar have enhanced the competitiveness of U.S. mills exporting to Canada, dumping is a cause of material injury to the domestic industry. Dumping has further reduced the time required by the Canadian industry to make the necessary adjustments to compete effectively in a North-American free-trade environment. Moreover, by driving prices and industry sales down, the dumping has obstructed the industry's ability to finance the investments in plant and technology that are required for the industry to remain competitive. The evidence shows that, throughout the 1980s, Canadian mills invested substantial funds in modernization and took steps to enhance their cost competitiveness through investments aimed at increasing labour productivity rates. In addition, over the past three years, the cost of raw materials has declined substantially in the case of some Canadian mills. The dumping has tended to offset such cost reductions and maintain U.S. cost advantages.

The Tribunal has carefully reviewed the industry's attempt to illustrate the effects of dumping by identifying well over 100 of its customers to which it lost sales or had to reduce prices because of dumping. In doing so, each Canadian mill that participated in the proceedings identified not only the accounts where its sales had been affected, but also the likely U.S. mill or mills against which it believed that it was competing for business at that account. Counsel for exporters were able to provide many examples where the industry erred in identifying their clients as having dumped goods at the named account. For example, Shaw and Queen were the two most frequently mentioned mills as the source of dumped goods. Yet, in several cases, the evidence showed that their sales to the given account were not dumped. In many instances where Shaw and Queen had made sales, the facts showed that their undumped prices were lower than the prices charged by Canadian mills for equivalent goods. In other cases, it became evident that Shaw and Queen had not sold any goods to the named account during the January to March 1991 period of investigation. Furthermore, in some instances, they had not sold goods to these accounts either before or after the investigation period.

The Tribunal recognizes that the industry has had difficulty identifying the correct source of dumping in respect to many of its lost accounts. The Tribunal is satisfied that this is explained, in part, by the complex channels of distribution which exist in this industry. On the supply side, mills sell directly to retail accounts as well as indirectly through distributors. Moreover, there are both mill-owned and independent distributors. On the customer side, there are many buying groups, comprised of small- and medium-size retailers, which makes it difficult to connect the origin of the goods with their retail destination. The Tribunal also notes that the Final Determination indicates that U.S. goods were shipped to no less than 1,100 separate importers and that there are over 60 possible sources of exports from the United States.

The Tribunal observes that, of the U.S. mills that exported to Canada during the period of investigation, about 50 did not give evidence during the hearing. These mills comprise around 50 percent of total U.S. exports. In most cases, the Final Determination shows that exports of the subject goods from these mills were dumped. The U.S. mills that participated in the hearings were also found to be dumping according to the Final Determination. In most cases, including that of Shaw and Queen which together

comprise about 30 percent of U.S. exports, the margins of dumping are at levels that the Tribunal considers significant. Therefore, while the examples selected by the industry may not fully reflect the dumping activities of U.S. mills, this does not contradict the fact that U.S. mills were selling dumped goods in substantial volumes to Canadian accounts.

Looking at the picture from the importing side, the Tribunal notes that the vast majority of the sample accounts identified by the industry were examined by the Deputy Minister during the dumping investigation. According to the Final Determination, in most cases, the imports by these specific accounts were found to be dumped. Accordingly, the Tribunal is satisfied that the information in the Final Determination supports the industry's allegations that sales were made to these accounts at dumped prices, and that as a consequence, the industry lost sales and/or had to reduce prices in many instances.

In the opinion of the Tribunal, this case is not simply about how much better the industry's situation is or will be with the elimination of dumping. This case is about how the dumping has made a difficult situation worse. Certainly, the evidence shows that the application of anti-dumping duties will still leave, in some cases, Canadian prices at higher levels than U.S. prices for comparable products. However, it does not follow that material injury from dumping cannot ensue merely because of the existence of such price differences.

The Tribunal observes that it is not uncommon for a domestic industry to enjoy some price premium over freight and duty-paid imports and still maintain market share. The reasons for these premiums include the security that customers get from having local suppliers and the loyalty that is paid for years of reliable service. However, as one witness stated, everything has a price, including loyalty, and if the price gap becomes too wide, customers have little alternative but to switch suppliers. In this situation, dumping causes material injury by making a bridgeable gap unbridgeable, in the opinion of the Tribunal.

