



Ottawa, Wednesday, June 22, 1994

Inquiry No.: NQ-93-005

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

**12-GAUGE SHOTSHELLS ORIGINATING IN OR EXPORTED FROM
THE CZECH REPUBLIC AND THE REPUBLIC OF HUNGARY**

FINDING

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry following the issuance by the Deputy Minister of National Revenue for Customs and Excise of a preliminary determination of dumping dated February 22, 1994, and of a final determination of dumping dated May 17, 1994, respecting the importation into Canada of 12-gauge shotshells originating in or exported from the Czech Republic and the Republic of Hungary.

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, originating in or exported from the Czech Republic and the Republic of Hungary, has not caused, is not causing, but is likely to cause material injury to the production in Canada of like goods.

Lise Bergeron
Lise Bergeron
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

The statement of reasons will be issued within 15 days.

Inquiry No.: NQ-93-005

Place of Hearing: Ottawa, Ontario
Dates of Hearing: May 24 and 25, 1994

Date of Finding: June 22, 1994

Tribunal Members: Lise Bergeron, Presiding Member
Arthur B. Trudeau, Member
Desmond Hallissey, Member

Director of Research: Réal Roy

Principal Research Officer: André Renaud

Research Officer: Anis Mahli

Economist: Simon Glance

Statistical Officer: Margaret Saumweber

Counsel for the Tribunal: Gilles B. Legault

Registration and Distribution Officer: Claudette Friesen

Participants: John D. Richard, Q.C.
for Société d'expansion commerciale Libec Inc.

(Complainant)

Donald Petersen
Jean T. Vachon
for Omnitrade Limited
Sellier & Bellot a.s.

(Importer/Exporter)



Ottawa, Thursday, July 7, 1994

Inquiry No.: NQ-93-005

**12-GAUGE SHOTSHELLS ORIGINATING IN OR EXPORTED FROM
THE CZECH REPUBLIC AND THE REPUBLIC OF HUNGARY**

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

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping in Canada of 12-gauge shotshells originating in or exported from the Czech Republic and the Republic of Hungary has not caused, is not causing, but is likely to cause material injury to the production in Canada of like goods.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	May 24 and 25, 1994
Date of Finding:	June 22, 1994
Date of Reasons:	July 7, 1994
Tribunal Members:	Lise Bergeron, Presiding Member Arthur B. Trudeau, Member Desmond Hallissey, Member
Director of Research:	Réal Roy
Principal Research Officer:	André Renaud
Research Officer:	Anis Mahli
Economist:	Simon Glance
Statistical Officer:	Margaret Saumweber
Counsel for the Tribunal:	Gilles B. Legault
Registration and Distribution Officer:	Claudette Friesen
Participants:	John D. Richard, Q.C. for Société d'expansion commerciale Libec Inc.

(Complainant)

Donald Petersen
Jean T. Vachon
for Omnitrade Limited
Sellier & Bellot a.s.

(Importer/Exporter)

Witnesses:

Elie Zarife
General Manager
Société d'expansion commerciale
Libec Inc.

Milan Nedv_d
Export Manager
Sellier & Bellot a.s.

Jean-Yves Ouellet
Vice-President and General Manager
Sumner Sports Inc.

George J. Hunter
Former Manager, Sporting Goods
Omnitrade Limited

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Ottawa, Thursday, July 7, 1994

Inquiry No: NQ-93-005

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

**12-GAUGE SHOTSHELLS ORIGINATING IN OR EXPORTED FROM
THE CZECH REPUBLIC AND THE REPUBLIC OF HUNGARY**

TRIBUNAL : LISE BERGERON, Presiding Member
ARTHUR B. TRUDEAU, Member
DESMOND HALLISSEY, Member

STATEMENT OF REASONS

CONDUCT OF THE INQUIRY

Following the issuance by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) of a preliminary determination of dumping¹ dated February 22, 1994, the Canadian International Trade Tribunal (the Tribunal) initiated an inquiry under section 42 of the *Special Import Measures Act*² (SIMA) respecting the importation into Canada of 12-gauge shotshells originating in or exported from the Czech Republic and the Republic of Hungary (the subject goods). The purpose of the inquiry was to determine whether the dumping of the subject goods had caused, was causing or was likely to cause material injury to the production in Canada of like goods. The Deputy Minister's investigation dealt with the subject goods imported between January 1 and October 31, 1993. On May 17, 1994, the Deputy Minister issued a final determination of dumping³ respecting the subject goods.

