



Ottawa, Tuesday, June 4, 1996

Inquiry No.: NQ-95-005

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

PORTABLE FILE CASES WITH HANDLE, CLOSING DEVICE AND SIDE WALLS CAPABLE OF EXPANSION AND CONTRACTION ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

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 of a preliminary determination of dumping dated February 5, 1996, and of a final determination of dumping dated May 3, 1996, respecting the importation into Canada of portable file cases with handle, closing device and side walls capable of expansion and contraction originating in or exported from the People's Republic of China.

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 People's Republic of China has not caused material injury or retardation to the domestic industry and is not threatening to cause material injury to the domestic industry.

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

Raynald Guay
Raynald Guay
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-95-005

Place of Hearing: Ottawa, Ontario
Dates of Hearing: May 6 and 7, 1996
Date of Finding: June 4, 1996
Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Raynald Guay, Member
Desmond Hallissey, Member
Director of Research: Selik Shainfarber
Lead Researcher: Ken Campbell
Economist: Ihn Ho Uhm
Statistician: Po-Yee Lee
Counsel for the Tribunal: David M. Attwater
Registration and Distribution Officer: Joël J. Joyal
Participants: Ronald C. Cheng
Gregory O. Somers
Alan L. Ross
for Anthes Universal Limited, A Subsidiary of Pelikan, Inc.
(Domestic Producer)
Darrel H. Pearson
Peter W. Collins
for Hudson's Bay Company
(Importer)

Ottawa, Wednesday, June 19, 1996

Inquiry No.: NQ-95-005

**PORTABLE FILE CASES WITH HANDLE, CLOSING DEVICE AND SIDE
WALLS CAPABLE OF EXPANSION AND CONTRACTION ORIGINATING IN
OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

Special Import Measures Act - Whether the dumping of the above-mentioned goods has caused material injury or retardation or is threatening to cause material injury to the domestic industry.

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping in Canada of portable file cases with handle, closing device and side walls capable of expansion and contraction originating in or exported from the People's Republic of China has not caused material injury or retardation to the domestic industry and is not threatening to cause material injury to the domestic industry.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	May 6 and 7, 1996
Date of Finding:	June 4, 1996
Date of Reasons:	June 19, 1996
Tribunal Members:	Robert C. Coates, Q.C., Presiding Member Raynald Guay, Member Desmond Hallissey, Member
Director of Research:	Selik Shainfarber
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for Anthes Universal Limited, A Subsidiary of Pelikan, Inc.

(Domestic Producer)

Darrel H. Pearson
Peter W. Collins
for Hudson's Bay Company

(Importer)

Witnesses:

Wally Charko
Area Manager
Anthes Universal Limited, A Subsidiary of
Pelikan, Inc.

Scott Schumpert
Vice-President of Finance
Anthes Universal Limited, A Subsidiary of
Pelikan, Inc.

Jim Hale
Divisional Merchandise Manager
The Bay

Dan Bell
Senior Buyer
Zellers Inc.

E.P. (Ted) Williams
General Manager
Acco Canada Inc.

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Ottawa, Wednesday, June 19, 1996

Inquiry No.: NQ-95-005

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

PORTABLE FILE CASES WITH HANDLE, CLOSING DEVICE AND SIDE WALLS CAPABLE OF EXPANSION AND CONTRACTION ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
RAYNALD GUAY, Member
DESMOND HALLISSEY, Member

STATEMENT OF REASONS

CONDUCT OF THE INQUIRY

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*¹ (SIMA), has conducted an inquiry following the issuance by the Deputy Minister of National Revenue (the Deputy Minister) of a preliminary determination of dumping² dated February 5, 1996, and of a final determination of dumping³ dated May 3, 1996, respecting the importation into Canada of portable file cases with handle, closing device and side walls capable of expansion and contraction (hereinafter referred to as portable file cases) originating in or exported from the People's Republic of China (China).

On February 6, 1996, the Tribunal issued a notice of commencement of inquiry.⁴ As part of the inquiry, the Tribunal sent detailed questionnaires to the domestic producer of portable file cases and to importers and purchasers of Chinese portable file cases, requesting production, financial, import and market information, as well as other information, covering the period from January 1, 1992, to December 31, 1995. From the replies to the questionnaires, the Tribunal's research staff prepared public and protected pre-hearing staff reports covering that period.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to the questionnaires, all exhibits filed by the parties that were received in evidence and the transcript of all proceedings. All public exhibits were made available to the parties. Protected exhibits were made available only to independent counsel who had filed a declaration and undertaking with the Tribunal.

1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.
2. *Canada Gazette* Part I, Vol. 130, No. 7, February 17, 1996, at 526.
3. *Ibid.*, No. 20, May 18, 1996, at 1468.
4. *Supra* note 2 at 534.

Public and *in camera* hearings were held in Ottawa, Ontario, on May 6 and 7, 1996. The domestic producer, Anthes Universal Limited, A Subsidiary of Pelikan, Inc. (Anthes), and Hudson's Bay Company (Hudson's Bay), which imports Chinese portable file cases directly through its subsidiaries, The Bay and Zellers Inc. (Zellers), were represented by counsel at the hearing. As well, in response to a subpoena issued by counsel for Hudson's Bay, the General Manager of Acco Canada Inc. (Acco) appeared as a witness at the hearing.

