



Ottawa, Friday September 27, 1996

**Inquiry No.: NQ-96-001**

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

**REFILL PAPER, ALSO KNOWN AS FILLER PAPER OR LOOSELEAF PAPER, ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF INDONESIA, AND NOTEBOOKS WITH A COILED OR SPIRAL BINDING, ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF INDONESIA AND THE FEDERATIVE REPUBLIC OF BRAZIL**

**FINDINGS**

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 May 30, 1996, and of a final determination of dumping dated August 26, 1996, respecting the importation into Canada of refill paper, also known as filler paper or looseleaf paper, originating in or exported from the Republic of Indonesia, and notebooks with a coiled or spiral binding, originating in or exported from the Republic of Indonesia and the Federative Republic of Brazil.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds:

- a) that the dumping in Canada of refill paper, also known as filler paper or looseleaf paper, originating in or exported from the Republic of Indonesia, has not caused material injury to the domestic industry and is not threatening to cause material injury to the domestic industry; and
- b) that the dumping in Canada of notebooks with a coiled or spiral binding, originating in or exported from the Republic of Indonesia and the Federative Republic of Brazil, has not caused material injury to the domestic industry and is not threatening to cause material injury to the domestic industry.

Charles A. Gracey  
Charles A. Gracey  
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-96-001**

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: September 3 to 6, 1996  
  
Date of Finding: September 27, 1996  
  
Tribunal Members: Charles A. Gracey, Presiding Member  
Arthur B. Trudeau, Member  
Desmond Hallissey, Member  
  
Director of Research: Peter Welsh  
  
Lead Researcher: Simon Glance  
  
Economist: Ihn Ho Uhm  
  
Statistical Officer: Margaret Saumweber  
  
Counsel for the Tribunal: Joël Robichaud  
  
Registration and Distribution  
Officer: Joël J. Joyal  
  
**Participants:** William Brock  
David J. Shapiro  
for Fanco Products Canada Ltd.

**(Complainant)**

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

**(Importer)**

Gabby Green  
Merchandising Manager  
Sotal Ltd.

**(Importer)**

Allan H. Turnbull  
Paul D. Burns  
for PT. Pabrik Kertas Tjiwi Kimia

**(Exporter)**



Ottawa, Tuesday, October 15, 1996

**Inquiry No.: NQ-96-001**

**REFILL PAPER, ALSO KNOWN AS FILLER PAPER OR LOOSELEAF  
PAPER, ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF  
INDONESIA, AND NOTEBOOKS WITH A COILED OR SPIRAL BINDING,  
ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF INDONESIA  
AND THE FEDERATIVE REPUBLIC OF BRAZIL**

*Special Import Measures Act* - Whether the dumping of the above-mentioned goods has caused material injury 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 refill paper, also known as filler paper or looseleaf paper, originating in or exported from the Republic of Indonesia, has not caused material injury to the domestic industry and is not threatening to cause material injury to the domestic industry, and that the dumping in Canada of notebooks with a coiled or spiral binding, originating in or exported from the Republic of Indonesia and the Federative Republic of Brazil, has not caused material injury to the domestic industry and is not threatening to cause material injury to the domestic industry.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	September 3 to 6, 1996
Date of Finding:	September 27, 1996
Date of Reasons:	October 15, 1996
Tribunal Members:	Charles A. Gracey, Presiding Member Arthur B. Trudeau, Member Desmond Hallissey, Member
Director of Research:	Peter Welsh
Lead Researcher:	Simon Glance
Economist:	Ihn Ho Uhm
Statistical Officer:	Margaret Saumweber
Counsel for the Tribunal:	Joël J. Robichaud
Registration and Distribution Officer:	Joël J. Joyal
<b>Participants:</b>	William Brock David J. Shapiro for Fanco Products Canada Ltd.  <b>(Domestic Producer)</b>

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

**(Importer)**

Gabby Green  
Merchandising Manager  
Sotal Ltd.

**(Importer)**

Allan H. Turnbull  
Paul D. Burns  
for PT. Pabrik Kertas Tjiwi Kimia

**(Exporter)**

**Witnesses:**

Samuel Eidinge  
President  
Fanco Products Canada Ltd.

Harvey Eidinge  
Vice-President  
Fanco Products Canada Ltd.

Gordon B. Hicks  
Vice-President, Sales & Marketing  
Hilroy, A Mead Company

Gabby Green  
Merchandising Manager  
Sotal Ltd.

Jim Hale  
Divisional Merchandise Manager  
Stationery, Yarns, Books  
Hudson's Bay Company

Dan Bell  
Zellers Inc.

Rudy R. Tanoto  
Export Manager  
Stationery & Gift Product  
PT. Pabrik Kertas Tjiwi Kimia

Frank Varona  
Vice-President  
Vestwin Paper (Canada) Corporation

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K1A 0G7

Ottawa, Tuesday, October 15, 1996

**Inquiry No.: NQ-96-001**

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

**REFILL PAPER, ALSO KNOWN AS FILLER PAPER OR LOOSELEAF PAPER, ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF INDONESIA, AND NOTEBOOKS WITH A COILED OR SPIRAL BINDING, ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF INDONESIA AND THE FEDERATIVE REPUBLIC OF BRAZIL**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
ARTHUR B. TRUDEAU, Member  
DESMOND HALLISSEY, Member

**STATEMENT OF REASONS**

**BACKGROUND**

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*<sup>1</sup> (SIMA), has conducted an inquiry following the issuance by the Deputy Minister of National Revenue (the Deputy Minister) of a preliminary determination of dumping<sup>2</sup> dated May 30, 1996, and of a final determination of dumping<sup>3</sup> dated August 26, 1996, respecting the importation into Canada of refill paper, also known as filler paper or looseleaf paper, originating in or exported from the Republic of Indonesia (Indonesia), and of notebooks with a coiled or spiral binding, originating in or exported from Indonesia and the Federative Republic of Brazil (Brazil).

The issue of dumped and subsidized imports of refill paper from Brazil has been examined previously by the Tribunal. A finding of material injury was made by the Tribunal in Inquiry No. NQ-89-004<sup>4</sup> on July 6, 1990. On July 5, 1995, in Review No. RR-94-005,<sup>5</sup> the Tribunal continued the finding in respect of the dumping in Canada of refill paper originating in or exported from Brazil, but rescinded the finding in respect of the subsidizing of refill paper originating in or exported from Brazil.

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1. R.S.C. 1985, c. S-15.
  2. *Canada Gazette* Part I, Vol. 130, No. 24, June 15, 1996, at 1697.
  3. *Ibid.*, No. 37, September 14, 1996, at 2648.
  4. *Refill Paper, Also Known as Filler or Looseleaf Paper, Originating in or Exported from the Federative Republic of Brazil, Finding*, July 6, 1990, *Statement of Reasons*, July 23, 1990.
  5. *Ibid.*, *Order and Statement of Reasons*, July 5, 1995.

On May 30, 1996, the Tribunal issued a notice of commencement of inquiry.<sup>6</sup> As part of the inquiry, the Tribunal sent detailed questionnaires to the Canadian producers of refill paper and spiral-bound notebooks, to importers and purchasers of the subject refill paper and the subject notebooks and to sales agents, requesting production, financial, import and market information, as well as other information, covering the period from January 1, 1992, to March 31, 1996. 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 throughout the inquiry 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.