The Tribunal is satisfied that the industry can derive, and is deriving, meaningful benefits from the elimination of dumping. Witnesses from the seven Canadian mills each testified that their domestic orders increased following the implementation by the Deputy Minister of provisional anti-dumping duties in December 1991. In some cases, these orders were from new clients with which the mill had previously not done business. In other cases, these orders were coming from former clients which the mills previously considered to have been lost to U.S. competition. According to these witnesses, industry prices remained down, as the industry's initial priority was to rebuild its market share. However, as a result of the increase in orders, plant loading had increased and hundreds of employees had been recalled or put on a full-time shift from a part-time shift.

This evidence was not contradicted by counsel for exporters, importers and distributors. Indeed, the Tribunal saw no indication, either from evidence submitted by exporters, importers and distributors or from official published statistics, that there has been any upturn in demand in Canada which would account for the marked increase in business reported by Canadian mills since the beginning of the provisional period. The industry claim that these orders are displacing U.S. shipments appears to be supported by Statistics Canada data which show that, in January 1992, imports of U.S. carpeting declined substantially compared to January 1991.

For the foregoing reasons, the Tribunal concludes that the dumping of the subject goods has caused and is causing material injury to domestic production of machine tufted carpeting, as a whole, as well as broken down into residential and commercial subcategories of like goods.

With regard to the future, the Tribunal sees no relief in sight from the intense competitive pressures which gave rise, in the past, to the dumping and the consequent material injury to the domestic industry. In Canada, the prospects are for prices to remain under downward pressure as tariffs continue to decline under CUSTA amid ongoing recessionary conditions. Market conditions in the United States appear only slightly better than those in Canada. In both countries, despite industry rationalization in recent years, there remains considerable overcapacity. On both sides of the border, the domestic and cross-border competition for market share to achieve the high levels of plant loading necessary for efficient production is likely to continue unabated. The Tribunal, therefore, concludes that the dumping of the subject goods is likely to cause material injury to domestic production of machine tufted carpeting as a whole, as well as broken down into residential and commercial subcategories of like goods.

REASONS FOR DECISION: ARTIFICIAL GRASS CARPETING

Having determined that artificial grass carpeting is a subcategory of like goods, the Tribunal must inquire into whether the dumping of artificial grass has caused, is causing or is likely to cause material injury to the production in Canada of machine tufted artificial grass.

The Tribunal notes that the market for artificial grass carpeting, which is a relatively stable market, was not affected by the current recession. Annual demand for this product for the past three years has been approximately 3.2 million square metres. The dominant player during most of the review period was Ozite, which closed its plant in the fall of 1991. National currently accounts for more than 80 percent of Canadian production of artificial grass and, therefore, constitutes the domestic industry. The remaining production is accounted for by Matting Technology which began production in 1989.

Material Injury

The Tribunal must consider whether the Canadian production of artificial grass carpet has suffered material injury.

The Canadian producers held virtually all of the Canadian market for artificial grass carpet in 1988 and 1989. However, in 1990, U.S. imports surged and took 10 more percentage points of market share from Canadian manufacturers. The surge continued in 1991, and U.S. imports took a further 28 percentage points from domestic production. Ozite began losing substantial sales to U.S. imports in 1990 and more so in 1991, when its largest account, Gesco, shifted its sourcing of artificial grass to the United States. The Tribunal observes that, by the time Ozite closed its plant in the fall of 1991, it had lost 24 percentage points of market share, most of which had been taken by U.S. imports.

National did not capture any of the volume lost by Ozite over the 1990-91 period. On the contrary, National's sales volume declined by 38 percent between 1989 and 1991, causing its share of the market to decline by 15 percentage points. In 1991 alone,

National not only failed to capture any of the substantial volumes lost by Ozite, but it also lost more than 20 percent of its own sales to U.S. imports.

The witness for National testified that, in order to counter the surge of U.S. imports, the firm made several changes. It lowered its prices quite significantly and, in some instances, began selling directly to large retailers rather than to distributors, where it was losing volume to U.S. imports. It also improved the appearance of its product and increased its weight. These changes enabled National to maintain its gross margin, as a percentage of net sales, during the period under review. However, the Tribunal finds that the loss of revenues on sales of artificial grass and the decline in gross margins in dollar terms were substantial. Specifically, between its fiscal period 1989 and 1991, National's sales revenues and gross margins on domestic sales of artificial grass declined by 42 and 43 percent, respectively. Although National's net income, as estimated by counsel for General Felt, was relatively stable in 1990 and 1991, the level achieved reflected only marginal profitability on sales of artificial grass carpeting.