On February 25, 1994, the Tribunal issued a notice of commencement of inquiry.⁴ As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian manufacturers and importers of 12-gauge shotshells requesting production, financial, import and market information, as well as other information, covering the period from January 1, 1990, to December 31, 1993. From the replies to the questionnaires and other sources, the Tribunal research staff prepared public and protected pre-hearing staff reports covering the period of inquiry.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected 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, but only independent counsel, as defined in subsection 45(4) of the *Canadian International Trade Tribunal Act*,⁵ who had given an undertaking under rule 16 of the *Canadian International Trade Tribunal Rules*⁶ were given access to confidential exhibits.

1. Canada Gazette Part I, Vol. 128, No. 10, March 5, 1994, at 1569-70.
2. R.S.C. 1985, c. S-15.
3. *Supra*, note 1, No. 22, May 28, 1994, at 2811-12.
4. *Ibid.*, No. 10, March 5, 1994, at 1572-73.
5. R.S.C. 1985, c. 47 (4th Supp.).
6. SOR/91-499, August 14, 1991, Canada Gazette Part II, Vol. 125, No. 18 at 2912.

Public and *in camera* hearings were held in Ottawa, Ontario, on May 24 and 25, 1994. The complainant, Société d'expansion commerciale Libec Inc. (Libec), was represented by counsel, submitted evidence and made arguments in support of a finding of injury. The representatives for Omnitrade Limited (Omnitrade) and Sellier & Bellot a.s. (Sellier & Bellot) also attended the hearing, submitted evidence and made arguments in support of a finding of no injury.

PRODUCT

The product that is the subject of this inquiry is described by the Deputy Minister in the preliminary determination of dumping as 12-gauge shotshells originating in or exported from the Czech Republic and the Republic of Hungary.

The 12-gauge shotshells are available in various shot sizes and loads, containing between 24 and 53 g (between 7/8 and 1 7/8 oz.) of lead, depending on the hunting or shooting requirements. Larger shot sizes are used for hunting migratory birds and small game, while smaller shot sizes are used for hunting small birds and for trap and skeet shooting.

In general, there are two types of 12-gauge shotshells: promotional and first-line. Promotional shotshells usually contain 32 g (1 1/8 oz.) of lead, have a shorter base and are sold under private brand names. First-line shotshells include all other loads, but generally contain 36 g (1 1/4 oz.) of lead, have a longer base and are sold under national brand names such as Winchester, Remington, Federal, Imperial or Challenger. Since this differentiation between the two types of shotshells is mainly of a marketing nature, a manufacturer can, if so desired, sell 36-g shotshells at promotional shotshell prices.

DOMESTIC INDUSTRY

During the Tribunal's period of inquiry which extended from 1990 to 1993, there were three Canadian manufacturers. They were Libec, in Sainte-Justine-de-Newton, Quebec, whose production volume is almost equal to total Canadian production, that is, 90 percent or more depending upon the year, and two other smaller manufacturers, Superior Canadian Munitions Ltd. (Superior) in Edmonton, Alberta, and Les Cartouches Tony Inc. (Tony) in Montréal, Quebec.

These manufacturers use automated loading machines to produce shotshells from various components, including a plastic head, tubing, a plastic or fibre wad gas seal, a primer, a propellant, a shot protector and lead shot. Some of these components, such as the head, are imported, while others, such as the propellant and the lead shot, are made in Canada.

IMPORTERS AND EXPORTERS

During the Tribunal's period of inquiry, 12-gauge shotshells were exported primarily by the Czech Republic and the Republic of Hungary (the subject countries) and the United States.