On August 30, 1996, the Tribunal convened a telephone conference to hear argument on two motions that had been filed by parties to the inquiry. Both motions were requests for orders directing certain parties to produce information. The motion filed by Fanco Products Canada Ltd. (Fanco) was denied on the basis that it was too broad and imprecise.<sup>7</sup> The motion filed by the Hudson's Bay Company (Hudson's Bay) was allowed on the basis that the information requested was relevant to Fanco's pricing structure of spiral-bound notebooks and its claims of material injury.<sup>8</sup>

Public and *in camera* hearings were held in Ottawa, Ontario, from September 3 to 6, 1996. Fanco, a domestic producer, Hudson's Bay, an importer, and PT. Pabrik Kertas Tjiwi Kimia (Tjiwi Kimia), an exporter were represented by counsel at the hearing. Sotal Ltd. (Sotal), an importer, was represented by its Merchandising Manager. In addition, the Vice-President, Sales & Marketing of Hilroy, A Mead Company (Hilroy) appeared as a witness at the hearing.

On September 27, 1996, the Tribunal issued findings that the dumping in Canada of refill paper, also known as filler paper or looseleaf paper, originating in or exported from Indonesia, had not caused material injury to the domestic industry and was not threatening to cause material injury to the domestic industry, and that the dumping in Canada of notebooks with a coiled or spiral binding, originating in or exported from Indonesia and Brazil, had not caused material injury to the domestic industry and was not threatening to cause material injury to the domestic industry.

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

### **Definition of the Subject Refill Paper and the Subject Notebooks**

#### Refill Paper

The Deputy Minister defined the subject refill paper as "[r]efill paper, also known as filler paper or looseleaf paper." The Deputy Minister provided additional product information in Appendix C to the statement of reasons for the preliminary determination. The Deputy Minister stated that refill paper is paper that is horizontally ruled or lined, with or without a vertically lined margin, or, alternatively, that is graph

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6. *Supra* note 2, No. 23, June 8, 1996, at 1634.

7. *Decision of the Tribunal*, August 30, 1996.

8. *Decision of the Tribunal*, August 30, 1996.

ruled or blank and that generally has three to five punched holes for insertion in a ring binder.<sup>9</sup> The Deputy Minister also stated that the subject refill paper can include refill paper in a “knocked-down” condition, that is, either in bulk or without holes and/or lines.

Furthermore, refill paper is sold in a wide variety of sizes, with different rulings and with various hole configurations, ranging from 3 in. x 5 in. to 8 1/2 in. x 14 in. The predominant size is 8 3/8 in. x 10 7/8 in.,<sup>10</sup> commonly referred to as 8 1/2 in. x 11 in., with horizontal lines and a vertical margin and punched with three holes for insertion in a ring binder. Refill paper comes in a wide variety of package sizes, ranging from 20 to 1,000 sheets per package. The most common is the 200-sheet package, accounting for approximately 80 percent of the total Canadian refill paper market in 1995.

### Spiral-Bound Notebooks

The Deputy Minister defined the subject notebooks as “notebooks with a coiled or spiral binding.” The Deputy Minister provided additional product information in Appendix C to the statement of reasons for the preliminary determination. The Deputy Minister stated that spiral-bound notebooks typically use the same paper and similar rulings as refill paper.<sup>11</sup> Printed covers and backing board are applied to hold the paper sheets together through the use of a spiral wire binding.

The Deputy Minister added that, until recently, most full-sized spiral-bound notebooks sold in Canada were the standard 8 1/2 in. x 11 in. notebooks. Since Hilroy was bought by Mead School & Office Products in late 1994, it has shifted its sales of spiral-bound notebooks from the 8 1/2 in. x 11 in. to the 8 in. x 10 1/2 in. format, which is the standard size sold in the US market. Another popular size is 6 in. x 9 in. When bound on the 9-in. side, the notebooks are ruled similarly to refill paper. When bound on the 6-in. side, they are usually ruled as steno books. Covers are usually made of printed paperboard or plastic of varying thicknesses and designs.

The Deputy Minister also stated that, with the evolution of more sophisticated bindery sections in newer production lines, manufacturers have been able to develop spiral-bound notebooks that incorporate several sheets or pockets to divide subject matter and that also include an extra front cover and inserts, which document selling features and organizational data. Some of these notebooks use plastic rather than cardboard covers and come in sizes up to 9 in. x 11 in.

There is a variety of smaller-sized spiral-bound notebooks that serve as agendas and all-purpose memo books. Sizes include 5 in. x 7 in., 4 in. x 6 in. and 3 in. x 5 in. Spiral-bound notebooks contain 40 sheets (80 pages) to 200 sheets (400 pages) per book, in all sizes.

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9. Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, August 26, 1996, Tribunal Exhibit NQ-96-001-4, Administrative Record, Vol. 1 at 62.20.

10. In the United States, the predominant size is 8 in. x 10 1/2 in.

11. *Supra* note 9.

## **DOMESTIC PRODUCERS**

There are three firms that produce refill paper and spiral-bound notebooks in Canada. Fanco was established in 1943 and began manufacturing paper products, including refill paper and spiral-bound notebooks, at its Montréal, Quebec, plant around 1969. Most of Fanco's production is sold to mass merchandisers. Refill paper is the principal component in Fanco's back-to-school stationery program.

Hilroy, located in Toronto, Ontario, was founded in 1918 and has been manufacturing refill paper for over 60 years. It supplies a wide range of other products, including spiral-bound notebooks. Its other products include stitched exercise books, brief covers, index dividers, steno books, ring binders, clipboards, memo books and pads. In 1990, Hilroy operated as a division of Abitibi-Price Inc., which purchased it in 1968 from the Hill family. In November 1994, Hilroy was purchased by Mead School & Office Products, located in Dayton, Ohio.

Spiral Paper Products, Division of Belt Manufacturing Limited (Spiral), was established in 1981. Its production facilities are located in Mississauga, Ontario. Originally, it marketed its products primarily through contract sales to school boards. To this end, refill paper was an important part of the sales mix. In about 1992, Spiral's marketing focus changed from making contract sales to selling through price lists to retailers. In this market, refill paper and spiral-bound notebooks have become minor items in Spiral's production mix.

## **EXPORTERS AND IMPORTERS**

In the final determination of dumping, the Deputy Minister identified one exporter of the subject refill paper and the subject notebooks from Indonesia, Tjiwi Kimia. Tjiwi Kimia produces its own tablet paper and is the leading manufacturer of writing paper, printing paper and stationery in Indonesia. It is vertically integrated with PT. Indah Kiat Pulp & Paper Corporation and PT. Lantar Papyrus Pulp & Paper Industry, which supply Tjiwi Kimia with pulp. All three companies are members of the Sinar Mas Group, one of Indonesia's largest business groups. Tjiwi Kimia is represented in Canada by Vestwin Paper (Canada) Corporation, which acts as its sales agent.

The Deputy Minister identified three exporters of the subject notebooks from Brazil: Caderbras Produtos de Papel S.A., Industria Gráfica Jandaia Ltda. and Tilibra S.A. Industria Grafica. The Deputy Minister's investigation also identified three importers of the subject refill paper and the subject notebooks from Indonesia: Hilroy, Hudson's Bay and Zellers Inc. (Zellers). Six importers of the subject notebooks from Brazil were identified: Hilroy, Kmart Canada Limited, Liberty Home Products Corp., Long Island Distributing Co., Rotex Canada Inc. and Sotal.