On June 4, 1996, the Tribunal issued a finding that the dumping in Canada of Chinese portable file cases had not caused material injury or retardation to the domestic industry and was not threatening to cause material injury to the domestic industry.

PRODUCTS

The products that are the subject of the inquiry are defined in the preliminary determination of dumping as portable file cases with handle, closing device and side walls capable of expansion and contraction originating in or exported from China.

Portable file cases have a clasp closure and handle which allow the user to carry the file case, hence its "portability." The design of the portable file case is characterized by a flap which overlaps the front wall and accordion side walls, which allow for the expansion or contraction of the case. Inside the portable file case are filing pockets which hold letter size and legal-size documents. Portable file cases are intended for both office and home use to organize and store business and personal records.

DOMESTIC INDUSTRY

Anthes is the sole domestic producer of portable file cases. In May 1991, Anthes became a wholly owned subsidiary of Pelikan, Inc. of Hanover, Germany, a manufacturer of writing instruments and art supplies. Prior to 1991, Anthes' ownership changed hands on several occasions. Anthes has been located at its current facilities in Brampton, Ontario, since 1972. In 1980, Anthes purchased equipment to manufacture portable file cases, which have become its core product.

Anthes also owns production facilities in Edenton, North Carolina. In late 1994, a portion of the plant equipment used to produce portable file cases for the U.S. market was moved from Edenton to Brampton. Since September 1994, all portable file cases sold by Anthes in Canada and the United States have been manufactured in Brampton.

Anthes markets a wide array of stationery products, including commercial and office and home supplies, computer and office machine accessories and writing instruments. Anthes markets its products nationally through a five-person sales force.

IMPORTERS

Four companies imported Chinese portable file cases during the period from 1992 to 1995.

Acco, an importer and a distributor, is wholly owned by Acco World Corporation of Deerfield, Illinois. Acco produces and/or markets a wide range of office and home supplies in Willowdale, Ontario. It began importing Chinese portable file cases in mid-1994. In mid-1995, Acco ceased importing Chinese portable file cases and began importing its requirements from Mexico.

Esselte Canada Inc., also an importer and a distributor, is a subsidiary of Esselte Business Systems of Garden City, New York. It has been manufacturing and/or marketing a wide range of office and home supplies in Canada for the past 25 years. It began importing Chinese portable file cases in 1991, but exited the market for portable file cases in mid-1993.

Zellers of Montréal, Quebec, and The Bay of Toronto, Ontario, imported Chinese portable file cases directly from the manufacturer during the period of inquiry. In addition, both Zellers and The Bay purchased part of their requirements of portable file cases from Anthes during the period of inquiry.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION

The Deputy Minister's investigation covered shipments of Chinese portable file cases to Canada during the period from July 1, 1994, to June 30, 1995. Although Climax Paper Converters Limited of Hong Kong was identified as the vendor of Chinese portable file cases, Five Brothers Stationery Manufacturer of China was the sole exporter for the purposes of SIMA during the period of investigation.

In the case of a non-market economy, such as in China, normal values are normally determined on the basis of profitable domestic sales or the full cost of the goods, plus an amount for profit in a country with a market economy. The Department of National Revenue (Revenue Canada) sought information from companies located in Hong Kong, Mexico and the United Kingdom. However, only a U.K. company was considered an appropriate surrogate, but did not have sufficient profitable sales on which to base normal values. Accordingly, normal values were estimated, pursuant to subparagraph 20(c)(ii) of SIMA, on the basis of the cost of production in the United Kingdom, plus an amount for all other costs and a profit based on sales of other goods of the same general category. Export prices were estimated pursuant to paragraph 24(a) of SIMA on the basis of the Hong Kong vendor's selling price, less all costs, charges and expenses incurred beyond the point of shipment in China.

Revenue Canada determined that 100 percent of the Chinese portable file cases exported to Canada during the period of investigation were dumped. The estimated margins of dumping ranged from 65.8 to 76.8 percent, with a weighted average of 70.7 percent, when expressed as a percentage of the normal value. The margins of dumping were subsequently confirmed in the Deputy Minister's final determination dated May 3, 1996.

SUMMARY OF POSITION OF PARTIES

Anthes - Domestic Producer

Counsel for the domestic producer requested that the Tribunal make a finding of injury to the domestic industry. Failing such a finding, counsel requested a finding of threat of injury to the domestic industry or, alternatively, a finding of retardation of the establishment of a domestic industry if there was an interruption in the domestic production of portable file cases.

With respect to past injury caused by the dumping of Chinese portable file cases, counsel for the domestic producer argued that Anthes had lost sales volume at several major mass merchandisers. This lost volume commenced in 1991 when Chinese imports entered the Canadian market for the first time and continued through 1995. Similarly, over this same time period, Anthes suffered price erosion at a number of accounts, which resulted in price declines of almost 50 percent between 1990 and 1995. In addition, counsel argued that the evidence showed that Anthes had suffered price suppression, as well as underutilization of production capacity.