Czech shotshells are produced and exported by Sellier & Bellot in Vlašim, Czech Republic. In 1993, these shotshells were imported by Omnitrade in Ville Saint-Laurent, Quebec. In 1990 and 1991, the Sellier & Bellot shotshells were exported by Merkuria in Prague, Czechoslovakia (now the Czech Republic), to Pragotrade, Division of Motokov Canada Inc. (Pragotrade), in Rexdale, Ontario. Pragotrade did not import

shotshells in 1992 and 1993. For their part, Hungarian shotshells were exported by Nike-Fiocchi Ltd. (Nike-Fiocchi) in Füzfögyártelep, Republic of Hungary, to Sumner Sports Inc. (Sumner) in Québec, Quebec. The shotshells from the subject countries have been primarily promotional.

The United States is, by far, the largest exporter of 12-gauge shotshells. U.S. shotshells have been exported by various manufacturers, including Winchester Division, Olin Corp. in East Alton, Illinois, Remington Arms Co., Inc. in Wilmington, Delaware, and Federal Cartridge Corp. in Anoka, Minnesota, to various importers in Canada. The shotshells from the United States have been primarily first-line.

Imports from countries other than the subject countries and the United States totalled less than 5 percent of total imports during the period of inquiry.

MARKETING AND DISTRIBUTION

The traditional distribution chain of a manufacturer of consumer products, which sells them to a distributor that then resells them to a retailer, is found less frequently in today's marketplace. Sales are generally made directly from the manufacturer to the retailer without using a middleman.

The largest distributor of 12-gauge shotshells in Canada is Canadian Tire Corp. (CTC) in Toronto, Ontario. CTC buys shotshells directly from the manufacturers on behalf of its associated retailers. Next comes Sumner, a traditional national distributor that resells to more than 3,000 retailers across the country, except in British Columbia, and then come a few smaller distributors that supply other retailers. Finally, many retailers deal directly with the manufacturers, either domestic or foreign.

Canadian Manufacturers

Prior to 1990, Libec was selling almost all of its production of 12-gauge shotshells through Sumner, which resold it to its retailing clients; Libec kept only a few "house accounts." The loss of its distributor in 1991 forced Libec to use the services of sales agents for a few years. At the end of 1993, however, Libec cancelled its contract with the sales agents and, since then, has handled the entire distribution of its products in the Canadian market. However, it should be noted that, since 1992, Libec has been selling 12-gauge shotshells to CTC that distributes them to its associated retailers.

Superior sells to retailers either through sales agents in the Canadian Prairies or directly through advertisements in trade magazines. Finally, most of Tony's sales are made through a sporting goods store affiliated with the company.

Importers

With the help of its large network of retailers, Sumner plays a very important role in the distribution of the subject goods in Canada. Since 1990, Sumner has been the sole Canadian distributor of Hungarian shotshells produced by Nike-Fiocchi. Moreover, in 1993, Sumner added Czech shotshells to its line of products. It should also be noted that, for many years, Sumner has been distributing 12-gauge shotshells from various U.S. manufacturers.

U.S. shotshells, in general, are sold either directly to retailers or through regional distributors, depending on the specific marketing strategies of each U.S. manufacturer.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION

Of the goods examined during the Deputy Minister's period of investigation, from January 1 to October 31, 1993, 97 percent of the subject goods exported by Sellier & Bellot had been dumped by a weighted average margin of dumping of 32 percent, while 99 percent of the subject goods exported by Nike-Fiocchi had been dumped by a weighted average margin of dumping of 37 percent. These margins of dumping are expressed as a percentage of the normal value.

POSITION OF PARTIES

Libec — Manufacturer

Counsel for Libec stated that, based on the final determination of dumping by the Deputy Minister, the margins of dumping and the volume of the dumped subject goods were significant. He added that the two exporters identified by the Deputy Minister, particularly Sellier & Bellot of the Czech Republic, had a great capacity for producing goods for export markets, including the Canadian market.