Table 1 presents the results of the Deputy Minister's investigation which covered the 14-month period from January 1, 1995, to February 28, 1996. During the period of investigation, 63 percent of exports of the subject refill paper to Canada were found to be dumped. It was estimated that 67 percent of the subject notebooks exported to Canada from Indonesia and Brazil were dumped.



<b>Country</b>	<b>Exporter</b>	<b>Product</b>	<b>Margin of Dumping (% of normal value)</b>
Indonesia	PT. Pabrik Kertas Tjiwi Kimia	Refill Paper	3.3
		Notebooks	2.4
	Other	Refill Paper	-
		Notebooks	-
Brazil	Caderbras Produtos de Papel S.A.	Notebooks	84.7
	Industria Gráfica Jandaia Ltda.	Notebooks	57.5
	Tilibra S.A. Industria Grafica	Notebooks	84.7
	Other	Notebooks	-

Source: Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, August 26, 1996, Tribunal Exhibit NQ-96-001-4, Administrative Record, Vol. 1 at 62.13-62.15.

## **POSITION OF PARTIES**

### **Fanco**

Counsel for Fanco argued that Hilroy should be excluded from the definition of the domestic industry for refill paper and spiral-bound notebooks for purposes of the Tribunal's injury inquiry on the bases that Hilroy imported the subject refill paper and the subject notebooks at dumped prices and that Fanco, on its own, represents a major proportion of total production of like goods. Counsel argued that the economic indicators clearly show that Fanco has suffered material injury caused by the dumping of both the subject refill paper and the subject notebooks. Counsel argued that the dumped imports from Indonesia and Brazil have caused material injury and are threatening to cause material injury to the domestic industry. They noted that it does not have to be shown that the dumping was the sole cause, the principal cause or even the major cause of injury. Rather, it must be shown that the dumping is a cause of injury. Counsel relied on the evidence which showed that Zellers, which is the largest buyer of refill paper in Canada, is aggressive in its negotiation of prices and shops the world for the best price. According to counsel, the evidence shows that Zellers has used Indonesian prices as leverage to obtain a better price from domestic producers and that this is evidence of injury.

Furthermore, the fact that Zellers bought from Indonesia in 1995 and 1996 makes Indonesia the incumbent. As a result, it has an advantage which, counsel for Fanco argued, will harm the domestic industry. The Indonesian price, which, counsel argued, is likely to be a dumped price, will be the "benchmark" price from which domestic prices will be set. In addition, the evidence shows that Indonesian manufacturers have the capacity to produce more subject refill paper and subject notebooks and, therefore, have greater flexibility in setting prices, especially if they get the orders early. The witness for Zellers testified

that the company's intention was to do just that. As such, counsel argued that Indonesia would have an advantage. Counsel argued that Zellers is the industry leader and that, if Zellers buys from Indonesia, other retailers in Canada are likely to do the same. Counsel argued that refill paper is a commodity product, making price and not brand name the most important factor in any sale. According to counsel, the evidence shows that Fanco makes a quality product and is a good competitor. Nonetheless, the evidence shows that Fanco has experienced a disastrous and traumatic loss of market.

Counsel for Fanco argued that there is positive evidence that Indonesian manufacturers have announced their intention to penetrate the Canadian market. For example, they have moved their offices from Vancouver, British Columbia, to Toronto, home of most major Canadian retail chains. According to counsel, the evidence shows that Indonesian manufacturers have the capacity to produce more subject refill paper and subject notebooks and that their intention is to increase their exports to Canada. In an *in camera* session, counsel argued that Indonesian manufacturers could not remain competitive in the Canadian market if anti-dumping duties were assessed against their exports to Canada.

Counsel for Fanco also reviewed the allegations of lost sales and price suppression relating to the Indonesian sale of dumped refill paper to Hilroy in 1994 and the Indonesian sale of refill paper to Zellers in 1996. Counsel argued that the sale to Hilroy caused injury to Fanco and that the sale to Zellers is threatening to cause injury to Fanco. Counsel attempted to show that, if the sale to Hilroy had been at undumped prices, Hilroy would never have bought the product, thereby creating more business opportunity for Fanco. With respect to the sale to Zellers, counsel attempted to show that it too was made at a dumped price. Counsel argued that, if Tjiwi Kimia had properly bid for the 1996 sale to Zellers, it would not have got the business and that this sale represented a direct lost sale for Fanco. Counsel went through a similar exercise with respect to direct sales of spiral-bound notebooks by Tjiwi Kimia in the Canadian market.

Counsel for Fanco argued that, where there is a price gap, the Tribunal does not have to find that the amount of dumping corresponds to the amount of the entire gap. All the Tribunal has to find is that, without the dumping, the price gap would narrow. Counsel referred to the Tribunal's decision in Inquiry No. NQ-93-006<sup>12</sup> in support of this argument. Counsel argued that, in the present inquiry, the amount of dumping is in excess of the amount of the price gap. Counsel also referred to the Tribunal's decision in Inquiry No. NQ-93-007<sup>13</sup> in support of the argument that the dumping is creating a "leapfrog" effect on prices in the Canadian market.

### **Hudson's Bay**

Counsel for Hudson's Bay argued that counsel for Fanco's attempt to show that the 1996 sale of refill paper by Tjiwi Kimia to Zellers was made at a dumped price was both misleading and confusing. Counsel for Hudson's Bay listed the factors that are normally taken into account by the Department of

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12. *Black Granite Memorials of All Sizes and Shapes and Black Granite Slabs in Thicknesses Equal to or Greater than Three Inches, Originating in or Exported from India, Finding, July 20, 1994, Statement of Reasons, August 4, 1994.*

13. *Certain Corrosion-Resistant Steel Sheet Products, Originating in or Exported from Australia, Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden, the United Kingdom and the United States of America, Finding, July 29, 1994, Statement of Reasons, August 15, 1994.*

National Revenue in calculating a dumping margin to illustrate that counsel for Fanco's calculation was wrong. Counsel for Hudson's Bay submitted that any arguments made by counsel for Fanco that were based on this calculation should, therefore, be ignored by the Tribunal.

Counsel for Hudson's Bay agreed with counsel for Fanco that Hilroy should be excluded from the definition of the domestic industry for both refill paper and spiral-bound notebooks and that Fanco, on its own, represents a major proportion of the domestic industry for both these products. Counsel conceded that Fanco has suffered material injury. However, counsel argued that there is no causal link between the dumping and the material injury. Referring to subsection 42(3) of SIMA and previous decisions of the Tribunal and its predecessors, counsel argued that the Tribunal does not have to cumulate dumped imports of the subject notebooks from Brazil and Indonesia. The Tribunal can assess the impact of the dumped imports from Brazil separately from the impact of the dumped imports from Indonesia. Counsel submitted, however, that, if the Tribunal does cumulate, it should still make a finding that the dumping has not caused and is not threatening to cause material injury to the domestic industry.