In addressing financial injury, counsel for the domestic producer argued that the production of portable file cases was a prime revenue contributor to Anthes' overall operations during the period of inquiry and that this contribution increased over time. In counsel's submission, if no injury from dumped imports had occurred, the entire company, sustained by sales of like goods, could have survived quite comfortably. Instead, having failed once to sell the company, Pelikan, Inc. was again on the verge of ceasing Anthes' domestic production. In counsel's view, without the benefit of an injury finding, Pelikan, Inc. would have no remaining ability to continue Anthes' domestic production of portable file cases and nothing viable left to sell to a prospective buyer that might be willing to consider maintaining domestic production of portable file cases.

In support of the request for a finding of injury, counsel for the domestic producer noted the past dumping history of Climax Paper Converters Limited in the Canadian market involving self-adhesive and pocket photo albums. In their view, this was evidence of a propensity to dump. These products were also high-volume, relatively low-cost consumer items which were imported by the same mass merchandisers involved in the present inquiry. Counsel also argued that quality issues relating to the domestic and imported portable file cases were a sham. Moreover, evidence brought by the importers that Chinese portable file cases were competing with an array of other products was nothing more than a decoy.

In addressing the question of threat of injury, counsel for the domestic producer pointed to the imports from Mexico as evidence of future injury. In fact, Revenue Canada had recently been requested by Anthes to initiate a dumping investigation against imports of Mexican portable file cases. Counsel also submitted that production of portable file cases had not ceased to date and, though there may be an interruption of production, there was no evidence that there would be no production in the future, subject to the outcome of this inquiry.

Finally, counsel for the domestic producer argued for a finding of retardation of the establishment of a domestic industry in the event that the Tribunal did not find injury or threat of injury. Counsel submitted that, if the effect of the dumping were to put the domestic producer out of business, then cessation of domestic production should not be the basis for denial of relief, as continued dumping would simply prevent the re-establishment of a domestic industry. In support of a request for a finding of retardation, counsel cited the findings of the Anti-dumping Tribunal in Inquiry Nos. ADT-4-72⁵ and ADT-2-81⁶ as authority for the

5. *Bicycle Tires and Tubes Originating in Austria, Japan, the Netherlands, Sweden and Taiwan*, Finding and Statement of Reasons, August 15, 1972.

6. *Custom Steel Wheel Rims with Painted or Chromed Centres Made from Steel or Aluminium, All Having Diameters from 13" to 16 1/2" Inclusive and Widths from 5 1/2" to 10" Inclusive, Originating in or Exported from Brazil*, Finding and Statement of Reasons, July 10, 1981.

proposition that termination of production or interruption of production is not a basis to deny relief. Counsel argued that, if the Tribunal made a finding of injury and if there was a permanent interruption of production, it would be open to interested parties to request a review of the Tribunal's finding.

Hudson's Bay - Importer

Counsel for The Bay and Zellers (the importers) requested that the Tribunal make findings of no injury and of no threat of injury, as well as of no retardation, caused by the dumping of Chinese portable file cases. Counsel accepted that Anthes had suffered material injury, but argued that such injury could not be attributed to dumping.

In the submission of counsel for the importers, Anthes had enjoyed a virtual monopoly in respect of the sale and marketing of portable file cases in Canada prior to 1991, during which Anthes had an industrial design registration for portable file cases designed by Willcox Stationery of the United Kingdom. This design registration essentially denied the production, importation or sale of portable file cases by any company in Canada other than Anthes. However, shortly after the expiration of the design registration in 1990, imports from China began to enter Canada. In this context, it was not surprising that, in 1991, pricing for portable file cases deteriorated, as Anthes, for the first time, faced competition. Moreover, the injury suffered by Anthes in 1991 could not be blamed on dumping, since there was no evidence that Chinese portable file cases were dumped at that time. Although prices continued to decline between 1991 and 1995, the magnitude of the decline was far less than what had occurred after the expiry of the design registration in 1990.

Counsel for the importers argued that Anthes was the creator of its own misfortune because it waited more than four years before filing a dumping complaint. By the time it approached Revenue Canada in 1995, the market for portable file cases was saturated and declining. Moreover, by 1995, the pricing for portable file cases had been boxed in because the consumer had become accustomed to a long period of discounted price levels and because of the advent of new products which compete with portable file cases on price and value. In addition, the introduction of new mass merchandisers such as Wal-Mart and The Business Depot Ltd., which have a reputation of offering products at heavily discounted prices, also served to keep retail prices at low levels. The low prices offered by these stores squeezed retail margins of other mass merchandisers that, in turn, applied pressure on their suppliers to lower prices.

Counsel for the importers claimed that the financial performance of Anthes on sales of other office and home supplies was far worse than the poor financial performance exhibited on sales of portable file cases. Further, Anthes experienced negative financial results on its export sales of portable file cases to the United States, where there is no evidence of dumping. This indicated that the problem was simply low retail prices. However, Anthes did have high production costs, particularly with respect to labour and, in 1995, there were large increases in paper costs. These factors contributed to its injury.