In summary, the Tribunal finds a significant increase in import market share and the existence of price suppression in the marketplace during the 1990-91 period. The increase in import market share was responsible, in large measure, for the significant reduction in sales volume of artificial grass and market share by National during that period, and the consequential reduction in revenues, gross margins and profits. The Tribunal is of the view that the injury to National's production of artificial grass was and is material.

Causality

The next issue to consider is whether there is a causal link between the material injury suffered by National's production of artificial grass and the dumped subject imports of artificial grass.

The Tribunal observes that nearly half of the imports of artificial grass examined by Revenue Canada were found to have been dumped by more than 7 percent. Artificial grass is a highly price-sensitive commodity where small price differences will make purchasers switch suppliers. Given this price sensitivity, the Tribunal finds that the dumping, at the margins found, provided the imported product with a significant advantage in the marketplace. The Tribunal is therefore satisfied that the dumping was a cause of the significant increase in imports over the 1990-91 period and the significant price pressure that was exerted. In 1990, when the U.S. imports increased their market share by 10 percentage points, National reported a 10-percent decline in its average revenue per square metre for its fiscal period ending on May 31, 1990. For its fiscal period ending in May 1991, National reported a slight improvement in its average revenue per square metre, but, because of much lower sales volumes, the contribution of these sales to the overall profitability of the company declined substantially in 1991 over 1990. The Tribunal therefore finds that the dumping of machine tufted artificial grass has caused and is causing material injury to domestic production of like goods.

With respect to the future, the Tribunal is not convinced that, in the absence of anti-dumping measures, National will increase its market share. Also, National is not likely to generate sufficient sales of artificial grass carpeting to increase this product contribution to the overall profitability of the company and make it a viable part of National's total business. Although the company's witness expressed some optimism in

filling some of the void left by Ozite's closure, the Tribunal notes that in 1991, while Ozite was losing significant sales to U.S. imports, National was unable to capture any of that volume. Moreover, General Felt, which was not a major player in the artificial grass market during 1991, testified that it has begun making inroads into this relatively small market. This will further intensify competition in the future. For these reasons, the Tribunal finds that the dumping of machine tufted artificial grass from the United States is likely to cause material injury to the production in Canada of like goods.

REQUESTS FOR EXCLUSION

The Tribunal rejects, with the exception noted below, the various requests to exclude from an injury finding custom carpeting or carpeting produced with patented technologies and designs. The Tribunal does not exclude such carpeting from its finding because carpeting which is substitutable by and competitive with those types of products is also produced in Canada. The Tribunal finds that carpeting produced using patented technologies and designs, such as Unibond and Duracolor by Burlington Industries, Inc., do have some differentiating characteristics from domestically manufactured carpeting. However, in the Tribunal's opinion, these variations do not create carpet so unique that it does not compete with, nor is substitutable by carpeting produced by Canadian mills.

The Tribunal agrees to exclude, as accepted by the domestic industry, machine tufted carpeting produced by the Millitron dyeing technology and exported by Milliken. In accepting this exclusion, the industry, in effect, has acknowledged that this technology is quite different from that which is available in Canada today and that Canadian mills cannot manufacture a product that competes with such carpeting. Although one Canadian carpet manufacturer is licensed to use older Millitron technology, the carpeting that it produces is not similar to that produced using current Millitron technology. This manufacturer also agreed to the exclusion.

The Tribunal does not accept Eraco's request to exclude its imports, including Belgian-made carpets imported from the United States from an injury finding. The Tribunal again cannot justify such an exclusion because these imported products are substitutable by, and competitive with, Canadian manufactured carpeting. However, the Tribunal notes that the Belgian-made product would not be subject to anti-dumping duties if it were imported directly from Belgium.

With respect to Image's request to exclude carpets made from polyester yarn extruded from recycled material, the Tribunal observes that conventional polyester carpeting is produced in Canada using the same manufacturing process as Image, and it has similar stain-resistance properties and warranties. The only difference is the raw material used, i.e. virgin polyester fibre versus recycled polyethylene terephtalate. Consequently, the Tribunal cannot justify such an exclusion from its finding.

With respect to the request to exclude scraps and/or remnants of machine tufted carpeting, the Tribunal finds that such goods within specified size limits should be excluded from its finding. These goods are normally used to produce rugs and mats and do not compete in the market with domestically produced machine tufted carpeting. They are neither substitutable by machine tufted carpeting nor priced on the same basis.