In the case of Brazil, counsel for Hudson's Bay argued that, although the dumping margins were high, they did not have any significant impact on the domestic market for spiral-bound notebooks. Counsel pointed to the evidence which shows that Brazilian products appear to serve a different market from that for the goods produced by Fanco. Counsel listed the factors which, they argued, have caused material injury to Fanco. The first is self-infliction. In this category, counsel included: (1) Fanco's costs, which were too high; (2) Fanco's distribution of Chinese spiral-bound notebooks; (3) Fanco's failure to deal with Indonesian manufacturers and to establish a proper relationship with them; (4) a lack of long-term planning on the part of Fanco in the 1990s; (5) Hilroy's brand name recognition; and (6) poor customer relations or the lack of responsiveness on the part of Fanco to quote on a timely basis when it received requests from both The Bay and Zellers. Other factors include intense North American and domestic competition, US competitive prices and costs and the impact of Indonesian competition, i.e. the fact that most of Indonesia's exports were found to be undumped. Counsel acknowledged that Indonesia did make inroads on the Canadian market during the period of inquiry; however, it did so at undumped prices. According to counsel, this was primarily due to low costs of production. Another factor that has caused material injury to the domestic industry is the declining markets for both refill paper and spiral-bound notebooks. Counsel also made reference to Fanco's loss of a major export account as a cause of its injury.

With respect to threat of injury, counsel for Hudson's Bay noted that, in order for Fanco to succeed, it needs much higher price increases than would be reflected in the margins of dumping. Fanco needs the volume more than it needs a higher price. Counsel submitted that, with or without Indonesia, competition will be severe, and prices will remain low. Another important factor is that, in the future, Hilroy is going to purchase from its US-based parent company and not from Indonesia. According to counsel, in order for Fanco to succeed, it needs to remove the self-inflicted injury. Counsel also referred to the evidence which shows that Indonesian manufacturers are targeting markets other than Canada.

### **Tjiwi Kimia**

Counsel for Tjiwi Kimia argued that the Tribunal must keep in mind the fact that Tjiwi Kimia's sales of refill paper to Zellers, the largest single domestic account, were made at undumped prices. The same applies to sales made to The Bay. Another important factor that the Tribunal must take into account is the low margins of dumping on exports of the subject refill paper and the subject notebooks from Indonesia.

Counsel argued that the dumping of refill paper from Indonesia has not caused and is not threatening to cause material injury to the domestic industry. The same argument was made with respect to spiral-bound notebooks from Indonesia. Counsel argued that any injury that may have been suffered by Fanco was caused by factors other than dumping. Counsel referred to subsection 37.1(3) of the *Special Import Measures Regulations*<sup>14</sup> (the Regulations) which sets out a list of other factors that the Tribunal may find are causing material injury to a domestic industry. One of those factors is the volumes and prices of imports of like goods that are not dumped. Counsel submitted that any injury caused by this factor and others that are listed in subsection 37.1(3) of the Regulations must not be attributed to dumping. Another factor that the Tribunal must take into account is the magnitude of the margins of dumping, which, in the present inquiry, are very low with respect to Indonesia. This factor is listed in Article 3.4 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of GATT 1994*<sup>15</sup> (the WTO Anti-dumping Agreement).

Counsel for Tjiwi Kimia acknowledged that Tjiwi Kimia made some inroads on the Canadian market, but argued that these inroads were a result of factors other than dumping. It was submitted that Indonesian manufacturers have competitive advantages over Fanco in the production of the subject refill paper and the subject notebooks. These include lower labour and equipment costs, virtually no inventory of raw materials, very low inventory costs on export sales since these orders are produced on demand and low raw material costs. Counsel noted that Tjiwi Kimia is part of a strong, vertically integrated group that is involved in every aspect of paper production, from the forest concessions to the manufacture of pulp to the manufacture of tablet paper and stationery products. As a result, Tjiwi Kimia enjoys a relatively high degree of insulation from the cyclical nature of world pulp and tablet paper prices, from which Fanco, for example, would not benefit.

Counsel for Tjiwi Kimia also argued that the injury to Fanco was due, in part, to ineffective business strategies, in particular, in respect of purchases of tablet paper. This and other factors caused Fanco's cost of goods sold to be higher than that of other domestic and foreign producers. Counsel referred to Fanco's loss of export sales of refill paper and spiral-bound notebooks to the United States as a cause of its injury. Another factor was the purchase by Fanco of new equipment, thereby doubling its production capacity at the same time that it was losing volume in the United States. Counsel also referred to the structural changes in the domestic market for refill paper and spiral-bound notebooks, for example, the diminishing role of wholesalers and the change in the nature of retailers. Another important factor is the fact that Zellers has focused on highly recognized brand names. All these structural changes have caused consumers to expect lower prices for refill paper and spiral-bound notebooks. Consumers want quality or value at a reasonable price. Counsel argued that Hilroy did not disrupt the domestic market for refill paper or spiral-bound notebooks. The same argument was made with respect to the impact of Brazilian imports.

With respect to threat of injury, counsel for Tjiwi Kimia referred to subsection 2(1.5) of SIMA which provides that the dumping shall not be found to be threatening to cause injury unless the circumstances in which the dumping of goods would cause injury are clearly foreseen and imminent. There must be a real threat of injury. The threat of injury must not be based on speculation or conjecture. Counsel submitted that Tjiwi Kimia does not pose any threat of injury. The evidence is clear that the corporate objective of Tjiwi Kimia is to make reasonable returns and that it cannot do that in the Canadian market.

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14. SOR/95-26, December 20, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 80.

15. Signed at Marrakesh on April 15, 1994.

Furthermore, Tjiwi Kimia has capacity constraints in its peak season, which is the same peak season as the domestic industry. As a result, Tjiwi Kimia has to allocate its production capacity during that period. Tjiwi Kimia did not sell any of the subject refill paper or the subject notebooks to Hilroy in 1996. Hilroy has no intention to buy from Tjiwi Kimia in the future. There is, therefore, no threat of injury from Indonesian manufacturers.

## ANALYSIS

Pursuant to section 42 of SIMA, as amended by the *World Trade Organization Agreement Implementation Act*<sup>16</sup> (the WTO Implementation Act), the Tribunal is required to “make inquiry ... as to whether the dumping or subsidizing of the goods [to which the preliminary determination applies] has caused injury ... or is threatening to cause injury.”<sup>17</sup> In the present case, the preliminary determination of dumping identified two distinct products: refill paper and spiral-bound notebooks. The Tribunal must, therefore, conduct two separate analyses. The Tribunal must inquire into whether the dumping of refill paper from Indonesia has caused material injury to the domestic industry for refill paper and whether the dumping of spiral-bound notebooks from Brazil and Indonesia has caused material injury to the domestic industry for spiral-bound notebooks.

It is well established that the definition of the subject goods is the responsibility of the Deputy Minister. In some cases, however, there may be difficulties in identifying the subject goods. When this occurs, the Tribunal must endeavour to ascertain the meaning of the words to determine the scope of its inquiry. This, of course, does not result in a redefinition of the subject goods.<sup>18</sup> During the hearing, counsel for Hudson’s Bay argued that there was some ambiguity regarding the meaning to be attributed to the words “refill paper.” To clarify the issue, the Tribunal heard testimony from the witnesses for Fanco and received submissions from counsel for Hudson’s Bay, for Tjiwi Kimia and for Fanco. The Tribunal also consulted information in the responses to the questionnaires. In addition, the Tribunal consulted Appendix C to the statement of reasons for the preliminary determination of dumping. In light of the foregoing, the Tribunal issued the following ruling:

[T]he Tribunal is of the opinion that the Preliminary Determination applies to refill paper that is horizontally ruled or lined, with or without a vertically-lined margin or that is graph ruled or blank and that has holes punched along the left margin for insertion into a ring binder.