As to the threat of injury, counsel for the importers argued that, absent dumped Chinese portable file cases, Anthes would continue to suffer injury, due to the availability of undumped portable file cases from the United States and Mexico, alternative polypropylene products from Taiwan, high production costs and a general trend in low prices for office and home filing supplies. With respect to retardation, counsel noted that Anthes had announced that it would cease production before the Tribunal's finding on June 4, 1996. There was no evidence or likelihood that domestic production would resume in the foreseeable future. Counsel

suggested that Pelikan, Inc. only wanted a finding of injury in order to sell its assets at a better price, but it had no commitment to domestic production of portable file cases.

Finally, the margins of dumping determined by Revenue Canada were wholly arbitrary, since they were calculated on the basis of the cost of production in the United Kingdom. There is no way to compare costs in the United Kingdom with those in China, particularly with respect to labour. Therefore, the margins of dumping calculated by Revenue Canada were excessive and had no meaning in the context of real prices in the retail marketplace.

ANALYSIS

Pursuant to section 42 of SIMA, as amended by the *World Trade Organization Agreement Implementation Act*,⁷ the Tribunal is required to “make inquiry ... as to whether the dumping or subsidizing of goods [to which the preliminary determination applies] ... has caused injury or retardation or is threatening to cause injury” (emphasis added). In the Tribunal’s decisions in Inquiry Nos. NQ-95-001⁸ and NQ-95-002,⁹ it concluded that, as a result of the amendments to SIMA, in making a finding under subsection 43(1) of SIMA in respect of an inquiry under section 42, it is directed to consider whether the domestic industry either has suffered injury or is threatened with injury. In other words, injury and threat of injury are distinct findings, and the Tribunal does not need to make a finding relating to both under subsection 43(1) of SIMA¹⁰ unless it first makes a finding of no injury. The Tribunal in this inquiry agrees with these views. As counsel for the domestic producer argued that the dumping will cause retardation, the Tribunal will consider whether the establishment of a domestic industry will be retarded.

“Injury” is defined in subsection 2(1) of SIMA as “material injury to a domestic industry.” “Domestic industry” is defined, in part, as “the domestic producers as a whole of the like goods or those ... whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods.” Therefore, in arriving at its decision in the present inquiry, the Tribunal will first determine which domestically produced goods are “like goods” to the Chinese portable file cases and then determine who are the domestic producers of portable file cases, i.e. which producers constitute the domestic industry. The Tribunal will then proceed to determine whether the domestic industry has suffered injury and, if so, whether a causal relationship exists between that injury and the dumping of Chinese portable file cases. If there is a finding of no injury, the Tribunal will proceed to consider whether the dumping of Chinese portable file cases is threatening to cause injury.

7. S.C. 1994, c. 47.

8. *Caps, Lids and Jars Suitable for Home Canning, Whether Imported Separately or Packaged Together, Originating in or Exported from the United States of America*, Finding, October 20, 1995, Statement of Reasons, November 6, 1995.

9. *The Dumping in Canada of Refined Sugar Originating in or Exported from the United States of America, Denmark, the Federal Republic of Germany, the Netherlands, the United Kingdom and the Republic of Korea, and the Subsidizing of Refined Sugar Originating in or Exported from the European Union*, Findings, November 6, 1995, Statement of Reasons, November 21, 1995.

10. *Caps, Lids and Jars* at 10; and *Refined Sugar* at 12.

Like Goods

Subsection 2(1) of SIMA defines “like goods,” in relation to any other goods, as follows:

(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.

The evidence is clear that the portable file cases known as “Portafiles” produced by Anthes and the Chinese portable file cases have similar physical characteristics, have the same end uses and compete with and can be substituted for one another. In particular, the information provided by the domestic producer, importers and purchasers in response to the Tribunal’s questionnaires on market characteristics indicates that Chinese portable file cases are interchangeable with domestically manufactured portable file cases. Within the home, school and office category, there are other domestic products, such as My Files, Project Pal, etc., that also compete, to varying degrees, with Chinese portable file cases, but they are different in design and construction. Therefore, the Tribunal finds that the portable file cases produced by Anthes constitute like goods to the Chinese portable file cases. This was not questioned by either party to the Tribunal’s inquiry.

Domestic Industry

Having determined that the like goods are domestically produced portable file cases, the Tribunal finds that Anthes, which produces all of the like goods, constitutes the domestic industry in this inquiry.

Injury

Subsection 37.1(1) of the *Special Import Measures Regulations*¹¹ (the Regulations) prescribes certain factors for the Tribunal to consider in determining whether a domestic industry has been injured by dumped imports. These factors include: the volume of dumped goods and their effect on prices in the domestic market for like goods; and the consequent impact of these imports on a number of economic factors, such as actual or potential declines in output, sales, market share and profits.