PUBLIC INTEREST

Section 45 of SIMA provides that where, after making a finding of material injury, the Tribunal is of the opinion that the imposition of anti-dumping duties, in whole or in part, would not or might not be in the public interest, it shall report its opinion to the Minister of Finance with the facts and reasons that gave rise to that opinion. In the course of these proceedings, several parties made submissions that it was not in the public interest to impose the full amount of anti-dumping duties in the event of a positive injury finding. The public interest aspects cited were consumer choice and competition in the market, including the effects of a positive injury finding on the future of Canadian independent carpet distributors. The Tribunal has reviewed these submissions and is of the opinion that the public interest does not require a reduction of the anti-dumping duties from their full amount.

The Tribunal observes that witnesses from U.S. mills testified that, with or without a finding, Canada represented an accessible export market where they would continue to compete for market share. In this connection, the evidence shows that, in some cases, major U.S. mills will be able to enjoy price advantages over Canadian mills on various products, even when they are sold at normal values. Moreover, a certain proportion of U.S. carpets was found not to be dumped during the Deputy Minister's period of investigation. These goods essentially will be unaffected by a positive injury finding as long as they continue to be sold at or above normal values. Accordingly, the Tribunal is satisfied that an injury finding will not prevent U.S. mills from maintaining a competitive presence in the Canadian market. In the Tribunal's opinion, continued import competition from U.S. mills, combined with vigorous competition among Canadian mills is likely to sustain downward pressure on prices. In many cases, this will oblige importers, distributors and retailers to accept lower margins rather than make full price increases in response to the imposition of anti-dumping duties. In any event, the Tribunal is satisfied that Canadian consumers will have a wide selection of carpeting products at reasonable prices in the period following this finding.

The Tribunal notes that a number of Canadian independent distributors that import U.S. carpeting testified that the viability of their operations would be jeopardized if anti-dumping duties were imposed, as prescribed in the Deputy Minister's Final Determination. Their primary concern was that the Final Determination did not generally provide U.S. mills with normal values on their sales to Canadian distributors that were lower than the normal values of their direct sales to Canadian retailers. The distributors stated that, in these circumstances, they could not be competitive in the marketplace, and U.S. mills would simply bypass them and sell directly to Canadian retailers.

The Tribunal observes that the Final Determination did not provide trade level adjustments to normal values on sales to distributors by U.S. mills if those mills did not differentiate between distributors and retailers in their home-market pricing. The evidence shows that, in the United States, direct selling to retail outlets comprises over 80 percent of U.S. carpeting producer sales. This marketing practice has been transferred to Canada by a number of U.S. mills that have been selling directly to retailers since they entered the Canadian market. In the opinion of the Tribunal, a finding of no injury, or the elimination of anti-dumping duties, will not curtail the spread of this marketing approach by U.S. mills in Canada. According to the evidence, this form of marketing is also being adopted increasingly by Canadian mills. The challenges presented by mill

direct selling is something that distributors have to confront, regardless of the outcome of this case.

However, it is apparent that some distributors will find it difficult to market, competitively, some U.S. products. This will undoubtedly necessitate reconsideration of sourcing and marketing strategies by a number of Canadian distributors. In some cases, they may consider an increased use of alternative Canadian sources for certain products. The resulting adjustments may also be more difficult for some distributors to make than for others. The Tribunal does not consider this to be a matter which warrants a public interest report to the Minister of Finance under section 45 of SIMA.

CONCLUSION

In light of the foregoing, the Tribunal concludes for the reasons given above that the dumping of the subject residential machine tufted carpeting originating in or exported from the United States has caused, is causing and is likely to cause material injury to production in Canada of like goods.

The Tribunal concludes that the dumping of the subject commercial machine tufted carpeting originating in or exported from the United States has caused, is causing and is likely to cause material injury to production in Canada of like goods.

The Tribunal further concludes that the dumping of the subject artificial grass machine tufted carpeting originating in or exported from the United States has caused, is causing and is likely to cause material injury to production in Canada of like goods.

The Tribunal also excludes from its finding:

a) scrap machine tufted carpeting in all lengths, or
b) remnants of prime quality goods of nine feet or less in length, sold as "off-goods" and imported for use in the manufacture of goods such as mats, runners or area rugs of an area less than five square metres, and
c) custom-designed machine tufted carpeting, which is made to order to the customers' specifications in respect to design, pattern and colour, manufactured using the patented Millitron dye technology and exported to Canada by Milliken, and area rugs exceeding five square metres manufactured using the patented Millitron dye technology and exported to Canada by Milliken.

John C. Coleman
John C. Coleman
Presiding Member

Michèle Blouin
Michèle Blouin
Member

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