Refill paper can come in a variety of sizes, ranging from as small as three inches by five inches and up to eight and a half by fourteen inches and can be sold in a variety of package sizes, commonly ranging from 20 to 1,000 sheets per polywrapped package.

Paper stock used to produce refill paper is generally referred to as exercise or tablet paper, which is a 15-pound paper. Refill paper can be imported in a “knocked down” condition, i.e. cut sheets of various sizes.

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16. S.C. 1994, c. 47.

17. For a more detailed discussion of the Tribunal’s views on the impact of the amendments to SIMA, see *Caps, Lids and Jars Suitable for Home Canning, Whether Imported Separately or Packaged Together, Originating in or Exported from the United States of America*, Inquiry No. NQ-95-001, *Finding*, October 20, 1995, *Statement of Reasons*, November 6, 1995.

18. See, for example, *DeVilbiss (Canada) Ltd. v. Anti-dumping Tribunal*, [1983] 1 F.C. 706.

The Tribunal is of the opinion that the preliminary determination does not apply to computer paper, which is fan-fold paper produced with tractor feed perforations along both left and right margins.

Copy paper which is made from 20-pound paper or typewriter paper. Explanation: Even though refill paper imported without holes would be covered, the evidence shows that typewriter paper is not treated as or considered to be refill paper.<sup>19</sup>

(Emphasis added)

“Injury” is defined in subsection 2(1) of SIMA as “material injury to a domestic industry.” “Domestic industry” is defined, subject to certain exceptions, 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.” In arriving at its decision, the Tribunal must, therefore, determine which domestically produced goods are “like goods” to the subject refill paper and which domestically produced goods are “like goods” to the subject notebooks. Subsequently, the Tribunal must identify the domestic producers of the like goods that constitute the “domestic industry” for refill paper and the domestic producers of the like goods that constitute the “domestic industry” for spiral-bound notebooks.

The Tribunal must then determine whether the domestic industry has suffered material injury and whether there is a causal link between the material injury and the dumping. In the event that the Tribunal makes findings of no injury, it must go on to consider the evidence relating to threat of injury and make findings in respect of that question.

### **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 shows that domestically produced refill paper and spiral-bound notebooks are identical in all respects to the subject refill paper and the subject notebooks, respectively. As such, for purposes of this inquiry, the Tribunal finds that refill paper produced by the domestic industry constitutes like goods to refill paper from Indonesia and that spiral-bound notebooks produced by the domestic industry constitute like goods to spiral-bound notebooks from Brazil and Indonesia.

### **DOMESTIC INDUSTRY**

As stated earlier, subparagraph 42(1)(a)(i) of SIMA provides that the Tribunal shall inquire into whether the dumping of the goods to which the preliminary determination applies has caused injury or is threatening to cause injury. The term “injury” is defined in subsection 2(1) of SIMA as “material injury to a domestic industry.” The term “domestic industry” is defined in subsection 2(1) of SIMA<sup>20</sup> as follows:

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19. *Transcript of Public Session*, Vol. 3, September 5, 1996, at 347-49.

20. This definition incorporates Article 4.1 of the WTO Anti-dumping Agreement and Article 16.1 of the *WTO Agreement on Subsidies and Countervailing Measures*, signed at Marrakesh on April 15, 1994.

“domestic industry” means, other than for the purposes of section 31 and subject to subsection (1.1), the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

The Tribunal must, therefore, assess injury against the domestic producers as a whole, or those domestic producers whose production represents a major proportion of the total production of like goods. In the present inquiry, as two distinct products have been defined, the Tribunal must identify the domestic producers that make up the domestic industry for refill paper and the domestic producers that make up the domestic industry for spiral-bound notebooks.

At the beginning of the hearing and before counsel presented their arguments, the Tribunal indicated that it would hear representations on whether Hilroy, a domestic producer of both refill paper and spiral-bound notebooks that imported dumped goods, should be excluded from the definition of the domestic industry for purposes of conducting the Tribunal’s injury inquiry. Counsel for Fanco argued and counsel for Hudson’s Bay and for Tjiwi Kimia conceded that Hilroy should be excluded from the definition of the domestic industry for both refill paper and spiral-bound notebooks on the basis that it imported dumped goods.

The wording of the definition of “domestic industry” in subsection 2(1) of SIMA is almost identical to the wording of paragraph 1 of Article 4 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*<sup>21</sup> (the GATT Anti-Dumping Code), which the Tribunal was required to consider in defining the domestic industry for the purposes of an inquiry prior to the amendments to SIMA resulting from the WTO Implementation Act.<sup>22</sup>

The definition of “domestic industry” in subsection 2(1) of SIMA uses the word “may,” thereby indicating that it is within the Tribunal’s discretion to exclude, or not to exclude, those producers that are related to exporters or importers or that are themselves importers of the dumped goods. It is a well-established principle of administrative law that discretion must be exercised in good faith and in such a way as to promote the policy and objects of the act in which that discretion is found.<sup>23</sup>

In Review No. RR-94-003,<sup>24</sup> the Tribunal found that there were no compelling reasons for excluding any of the domestic producers from the definition of “domestic industry” for boots. In making this finding, the Tribunal noted that total sales from imports of the subject goods from the subject countries by

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21. Geneva, March 1980, GATT BISD, 26th Supp. at 171.

22. See former subsection 42(3) of SIMA.

23. See, for example, *Roncarelli v. Duplessis*, [1959] S.C.R. 121; and *Maple Lodge Farms v. Government of Canada*, [1982] 2 S.C.R. 2.

24. *Women’s Leather Boots and Shoes Originating in or Exported from Brazil, the People’s Republic of China and Taiwan; Women’s Leather Boots Originating in or Exported from Poland, Romania and [the Former] Yugoslavia; and Women’s Non-Leather Boots and Shoes Originating in or Exported from the People’s Republic of China and Taiwan*, Canadian International Trade Tribunal, *Order and Statement of Reasons*, May 2, 1995.

domestic producers represented less than 2 percent of domestic producers' total sales and only 3 percent of total sales from imports of the subject boots in 1993. In the Tribunal's view, such volumes were not significant.<sup>25</sup> The Tribunal notes that the question of requests for exclusion of producers on the grounds that they were importers of the dumped goods was raised by counsel for importers and exporters.

The Tribunal made a similar finding with respect to shoes, where total sales from imports of the subject goods from the subject countries by domestic producers represented less than 13.0 percent of domestic producers' total sales and less than 4.5 percent of total sales from imports of the subject shoes in 1993.<sup>26</sup> The evidence also showed that Brown Shoe Company of Canada, Ltd., a domestic producer, imported the subject shoes to complement its Naturalizer line and, in part, to defend its position in the marketplace against other imported lines.<sup>27</sup> The evidence also showed that Tender Tootsies Ltd., another domestic producer, began importing shoes at about the time of the 1990 findings respecting dumped shoes, partly for defensive reasons relating to the subject imports from the People's Republic of China (China). Further, these imports were, for the most part, directed at a particular market segment in which there was almost no other competition from domestic production.<sup>28</sup>

In Inquiry No. ADT-15-83,<sup>29</sup> a decision of the Anti-dumping Tribunal (the ADT), the evidence showed that the industry represented by its trade association consisted of producers that, between them, were responsible for 72 percent of "the production in Canada of like goods." There were, however, a number of producers outside this collectivity that were mainly subsidiaries of companies exporting from the three countries named in the preliminary determination of dumping or that were importers of the dumped goods. Counsel for the trade association requested that the latter companies be excluded in the ADT's assessment of injury to an industry. The request was based on Article 4 of the GATT Anti-Dumping Code. The ADT stated the following:

A decision on this request was reserved, the [ADT] being of the opinion that the decision could only be made when all the evidence was in. While only some 10 per cent of all lenses imported during the period of investigation were effected by certain Canadian producers, the importance of the request lies in the fact that this volume of dumped imports is equal to 20 per cent of total Canadian production for the same period. Not to exclude these producers would be tantamount to concluding that an important part of the industry concerned could be said to be inviting injury.