The Tribunal notes that counsel for the importers did not dispute that Anthes has suffered material injury. Examination of the key economic indicators set out below confirms that injury has occurred and indicates more precisely the nature and magnitude of this injury. For reasons of confidentiality, actual data cannot be released. Accordingly, the data below are presented on an index basis.

11. SOR/95-26, Canada Gazette Part II, Vol. 129, No. 1, January 11, 1995, at 80.

INDEX VALUES OF KEY ECONOMIC INDICATORS			
PORTABLE FILE CASES			
(1992 = 100)			
	1993	1994	1995
Market Sales (units)			
Anthes	94	116	80
China	181	162	88
Total	121	131	87
Market Share (%)			
Anthes	78	90	93
China	147	122	100
Imports (units)			
China	115	126	67
Financial			
Net Domestic Sales (\$)	87	109	74
Production Costs (% of net sales)	105	120	128
Weighted Average Prices (\$/unit)			
Anthes	95	95	96
China	90	85	90

Source: Protected Pre-Hearing Staff Report, March 27, 1996, Tribunal Exhibit NQ-95-005-7 (protected), Administrative Record, Vol. 2 at 5.

The data indicate that total market demand for portable file cases increased in both 1993 and 1994, before declining by roughly one third in 1995 over the level achieved in 1994. Throughout the period, Anthes held the lion's share of the market. From 1992 to 1993, Anthes lost 22 percent of its market share to Chinese portable file cases, which it largely recovered in 1994 and 1995. However, in 1995, Anthes' market share was still several percentage points lower than in 1992 because of the entry of Mexican portable file cases into the market. Despite its recovery in market share, the large decline in market demand in 1995 resulted in a significant decrease in Anthes' sales volume, which was some 20 percent lower than in 1992.

Imports of Chinese portable file cases, which entered Canada for the first time in 1991, increased in volume in 1993 over the volume imported in 1992 and, as noted above, took several percentage points of market share from Anthes. Thereafter, the market share and sales volume of Chinese portable file cases declined. By 1995, sales of Chinese portable file cases had fallen by one half from the 1993 peak level and was below the volume achieved in 1992. Moreover, by 1995, Chinese portable file cases had given up all of the market share that it had gained in 1993.

On a unit sales value basis, the data indicate that, after a decline of some 5 percent from the base year, 1992, Anthes' selling prices for portable file cases remained virtually unchanged through 1995. The price for Chinese portable file cases fell by 10 percent in 1993 and a further 5 percent in 1994, compared to 1992. However, in 1995, the price for Chinese portable file cases returned to the 1993 level.

In the Tribunal's opinion, the clearest manifestation of the injury suffered by Anthes is shown in its financial results over the period of inquiry. A review of the evidence indicates that Anthes' net revenues on sales of portable file cases were down by about one quarter in 1995 from the revenues earned in 1992. While revenues earned on domestic sales were decreasing, production costs as a percentage of net sales steadily increased over the period. By 1995, production costs as a percentage of net sales were nearly 20 percent higher than in 1992, which resulted in a sharp erosion of gross margins. As a consequence of declining sales and increasing costs, the bottom-line results for Anthes deteriorated over the four years, with substantial losses occurring in 1994 and 1995.

The Tribunal notes that the losses in 1995 were particularly severe, almost triple the losses in 1994. The evidence indicates that the reason for these further losses was a significant increase in general selling and administrative costs on portable file cases, as a percentage of net sales, in 1995 compared to 1994. This increase was caused by the sharply decreased sales of portable file cases, as well as by the collapse in sales of other Anthes products. More particularly, Anthes, which had been experiencing declining sales, increased costs and losses on all its product lines over the period of inquiry, saw its sales of products other than portable file cases drop by a greater percentage than its sales of portable file cases. As a consequence, sales of portable file cases had to carry a higher proportion of company overhead costs, such as general selling and administrative costs, than in previous years.

Anthes' financial results on export sales of portable file cases were also unsatisfactory. In late 1994, it closed its North Carolina production facilities, which had been producing portable file cases for the U.S. market. At that point in time, Anthes consolidated all production of portable file cases at its Brampton plant and began supplying the U.S. market from domestic production. From late 1994 through 1995, Anthes incurred substantial and growing losses on export sales, which matched or exceeded the losses reported on domestic sales of like goods.

In terms of other performance indicators, the data show that Anthes' production, employment and production capacity increased in 1994 and 1995. It is clear, however, that most of these increases were related to the consolidation of production of portable file cases in Brampton subsequent to the closing of the North Carolina facilities. Anthes had more than enough production capacity to supply the Canadian market even before it transferred production equipment from North Carolina and was already operating at low utilization rates. Although this transferred production capacity was intended to be used to supply the U.S. market from Canada, it appears to have further depressed utilization rates and added to the overcapacity which already existed.

In any event, it is clear from the evidence, as acknowledged by counsel for the importers, that, over the period of inquiry, Anthes suffered material injury, primarily in the form of financial injury stemming from falling revenues and rising costs.