Counsel declared that the price, particularly with respect to promotional shotshells, is the deciding factor in the purchase of 12-gauge shotshells. He stressed that, as indicated by the Tribunal's witness, it was the lower prices of Czech shotshells that motivated Sumner, in 1993, to sell Czech rather than Hungarian shotshells. Indeed, Sellier & Bellot and Nike-Fiocchi advertisements for 1993 highlighted very low prices. In addition, following the Deputy Minister's decision to initiate a dumping investigation, Sumner immediately turned to Libec. Counsel also maintained that, following the preliminary determination of dumping, Sumner placed an order with Libec, since the price of the subject goods was no longer as attractive. According to counsel, all of this evidence shows that shotshells sell on the basis of price rather than on the basis of factors such as delivery time and quality. And counsel added that, except for some differences such as packaging, labelling, height of the base or load of lead, it is still price which differentiates promotional shotshells from first-line shotshells.

Counsel argued that the dumping of the subject goods had caused injury to Libec in the form of price erosion. Indeed, Libec had to lower its prices to compete with the prices of goods imported from the Czech Republic and the Republic of Hungary. Moreover, since 1991, Libec has lost a significant volume of sales to those imports, as shown by the sales made by Libec to clients other than CTC. Counsel added that, to sell to this client, Libec replaced the United States as a source of supply by pricing between the ceiling price of U.S. imports and the floor price set by imports from the subject countries. This strategy enabled Libec to make some profits in spite of the injury caused by the dumping of the subject goods. On the other hand, counsel asserted that large quantities of shotshells from Omnitrade's inventory were purchased by Sumner in 1994, so that Libec continues and will continue to suffer material injury in the form of lost sales volume caused by the subject goods imported from the Czech Republic.

Finally, counsel alleged that the dumping of the subject goods is likely to destroy the production in Canada of like goods. He added that, if dumping continued, planned investments for the manufacture of both 12-gauge shotshells and of other components that Libec intends to sell to other shotshell manufacturers would certainly be deferred. Counsel for Libec explained that production capacity must be analyzed in relation to the peak production period, i.e. from November to February, during which time Libec must have sufficient capacity to effectively supply the Canadian market.

Counsel also asserted that, even if Omnitrade were to pull out of the Canadian market for 12-gauge shotshells, as it claimed during the hearing, it is obvious that neither Sellier & Bellot nor Nike-Fiocchi has the same intention.

Counsel asked the Tribunal to find that the dumping of the subject goods had caused, was causing and was likely to cause material injury to Libec and was causing a significant retardation of Libec's planned investments.

Omnitrade and Sellier & Bellot — Importer and Exporter

The representatives for Omnitrade and Sellier & Bellot identified certain contradictions in the assessment of the Canadian market for 12-gauge shotshells. Indeed, some witnesses estimated that the market was increasing, while the Tribunal staff report shows a decreasing market. Moreover, the representatives stated that, for 1994, Libec has a written commitment from Sumner for the sale of 12-gauge shotshells and that Libec intends to sell a large number of first-line shotshells under the brand name of Imperial to its largest client (CTC), as well as a large number of promotional shotshells. On this score, the representatives have left it to the Tribunal to determine the market share that is really held by Libec. They also asked the Tribunal to analyze Libec's production capacity, noting that Libec has many filled orders and that it was revealed during the hearing that, if a U.S. client offered to buy five million units, Libec could not supply them before the fall of 1994. The representatives mentioned, with regard to export markets, that Libec had not tried to break into these markets, whether it be in the United States or elsewhere.

The representatives stated that Sellier & Bellot supplies 65 countries in addition to Canada and that the proportion of its production capacity slated for the Canadian market was limited. The representatives stressed that, of the 4.5 million shotshells imported from the Czech Republic during the Deputy Minister's period of investigation, only a part of them has been sold. With respect to Omnitrade, they indicated that it did not import any of the subject goods between 1990 and 1992, inclusively. Consequently, Omnitrade was not in a position to comment on the purchasing and selling practices of previous importers of Czech shotshells.

With respect to prices, the representatives asserted that the various price lists submitted in evidence are of little use, since, to all intents and purposes, the price of promotional shotshells is determined by CTC. They stated that the Tribunal knows the identity of that retailer's supplier and its selling price. Moreover, the Tribunal is well aware that this supplier is likely to continue to sell to CTC and, therefore, its prices will have an impact on its competitors' prices.