The [ADT] has accepted, for the purposes of determining whether injury has been inflicted on "the production in Canada of like goods", the collective production of the four original complainants, namely, Freflex, Tru-Flex, Dominion and Trans-Canada, together with the production of PCL, by far the largest manufacturer in Canada, as well as that of Les Laboratoires Blanchard and CCCL. All of these producers testified as to their perception of activities in the marketplace and were unanimous in seeking the protection of anti-dumping measures. While PCL, Les Laboratoires Blanchard

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25. *Ibid.* at 17. See, also, *supra* note 12.

26. *Supra* note 24 at 17.

27. *Ibid.*

28. *Ibid.* at 17-18.

29. *Optical Contact Lenses, Namely, Soft, Hard, Gas-Permeable, Toric and Bifocal Lenses, but Excluding Intraocular Lenses that are Surgically Implanted in the Human Eye, Originating in or Exported from the United States of America, the United Kingdom of Great Britain and Northern Ireland, and the Republic of Ireland*, Anti-dumping Tribunal, *Finding and Statement of Reasons*, March 27, 1984.



and CCCL were not complainants at the time the complaint was lodged with Revenue Canada and produced between them considerably more than the combined output of the four complainants themselves, the [ADT] attaches no significance to this. As a general rule the [ADT] is concerned with injury to Canadian production as a whole not simply to the production of original complainants.<sup>30</sup>

In the present inquiry, the evidence shows that Hilroy imported 100 percent of the subject refill paper that was found to be dumped by the Deputy Minister and approximately 70 percent of the subject notebooks that were also found to be dumped by the Deputy Minister. The evidence also shows that, in 1995, Hilroy's total sales from imports of refill paper from Indonesia represented 39 percent of its total sales of refill paper.<sup>31</sup> In addition, the evidence shows that, in 1995, Hilroy's total sales from imports of spiral-bound notebooks from Indonesia and Brazil represented 77 percent of its total sales of spiral-bound notebooks.<sup>32</sup>

The evidence shows that Hilroy's decision to outsource a portion of its supply of refill paper or spiral-bound notebooks was made on the basis of factors such as material shortages, the ability to make certain products or the capacity to stock products in inventory.<sup>33</sup> Although Hilroy's reasons for importing instead of producing certain goods may have been justified, the Tribunal is of the opinion that the above-noted percentages are too significant to consider Hilroy part of the domestic industry for purposes of the present inquiry. The Tribunal finds that Hilroy's volumes of imports of the subject refill paper and the subject notebooks are not only significant expressed as a percentage of Hilroy's total sales but also significant when expressed as a percentage of total sales of refill paper and spiral-bound notebooks respectively.<sup>34</sup> The Tribunal notes that, in the present inquiry, to exclude Hilroy from the definition of "domestic industry" does not deny the existence of a domestic industry.

Furthermore, it is important to note that the decision to exclude Hilroy from the definition of "domestic industry" does not, in any way, deny the fact that Hilroy was, throughout the period of inquiry, an important producer of like goods. For example, in 1995, when most of the dumped goods were imported, 58 percent of Hilroy's total sales of refill paper were from domestic production.<sup>35</sup> Similarly, in 1995, 11 percent of Hilroy's total sales of spiral-bound notebooks were from domestic production.<sup>36</sup>

Having excluded Hilroy from the definition of the domestic industry for purposes of its injury inquiry, the Tribunal finds that Fanco and Spiral represent the domestic industry for refill paper and for spiral-bound notebooks, and herewith all references to the domestic industry will mean Fanco and Spiral.

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30. *Ibid.* at 9.

31. *Protected Pre-Hearing Staff Report*, July 22, 1996, Tribunal Exhibit NQ-96-001-7 (protected), Administrative Record, Vol. 2 at 34.

32. *Ibid.* at 39.

33. *Transcript of Public Session*, Vol. 2, September 4, 1996, at 274.

34. *Protected Pre-Hearing Staff Report*, July 22, 1996, Tribunal Exhibit NQ-96-001-7 (protected), Administrative Record, Vol. 2 at 34 and 39.

35. *Ibid.* at 34.

36. *Ibid.* at 39.

## CUMULATION

The Deputy Minister made a preliminary determination that spiral-bound notebooks originating in or exported from Brazil had been dumped in Canada. As noted earlier, subsection 42(1) of SIMA provides that the Tribunal shall make inquiry as to whether the dumping of the goods to which the preliminary determination applies has caused injury or is threatening to cause injury.

Prior to the amendments made to SIMA as a result of the WTO Implementation Act, SIMA did not provide the Tribunal with the express statutory authority to make cumulative assessments of the effects of the importation of dumped or subsidized goods. Nevertheless, it has been the Tribunal's practice, in inquiries which included goods from more than one source, to make cumulative assessments of the effects of imports of all the subject goods on the domestic industry.<sup>37</sup> One of the amendments made to SIMA as a result of the WTO Implementation Act was the addition of subsection 42(3), which provides the Tribunal with the discretion to make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the preliminary determination applies. Subsection 42(3) of SIMA provides as follows:

- (3) In making or resuming its inquiry under subsection (1), the Tribunal may make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the preliminary determination applies that are imported into Canada from more than one country if
- (a) the margin of dumping or the amount of the subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and
  - (b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and
    - (i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or
    - (ii) like goods of domestic producers.

The words "insignificant" and "negligible" are defined, in part, in subsection 2(1) of SIMA as follows:

"insignificant" means,

- (a) in relation to a margin of dumping, a margin of dumping that is less than two per cent of the export price of the goods,

"negligible" means, in respect of the volume of dumped goods of a country,

- (a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods.

In the present inquiry, the evidence shows that the margin of dumping of spiral-bound notebooks from both Brazil and Indonesia was more than 2 percent of the export price of the goods. The evidence also shows that the volume of dumped goods from Brazil is more than 3 percent of the total volume of goods that were released into Canada from both Brazil and Indonesia. Similarly, the evidence shows that the volume of

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37. See, for example, *Polyphase Induction Motors Originating in or Exported from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America* (1989), 1 T.T.R. 58, Canadian International Trade Tribunal, Inquiry No. CIT-5-88, *Finding*, April 28, 1989, *Statement of Reasons*, May 12, 1989; and *supra* note 13.

dumped goods from Indonesia is more than 3 percent of the total volume of goods that were released into Canada from both Brazil and Indonesia. Finally, the evidence shows that dumped goods from Brazil and Indonesia compete against each other and also with the like goods of domestic producers. For these reasons, the Tribunal does not see any reason why it should not cumulate the dumped imports of spiral-bound notebooks from Brazil and Indonesia. Thus, in the analysis which follows, the Tribunal has made an assessment of the cumulative effect of the dumped imports of spiral-bound notebooks from Brazil and Indonesia.