Causation

Having determined that the domestic industry has been materially injured, the Tribunal must determine whether there is a causal link between the injury and the dumping of Chinese portable file cases. A thorough review of the evidence convinces the Tribunal that the causal link cannot be made in this instance.

Imports of Chinese portable file cases first entered the Canadian market in early 1991. Prior to this period, Anthes had a monopoly on domestic market sales of portable file cases. Counsel for the importers argued that Anthes had been shielded from competition because it held an industrial design registration which effectively prevented other companies from manufacturing, importing or otherwise marketing portable file cases.

In the Tribunal's opinion, the evidence as to the restrictive scope of the design registration was inconclusive. It is clear, however, that, not long after the design registration expired in March 1990, Anthes witnessed competition for the first time, in the form of Chinese portable file cases, and wholesale and retail prices for portable file cases sustained a precipitous decline. Indeed, although prices for portable file cases continued to decline over the period of inquiry, 1992 to 1995, these declines were relatively small compared to the initial price shock which accompanied the advent of competition from imports.

The Tribunal notes that Anthes waited more than four years to file the dumping complaint with Revenue Canada which underlies the present inquiry. It is not clear to the Tribunal why the domestic producer waited such an extended period after it alleges to have first experienced injury from Chinese competition before taking this action. The market for portable file cases is relatively small, there is only a handful of significant participants, and there is no indication that Anthes lacked knowledge of relevant market developments. During this unusually long delay, numerous other factors have intervened to affect Anthes' performance which, in the Tribunal's opinion, have tended to obscure any cause and effect relationship between Chinese portable file cases and Anthes' injury.

In particular, since the first entry of Chinese portable file cases in 1991, the Canadian market has undergone fundamental changes at the retail level which have resulted in a significant repositioning of portable file cases for sale to consumers. The evidence indicates that, in the pre-1991 period, Anthes had positioned the Portafile as the premium expanding file available in the market¹² at a suggested retail price of \$24.99. However, as noted above, with the introduction of Chinese portable file cases in 1991, Anthes' monopoly position ended, and the pre-1991 price structure was fundamentally altered. By 1993, retailers were selling portable file cases at prices in the range of \$13.00 to \$14.00;¹³ by 1996, a retail price of around \$8.00 had become a common standard for portable file cases. In other words, regular retail selling prices declined by roughly two thirds from the prices obtained in the pre-1991 period.

The evidence also shows that, at the wholesale level, prices fell by roughly one third over the corresponding period, i.e. retail prices fell to a much greater extent than did wholesale prices. This is consistent with evidence brought by Anthes, The Bay and Zellers to the effect that portable file cases have

12. Manufacturer's Exhibit A-1 at 16, Administrative Record, Vol. 11.

13. Manufacturer's Exhibit A-1, Attachment 6, Administrative Record, Vol. 11; and Importer's Exhibit B-1 at 4, Administrative Record, Vol. 13.

been repositioned at retail as a feature product used by mass merchandisers to draw traffic into their stores. Specifically, the witnesses for The Bay and Zellers indicated that portable file cases are now used as promotional tools, often located in prime “end cap” selling space in retail outlets, and are frequently sold as “loss leaders.”¹⁴ The witness for Zellers succinctly noted the change in the positioning of portable file cases, stating that, over the past several years, they have gone from the high end of the expanding file assortment to the low end in terms of price and profit margin. He also stated that, from a retailer’s standpoint, portable file cases are considered part of a family of products, some of which are sold at high margins and some, like portable file cases, at low or nil margins, in the expectation that a satisfactory margin for the group as a whole will be met.¹⁵

Since the early 1990s, the introduction of “big box” retailers such as Wal-Mart and PriceCostco, that target budget-conscious consumers, has also changed the Canadian landscape at the mass merchandiser level and exerted downward pressure on retail prices for a wide variety of goods, such as portable file cases. In addition, the advent of specialty office supply superstores, such as The Business Depot Ltd., has heightened the competition for products in the home, school and office category in particular. According to the witness for Zellers, the strategy of these specialty stores is to offer a wide assortment of products at substantial discounts from normal retail prices. This has forced competitors to review their own strategies. Most major retailers have responded by expanding assortments and targeting specific products, such as portable file cases, as price leaders which are frequently sold on promotion in the battle for consumer attention.¹⁶

As a result of this increased competition among retailers over the past several years, consumers now have a wider choice of retail outlets from which to make their purchases of products, such as portable file cases, and they are constantly made aware of advertised competitive prices. According to the witnesses for The Bay and Zellers, this has created a price expectation or perception in the mind of the consumer about what is the right price to pay for portable file cases, which is currently at about the \$8.00 price point. This perception has been strongly reinforced by the fact that portable file cases have frequently been promoted over the past few years in the \$6.00 to \$7.00 price range.¹⁷ Consequently, any attempt to increase prices for portable file cases could be expected to meet considerable consumer resistance, especially given the availability of numerous cost-effective substitute products.