In light of the foregoing, the representatives concluded that Libec had not suffered and was not suffering material injury. They added that Libec would not suffer material injury in the future or, at least, that such injury would not be caused by Sellier & Bellot or Omnitrade, since Omnitrade would no longer be importing the subject goods from Sellier & Bellot, which will no longer have clients in Canada in the coming years.

Finally, based on Libec's preliminary submission to the Tribunal and on the testimony of its president who stated that it is generally recognized that the dumped imports consist of promotional shotshells, the representatives asked, in the event of a finding of material injury, that the Tribunal grant an exclusion for first-line shotshells which, in their opinion, have not caused material injury to Libec.

Table 2			
INDICES OF KEY INDICATORS			
(1990=100)			
	1991	1992	1993
Domestic Production (units)	108	276	235
Market Share Held by Domestic Manufacturers (units)	123	246	338
Weighted Average Prices:			
<u>Promotional Shotshells¹</u>			
Domestic Manufacturers	92	80	79
Subject Countries	99	99	77
Non-Subject Countries	90	94	104
<u>First-Line Shotshells¹</u>			
Domestic Manufacturers	130	114	114
Subject Countries	N/A	N/A	N/A
Non-Subject Countries	113	111	119
Employment at Libec (hours worked)	100	233	233
<u>Libec's Net Income Before Taxes</u>	172	446	401
N/A = Not applicable.			
1. All shotshells containing 32 g of lead were considered promotional shotshells.			
Source: Tribunal Staff Report.			

As shown in the preceding table, domestic production of 12-gauge shotshells registered strong growth in 1992, before falling somewhat in 1993. However, it is still higher than it was in 1990.

The market share held by Canadian manufacturers increased every year during the Tribunal's period of inquiry.

Weighted average prices of promotional shotshells from the subject countries were stable between 1990 and 1992, before falling substantially in 1993. During this time, the weighted average prices of promotional shotshells produced by Canadian manufacturers decreased consistently. The weighted average prices of promotional shotshells from non-subject countries have increased continuously since 1992, after falling in 1991.

With regard to first-line shotshells, for which the subject countries are only a marginal factor, weighted average prices of domestic manufacturers stabilised in 1992 and 1993 after having increased substantially in 1991. The weighted average prices of first-line shotshells from non-subject countries, particularly the United States, were relatively stable during the period from 1991 to 1993.

The number of hours worked at Libec doubled in 1992 and remained at that level in 1993. On the other hand, Libec's return (net income before taxes) on domestic sales of 12-gauge shotshells increased rapidly during the Tribunal's period of inquiry.

REASONS FOR DECISION

Under section 42 of SIMA, the Tribunal must determine whether the dumping of the subject goods has caused, is causing or is likely to cause material injury to the production in Canada of like goods. Before proceeding with this determination, the Tribunal must be satisfied that the domestic industry, as represented in this case by the complainant, produces goods that are like those described by the Deputy Minister in the preliminary determination of dumping and that the complainant constitutes at least a major proportion of the total domestic production of the like goods.

The class of goods described by the Deputy Minister in the preliminary determination of dumping includes essentially two kinds of 12-gauge shotshells, namely, promotional shotshells and first-line shotshells, the uses and characteristics of which closely resemble one another. These two types of shotshells are produced in Canada by Libec. Their uses and characteristics closely resemble those of the subject goods. Therefore, the 12-gauge shotshells produced in Canada constitute like goods for the purposes of this inquiry.

With respect to the requirement that the complainant constitute at least a major proportion of the total domestic production of like goods, the Tribunal finds that this requirement is met, since Libec accounts for the vast majority of the total domestic production of the three domestic manufacturers of those goods.