## **INJURY**

Subsection 37.1(1) of the Regulations prescribes certain factors that the Tribunal may consider when determining whether a domestic industry is being materially injured by dumped or subsidized imports. These factors include: the volume of dumped or subsidized goods and their effect on prices in the domestic market for like goods; and the consequent impact of these imports on the state of the domestic industry. When examining the impact of the imports, the Tribunal considers the relevant economic factors, which, in this case, include actual or potential declines in output, sales, market share, profits and utilization of industrial capacity.

The Tribunal must determine whether there is a causal relationship between the dumped imports and any material injury that may have been suffered by the domestic industry. The Tribunal was guided by subsection 37.1(3) of the Regulations and, in this particular case, those factors pertaining to the volume and prices of imports that were not dumped, changes in the level of demand for the subject refill paper and the subject notebooks or like goods and the export performance of the domestic industry in respect of like goods.

### **Refill Paper**

The Tribunal's consideration of the industry's performance and whether dumped imports of refill paper from Indonesia have caused injury starts with an analysis of trends in the market for refill paper. The Tribunal then looked at the industry's allegations of injury from Indonesian imports. The analysis includes an assessment of all the factors that have affected the industry's performance and, in particular, imports from Indonesia, as well as the fact that not all of those imports were found to be dumped. The Tribunal also observes that Fanco accounted for almost all of the domestic industry's domestic sales from domestic production and that nearly all of the evidence considered pertaining to the domestic industry relates to Fanco's activities.

The relevant economic indicators considered by the Tribunal are shown in Table 2. The table shows actual figures for the volume and value of the apparent market. Due to the confidentiality of the remaining statistics, they are presented as indices, with the value for 1992 equal to 100. The Tribunal has not looked at these indicators in isolation. It has attempted to understand any interrelationships among them and especially to place them in context, recognizing the market dynamics during the inquiry period.

**Table 2**  
**REFILL PAPER**  
**SELECTED ECONOMIC INDICATORS**  
**(1992 = 100)**

	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>
<b>Total Market</b>				
Volume (000 sheets)	4,080,781	3,381,456	3,405,834	2,388,973
Value (\$000)	19,080	14,839	14,469	18,893
<b>Production</b>				
Domestic Industry	100	84	70	31
Other Producer	100	69	127	62
<b>Exports</b>	100	187	385	123
<b>Sales from Production</b>				
Domestic Industry	100	77	59	27
Other Producer	100	83	145	64
<b>Sales from Imports</b>				
Indonesia				
Domestic Industry	-	-	-	-
Other Producer	100	230	30	280
Direct Imports	100	24	-	356
Non-Subject Countries	100	1	45	30
<b>Financial</b>				
Domestic Industry				
Gross Margin	100	23	(106)	21
Net Income Before Taxes	100	(275)	(290)	(179)
Other Producer				
Gross Margin	100	76	26	131
Net Income Before Taxes	(100) <sup>1</sup>	259	(185)	451

1. Denotes a loss in 1992.

The domestic market for refill paper declined significantly between 1992 and 1995, the Tribunal's period of inquiry. Total sales of refill paper in Canada fell by 17 percent in 1993 and by a further 30 percent in 1995.<sup>38</sup> The Tribunal and counsel questioned witnesses on what might have accounted for this substantial contraction of the domestic market for refill paper. Their testimony and other evidence suggest that, at least during the Tribunal's period of inquiry, the Canadian market for refill paper may have been undergoing a structural decline.

38. *Protected Pre-Hearing Staff Report*, July 22, 1996, Tribunal Exhibit NQ-96-001-7 (protected), Administrative Record, Vol. 2 at 25.

Witnesses referred to the increased use of computers for both note taking and report writing and declining student populations as possible factors causing the decline in the market. They also cited possible excess purchasing of refill paper at low loss-leader prices offered by some retailers in earlier years, which may have led to a carry-over of refill paper by consumers in subsequent years. The 1995 back-to-school season was marked by significantly higher wholesale prices for refill paper because of the higher cost of tablet paper, which accounts for most of the cost of production of refill paper. Retailers paid twice as much for refill paper as they did for the 1994 back-to-school season. In 1995, consumers buying a 200-sheet package of refill paper from a mass retailer may have paid as much as a dollar less than the retailer paid its supplier for the paper. In this environment, mass retailers that normally use refill paper as a loss leader may have reduced their purchases to control the losses incurred on sales of refill paper. Data for a selection of large retailers confirm that their total purchases for the 1995 back-to-school season were approximately one third lower than in the previous year.<sup>39</sup>

The sharp decline in the domestic market, particularly in 1995, had a major impact on the domestic industry. Its sales to the Canadian market declined by almost 55 percent between 1994 and 1995. Even if the industry had maintained its 1994 market share in 1995, its domestic sales would still have declined by 30 percent. Nonetheless, the domestic industry lost considerable market share to sales from imports, which had a significant impact on its production volumes and unit costs. The decline in the apparent market also created downward price pressures, as producers of refill paper competed to maintain the volumes of production necessary to keep costs down, as well as to hold on to existing accounts and market share.

In that same year, the domestic industry also faced a significant reduction in export sales. Fanco's export sales to the United States had increased substantially between 1992 and 1994, representing a volume equivalent to almost half of the domestic industry's total sales of refill paper to the Canadian market. In 1995, however, there was a sharp decline in Fanco's exports as a result of the loss of a major export account. This lost export business had a significant impact on the domestic industry's production volume, equivalent to what the industry had lost as a result of the contraction in the domestic market.

In 1995, the domestic industry faced a situation where it could not afford to lose any business in the Canadian market. Among the factors at play was consolidation within the retailing sector in Canada. Although consolidation had commenced much earlier, it continued to place competitive pressure on suppliers of refill paper. Suppliers were competing for fewer but larger accounts.<sup>40</sup> The top 10 accounts represent approximately 60 percent of the total Canadian market,<sup>41</sup> with some individual accounts representing nearly one fifth of the total market. The Tribunal has already described how the practice of loss-leader refill paper sales by mass retailers may have led them to reduce purchases of refill paper in 1995. Even with less volume, the large losses that they incurred from selling below cost led them to put additional pressure on suppliers, particularly in 1995 when refill paper wholesale prices were very high. This environment increased

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39. Tribunal Exhibit NQ-96-001-25 (protected), Schedule III to questionnaires, Administrative Record, Vol. 6.3; and Tribunal Exhibit NQ-96-001-28 (protected), Schedule III to questionnaires, Administrative Record, Vol. 6.4.

40. Manufacturer's Exhibit A-6 (protected) at 2, Administrative Record, Vol. 12.

41. *Ibid.*; and *Transcript of In Camera Session*, Vol. 1, September 3, 1996, at 33.

the intensity of price competition among suppliers, as retailers negotiated the lowest possible price in order to minimize losses.<sup>42</sup>

Compounding the decline in the overall market for refill paper was the entrance of a new competitor from Indonesia, Tjiwi Kimia. Fanco alleged that imports from Indonesia caused injury. Tjiwi Kimia had made initial inroads on the domestic market in 1993, but made few sales in 1994. However, Tjiwi Kimia increased its sales significantly in 1995, when it accounted for well over one third of the Canadian market for refill paper. Close to two thirds of these sales were purchased by Hilroy for resale, while mass retailers bought the remainder. Much of the testimony that the Tribunal heard turned on the direct sales to mass retailers of refill paper from Indonesia.