In the Tribunal’s opinion, this testimony is supported by the considerable evidence submitted by The Bay and Zellers on the wide array of filing products at competitive prices to those for portable file cases. While these products are not “like goods” to portable file cases, they have the same end uses and similar physical characteristics and are, therefore, competitive alternatives in the consumer’s purchasing decisions. These include a range of paper products, such as the Rogers “Personal File” which retails at \$12.99, the Oxford expanding file which retails at \$9.99¹⁸ and expanding files of various sizes which retail at

14. Manufacturer’s Exhibit A-1 at 5-6, Administrative Record, Vol. 11.

15. Transcript of In Camera Session, Vol. 2, May 7, 1996, at 170.

16. Importer’s Exhibit B-13 at 6-7, Administrative Record, Vol. 13.

17. Manufacturer’s Exhibit A-1, Attachment 6, Administrative Record, Vol. 11; Importer’s Exhibit B-1 at 5, Administrative Record, Vol. 13; and Importer’s Exhibit B-29 (protected), Administrative Record, Vol. 14.

18. Importer’s Exhibit B-1 at 8, Administrative Record, Vol. 13.

under \$10.00.¹⁹ The evidence also indicates the growing presence of plastic filing products which compete with portable file cases on both function and price. For example, Zellers carries a range of vinyl expandable file folders produced in China which retail from \$8.99 to \$13.99.²⁰ As well, there are plastic expanding files readily available from Taiwan at landed prices which are below Anthes' wholesale price for portable file cases.²¹ Some of these Taiwanese products are currently available in the Canadian market.

In addition to these competitive non-subject filing products, the Tribunal notes that Mexican portable file cases, which are virtually identical to Anthes' portable file cases, are now competing in the Canadian market. Acco, a company which imports portable file cases into both the United States and Canada, began sourcing from Mexico in 1995. Mexican portable file cases are sold at retail prices of around \$7.80. Moreover, the evidence indicates that U.S. portable file cases are available at landed costs which are comparable to Anthes' wholesale price.²² Finally, evidence submitted by Zellers indicates that plastic portable file cases have been quoted from offshore sources at landed prices which compare with Anthes' wholesale price.²³

The Tribunal notes that the repositioning of portable file cases to their current price level is not a made-in-Canada phenomenon. According to the evidence, portable file cases are sold in the U.S. market by several sources, including China, Mexico and Anthes, itself, from its domestic production. Prevailing wholesale and retail prices in the U.S. market are quite similar to those in Canada.²⁴ Indeed, the evidence shows that Anthes' export sales of Portafiles have produced less than satisfactory financial results. It certainly appears that, in the U.S. market, where to the Tribunal's knowledge there are no allegations of dumping having affected prices, the difficulties which Anthes faces are substantially the same as those that it faces in Canada.

Further, the Tribunal notes that, over the past several years, there has been a general price decline for products in the home, school and office category. Although sales volumes in that category, as a whole, have been healthy, largely due to the growing demand by home and small business offices, prices have been soft. It appears that the same factors which have impacted the pricing for portable file cases are at play across the entire category of products. Specifically, an examination of Anthes' pricing for the home, school and office category reveals that virtually all its wholesale prices for products within that category have fallen since the 1991-92 period.²⁵ Similarly, evidence submitted by The Bay and Zellers²⁶ indicates that their retail prices for home, school and office products have generally decreased across the board. For example, The Bay's retail price for two-drawer metal filing cabinets fell from \$39.99 in 1994 to \$26.82 in late 1995 in order to

19. Importer's Exhibit B-13 at 5, Administrative Record, Vol. 13.

20. *Ibid.*

21. Transcript of Public Hearing, Vol. 2, May 7, 1996, at 153; Transcript of In Camera Session, Vol. 2, May 7, 1996, at 137; and Importer's Exhibits B-17.1-B-17.4, Administrative Record, Vol. 13.

22. Transcript of In Camera Session, Vol. 2, May 7, 1996, at 147; and Importer's Exhibit B-39 (protected), Administrative Record, Vol. 14.

23. Transcript of In Camera Session, Vol. 2, May 7, 1996, at 129-36; and Importer's Exhibits B-27 and B-31 (protected), Administrative Record, Vol. 14, and B-28, Administrative Record, Vol. 13.

24. Transcript of In Camera Session, Vol. 1, May 6, 1996, at 47-48.

25. Importer's Exhibit B-22, Administrative Record, Vol. 13.

26. Importer's Exhibits B-1 at 9 and B-13 at 6-7, Administrative Record, Vol. 13.

compete with Wal-Mart's retail pricing.²⁷ It is interesting to note that, at this price, metal filing cabinets are retailing, in 1996, at only slightly more than the suggested pre-1991 retail price for the filing system made out of paper-based materials, such as portable file cases.

Another factor which appears to have depressed prices over the past two years or so is a saturation of demand for portable file cases. According to the evidence, demand for portable file cases dropped by about one third in 1995 compared to 1994. This drop significantly reduced sales from imports, as well as sales from domestic production. Moreover, the evidence indicates that the decline has continued into 1996, as sales have continued to fall and inventories have remained at high levels.²⁸ The witnesses for The Bay and Zellers reported that even exceptionally low prices and frequent promotions over this period were unable to bring sales volumes of portable file cases up to the levels of previous years. In the Tribunal's estimation, this seems to reflect, in part, the crowded nature of the home, school and office category of consumer products, as has already been alluded to earlier, and the displacement effect of competition from other substitute products.