Past and Present Injury

Before proceeding with a systematic analysis of the evidence submitted during this inquiry, it is important to state some facts concerning 12-gauge shotshells. As previously explained, 12-gauge shotshells are sold either as promotional or as first-line shotshells, the distinction being based mainly on marketing considerations. The evidence submitted during this inquiry, including CTC's reply to the importer's questionnaire, leave no doubt that promotional shotshells are sold based on price, while the most important factor in the sale of first-line shotshells is the brand name under which they are sold. Moreover, according to the testimony of witnesses, it is clear that, for a manufacturer or a distributor, selling promotional shotshells to a client means, more often than not, also selling first-line shotshells.

It is also worth noting the dominant role played by three participants in the Canadian market in the last few years. Libec, in 1993, accounted for over 40 percent of the Canadian market, by volume, for 12-gauge shotshells. CTC and its retailers sold, that same year, over one third of all 12-gauge shotshells sold in Canada. Finally, Sumner, through its distribution network, supplied over 3,000 points of sale in 1993.

One must go back to 1991 to gain a better understanding of certain events that took place in 1993 and 1994 and which still have an impact on the Canadian market and on the complainant.

In 1991, Sumner stopped buying promotional shotshells from Libec and bought, instead, imports from the Republic of Hungary. Losing Sumner, its main distributor, forced Libec to set up its own distribution network overnight. Libec then decided to hire

sales agents to distribute its products. This decision paid off since Libec succeeded, that same year, in increasing its share of the Canadian market.

The situation evolved rapidly in 1992 when Libec became CTC's main supplier of 12-gauge shotshells. In doing so, Libec's production and share of the total market increased considerably. However, Libec's sales to clients other than CTC fell by nearly two million units, even though its sales were made at prices that were lower than those of the previous year, as shown in Table 2.

In 1993, Sumner, which was already buying from the Republic of Hungary at very competitive prices because of the dumping, was offered the possibility of distributing a large quantity of the subject goods from the Czech Republic at still lower prices. Omnitrade, the new Canadian importer of the subject goods from the Czech Republic, having decided not to distribute the subject imports itself, made Sumner its exclusive distributor. Libec faced stiff competition and, to avoid losing sales to clients other than CTC, had to lower its prices once again. According to the witness for Libec, if there had been no sales to CTC in 1992 and 1993, Libec's sales volume would have been significantly lower than that in previous years, and this decrease would have seriously affected corporate profitability, production and employment.

The witnesses for Omnitrade and Sumner did not dispute the fact that they bought the subject goods at prices that were lower than those offered by Libec, nor the fact that offering promotional shotshells at low prices can swell sales of first-line shotshells. However, the representatives for Omnitrade and Sellier & Bellot alleged that these imports had not caused material injury to Libec.

Taking into account the facts and the evidence, the Tribunal is convinced, considering the margins of dumping, the significant increase in imports from the subject countries since 1990 and Libec's loss of clients due to dumped prices of the subject goods, that the dumping of the subject goods has caused and is causing injury to the Canadian industry. However, the Tribunal must acknowledge that Libec was able to compete with the subject countries by offering competitive prices and compensated for the loss of clients by acquiring new clients to the detriment of imports of 12-gauge shotshells from the United States.⁷ This enabled Libec to increase its production, its market share, its level of employment and its profitability.

Consequently, even if the dumping of the subject goods has caused Libec to lose clients and to suffer an erosion of prices to its clients other than CTC, the Tribunal finds that the company did not suffer and is not suffering material injury within the meaning of SIMA.

Future Injury

With regard to the future, the Tribunal considers that continued dumping is likely to cause material injury to Libec's production in Canada of like goods.

The subject goods are primarily promotional shotshells. These shotshells, from the point of view of quality, are similar to Canadian promotional shotshells. In 1994, Omnitrade continued to sell, on the Canadian market, shotshells imported in 1993 which

7. U.S. manufacturers saw their share of the Canadian market drop by over 50 percent between 1990 and 1993.

had not been sold, since they arrived late in the year. During the spring of 1994, these shotshells were sold at prices that were even lower than those in 1993. The availability of these shotshells and the Tribunal's pending finding in this inquiry have caused a reduction of orders to the Canadian industry for the 1994 season.