In sum, based on the evidence submitted in this case, the Tribunal is persuaded that the repricing and repositioning of portable file cases which have occurred since 1991 were more or less inevitable consequences of the evolution of the home, school and office category of products within an increasingly competitive retail environment. In the Tribunal's opinion, the transition which took place would have occurred with or without Chinese portable file cases, although the pace and timing might have been somewhat different had Chinese portable file cases not entered in 1991. In connection with this transition, the Tribunal acknowledges that Anthes lost sales and experienced price erosion and suppression, as it has claimed. However, the Tribunal sees this as the inevitable byproduct of the changing circumstances in this market and the strategies which Anthes adopted (or failed to adopt) to confront its competition in the form of other suppliers of portable file cases, as well as suppliers of substitute products.

Finally, the Tribunal notes that the material injury suffered by Anthes over the period of inquiry was a function not only of price difficulties but also of cost difficulties. In particular, in 1995, paper costs, which account for the lion's share of material input costs in the production of portable file cases, rose dramatically, by as much as 50 percent over 1994, according to the witness for Anthes.²⁹ As this cost increase could not be passed on to retailers or consumers, in light of the market conditions which existed, it was undoubtedly a primary cause of the substantial losses reported by Anthes, especially in 1995. The severe impact of this cost increase was also alluded to by the witness for Acco as a major determinant in Acco's decision to cease importing from China and to look for a new source of supply with lower costs of production.³⁰

27. Importer's Exhibit B-1 at 8, Administrative Record, Vol. 13.

28. Protected Pre-Hearing Staff Report, March 27, 1996, Tribunal Exhibit NQ-95-005-7 (protected), Administrative Record, Vol. 2 at 22; and Importer's Exhibits B-15 and B-29 (protected), Administrative Record, Vol. 14.

29. Transcript of Public Hearing, Vol. 1, May 6, 1996, at 90.

30. Transcript of In Camera Session, Vol. 2, May 7, 1996, at 175.

The Tribunal notes that the witness for Anthes candidly indicated that this paper cost increase was a major impetus behind Anthes' decision to finally file its dumping complaint in late 1995.³¹ In the Tribunal's opinion, the timing of this action, combined with its lengthy period of inaction, again tends to suggest that, while Chinese portable file cases have undoubtedly hastened Anthes' deteriorating performance, Anthes' prime difficulties stem from factors other than dumping.

For the foregoing reasons, the Tribunal concludes that Anthes has not suffered material injury by reason of dumped Chinese portable file cases, but by reason of other factors.

Threat of Injury

As already noted, the market for portable file cases, as well as for other home, school and office supplies, has undergone profound changes in recent years. Clearly, wholesale and retail price competition for these products has become intense, and this competition is likely to continue unabated at least over the near term. It is, and has been, obviously a difficult environment for suppliers such as Anthes, whose principal product lines, such as portable file cases, are at the forefront of the competitive battles. It is apparent that Anthes has been unable to make the adjustments necessary to survive in the face of the new market realities. It has announced that it will have terminated all its Canadian operations by the time these reasons are issued, although Anthes' owner, Pelikan, Inc., is continuing efforts to sell Anthes. Whether or not Pelikan, Inc. is successful in its efforts, the Tribunal sees no change in circumstances in the immediate future which will create a threat of material injury from Chinese portable file cases where such imports have not caused material injury to the domestic industry in the past.

Retardation

The domestic producer suggested that it would be open to the Tribunal to find that dumping would materially retard the establishment of a domestic industry, in the event that domestic production of portable file cases was interrupted.³² Evidence tendered at the hearing was to the effect that domestic production was scheduled to cease in late May 1996.

Pursuant to section 42 of SIMA, the Tribunal shall make inquiry, *inter alia*, as to whether the dumping of the goods to which the preliminary determination applies "has caused ... retardation." Retardation is defined in subsection 2(1) of SIMA to mean "material retardation of the establishment of a domestic industry."

As is apparent from the wording of section 42 of SIMA, a claim of retardation must be with respect to an industry that is not yet established. It does not apply in the case of an established, albeit failing, enterprise, as is the case in this inquiry. Moreover, although the future of domestic production is unclear, SIMA does not contemplate an action based on threat of retardation.

31. Transcript of Public Hearing, Vol. 1, May 6, 1996, at 24.

32. In support of this argument, counsel for the domestic producer cited *Bicycle Tires and Tubes*, *supra* note 5.

CONCLUSION

For the reasons stated above, the Tribunal concludes that the dumping in Canada of portable file cases with handle, closing device and side walls capable of expansion and contraction originating in or exported from the People's Republic of China has not caused material injury or retardation to the domestic industry and is not threatening to cause material injury to the domestic industry.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Presiding Member

Raynald Guay

Raynald Guay
Member

Desmond Hallissey

Desmond Hallissey
Member