The Canadian market is made up, in large part, of an indeterminate number of medium- and small-sized retailers and of one very large buyer. The evidence submitted to the Tribunal indicates that these buyers have, for the most part, deferred their orders for the current year and that many of them are waiting for the Tribunal's decision before placing a firm purchase order. Contrary to the allegations of the representatives for Omnitrade and Sellier & Bellot, Libec's number of firm orders was fairly low in the spring of 1994. In the absence of a finding of material injury, it is likely that Libec will not only continue to lose clients to the dumped prices but it will also risk losing its main client. Omnitrade admitted having offered its shotshells to CTC in the fall of 1993. This leads the Tribunal to believe that the importer thought that it would have a sufficient volume of the subject goods to meet the needs of this client. This last element contradicts somewhat the evidence of the witness for Sellier & Bellot who stated that deliveries of 12-gauge shotshells are and will continue to be rationed to allow it to meet the demand of other foreign markets. Nevertheless, this witness acknowledged that Sellier & Bellot can very rapidly fill Canadian orders and that the prices of the subject goods exported to Canada are lower than those in other markets.

The witness for Sellier & Bellot also indicated that its plant produces over 32 million units of 12-gauge shotshells per year. This production is aimed primarily at export markets. Notwithstanding Omnitrade's decision to no longer import the subject goods from Sellier & Bellot, the Tribunal still notes the continuing interest of Sellier & Bellot in the Canadian market. Indeed, over a very short period of time in 1993, this company exported to Canada over four million units. With respect to the Republic of Hungary, in spite of a decrease in the number of the subject goods imported in 1993, nothing in the testimony leads to the belief that future imports will not equal the numbers reached in 1991. The Tribunal concludes that, in the absence of anti-dumping measures, large quantities of shotshells, mainly promotional, will be imported from the subject countries at low prices. These imports are likely to have a negative impact on Libec's ability to sell first-line shotshells in Canada, which, in turn, would have serious consequences on Libec's profitability and employment, since most of Libec's profits are derived from first-line shotshells.

In addition, the Tribunal is convinced that continued dumping could also adversely affect Libec's planned investment for the manufacture of certain components used in the production of 12-gauge shotshells.

For all these reasons, the Tribunal finds that continued dumping of the subject goods is likely to cause material injury to the production in Canada of like goods.

Request for Exclusion of First-Line Shotshells

The representatives for Omnitrade and Sellier & Bellot requested that the Tribunal, in the event of a finding of material injury, exclude first-line shotshells from the finding.

The Tribunal cannot grant this request. Based on the evidence submitted, there are no physical characteristics that distinguish, with accuracy and certainty, promotional shotshells from first-line shotshells. Libec has, in the past, sold promotional shotshells

containing 36 g of lead, while, in the United States, promotional shotshells containing 28 g of lead are sold. For his part, the witness for Sumner, called by the Tribunal, considers that all shotshells imported from the Republic of Hungary are promotional shotshells, regardless of the lead load.

Most of the witnesses admitted that the difference between the two types of shotshells is more a question of marketing than of measurable differences based on objective criteria such as the weight of the lead load or the length of the base. According to these witnesses, the basic difference between first-line and promotional shotshells is that the former are sold nationally under a known brand name and are the subject of targeted advertising. On the other hand, promotional shotshells cost a little less to produce because they contain less raw materials and are generally sold under a private brand name. In short, first-line shotshells are different from promotional shotshells by virtue of their known brand name and of the higher price obtained as a result.

Short of being able to clearly and accurately define what promotion shotshells are and how they are different from first-line shotshells, the Tribunal cannot grant the request for exclusion as formulated. It is worth noting, in this regard, that the granting of an exclusion for first-line shotshells would interfere with the executory nature of the Tribunal's decision.

CONCLUSION

Consequently, the Tribunal finds that the dumping in Canada of 12-gauge shotshells originating in or exported from the Czech Republic and the Republic of Hungary has not caused, is not causing, but is likely to cause material injury to the production in Canada of like goods.

Lise Bergeron

Lise Bergeron
Presiding Member

Arthur B. Trudeau

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Desmond Hallissey

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Member