To understand what impact these imports had on the domestic industry, the Tribunal undertook a very thorough examination of Fanco's allegations of injury in relation to the 16 importations of refill paper reviewed by the Deputy Minister in the final determination of dumping.<sup>43</sup> Between 1993 and 1994, the domestic industry lost just over 25 percent of its market share, while Hilroy's share of the market increased by 75 percent.<sup>44</sup> It is clear to the Tribunal that Fanco lost business to Hilroy in 1994, as mass retailers shifted purchases from Fanco to Hilroy. In 1995, Fanco lost a further 14 percent of its sales volume, as more of its mass retailer business shifted to direct imports from Tjiwi Kimia.

In 1992 and 1993, Fanco supplied all of Zellers' refill paper purchases, the largest account in the Canadian market. In 1994, Zellers implemented a policy of increasing the presence of recognized national brands in its stores. Thus, for the 1994 back-to-school season, Zellers split its purchases of refill paper between Fanco and Hilroy. The partial loss of the Zellers account in 1994 accounted for almost all of the domestic industry's loss of market share in that year. The Tribunal heard evidence that, all other things being equal, greater national brand recognition, and hence the potential for retailers to sell at premium prices, gave Hilroy a competitive advantage. It is clear to the Tribunal that the business lost to Hilroy in 1994 can, in no way, be attributed to imports from Indonesia, since Hilroy manufactured virtually all of its refill paper requirements in Canada that year.

In 1995, Zellers and The Bay imported the subject refill paper directly from Tjiwi Kimia. These direct imports accounted for a 13 percent shift in market share, from the domestic industry to Indonesia, between 1994 and 1995. These direct imports represented virtually all of the volume lost by the domestic industry in the 1995 back-to-school season. Canadian Tire's withdrawal from the back-to-school market in 1995 represented the loss of an additional large account and corresponding production volume previously held by Fanco. There is no doubt that Fanco lost a significant amount of retail business to imports from Indonesia and, as a result, suffered material injury. However, the Tribunal is faced with the fact that all of these imports were found by the Deputy Minister to be undumped. Thus, the injury suffered by the domestic industry was not caused by dumping.

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42. Manufacturer's Exhibit A-6 (protected) at 3, Administrative Record, Vol. 12; and *Transcript of In Camera Session*, Vol. 1, September 3, 1996, at 33.

43. Tribunal Exhibit NQ-96-001-5 (protected), Administrative Record, Vol. 2 at 7.6.

44. *Protected Pre-Hearing Staff Report*, July 22, 1996, Tribunal Exhibit NQ-96-001-7 (protected), Administrative Record, Vol. 2 at 28.

The domestic industry also alleged that sales by Tjiwi Kimia to mass retailers caused a “ripple effect” on prices in the Canadian market. According to Fanco, prices demanded by the retail price leader, Zellers, were based on quotations obtained from Tjiwi Kimia, and these quickly became the industry price. Fanco thus alleged price suppression and price erosion at other accounts such as Wal-Mart, that demanded and got from Fanco approximately the same pricing that Zellers secured from Indonesia. The Tribunal agrees with Fanco that the price suppression and price erosion suffered at these accounts were caused by imports from Indonesia. However, the Tribunal cannot ignore the fact that the Deputy Minister found direct imports to be undumped and, therefore, cannot attribute the price suppression or price erosion to dumping.

Although Fanco did not provide any precise allegations of lost sales to Hilroy in 1995, the Tribunal has considered what impact Hilroy’s imports of refill paper in that year might have had on the domestic industry. Hilroy bought two thirds of Tjiwi Kimia’s shipments of refill paper to Canada in 1995 and all of these purchases were found to be dumped. They accounted for 40 percent of Hilroy’s refill paper sales in 1995, the remainder being produced in-house.

There are several reasons why the Tribunal does not consider Hilroy’s purchases of dumped imports of refill paper to have injured the domestic industry. As the Tribunal has already noted, most of the market share gained by Hilroy was achieved in 1994, the year in which almost all of Hilroy’s sales of refill paper were from domestic production. Injury to the domestic industry, therefore, cannot be attributed to dumped imports.

In 1995, the evidence shows only a marginal increase in Hilroy’s market share. The Tribunal notes the testimony of the witness for Hilroy that, because of rapidly rising tablet paper prices in 1995, Hilroy opted to source about one quarter of its requirements for tablet paper in Indonesia. Pricing data examined by the Tribunal demonstrate clearly that Hilroy sold refill paper at prices well above those of its competitors, including both Fanco and Tjiwi Kimia.<sup>45</sup> Hilroy’s unit sales prices<sup>46</sup> for refill paper from imports were significantly higher than the cost of imports, while sales from domestic production in 1995 were also profitable.<sup>47</sup> The Tribunal notes that dumping margins on Hilroy’s imports would have had to have been significantly higher before Hilroy could adopt a marketing strategy that would have taken even more market share from the domestic industry or caused price erosion or price suppression. In addition, Hilroy has been able to realize a competitive advantage over Fanco through greater brand recognition<sup>48</sup> and lower costs of production.<sup>49</sup> The Tribunal is, therefore, not convinced that Hilroy used the dumped imports to improve its market share in 1995.

Accordingly, the Tribunal finds that sales from imports by Hilroy were not disruptive to prices in the Canadian market. Moreover, after the unprecedented market conditions in 1995, Hilroy returned to full

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45. *Protected Pre-Hearing Staff Report*, July 22, 1996, Tribunal Exhibit NQ-96-001-7 (protected), Administrative Record, Vol. 2 at 43.

46. Tribunal Exhibit NQ-96-001-10.3 (protected), Administrative Record, Vol. 4 at 78 and 85.

47. *Protected Pre-Hearing Staff Report*, July 22, 1996, Tribunal Exhibit NQ-96-001-7 (protected), Administrative Record, Vol. 2 at 53.

48. *Transcript of Public Session*, Vol. 2, September 4, 1996, at 293 and Vol. 3, September 5, 1996, at 389.

49. *Protected Pre-Hearing Staff Report*, July 22, 1996, Tribunal Exhibit NQ-96-001-7 (protected), Administrative Record, Vol. 2 at 65.

in-house production of refill paper in 1996 and continued to hold accounts and market share achieved in previous years.

Summing up, the Tribunal considers that the domestic industry has indeed suffered material injury. Like all other suppliers of refill paper to the Canadian market, it was hit hard by the sharp decline in the overall market for refill paper over the inquiry period and especially in 1995. Fanco also lost a substantial portion of its refill paper export business to the United States in 1995. Added to these factors was the loss of several large retail accounts in 1995 to imports from Indonesia. These lost accounts alone were equivalent to one half of the domestic industry's domestic sales in 1995. They accounted for over one third of the domestic industry's decline in production between 1994 and 1995 and are, in the Tribunal's opinion, material. These losses, combined with those of earlier years, translated into a significant decline in sales from domestic production, which fell by 73 percent over the 1992 to 1995 period.<sup>50</sup>

The continued loss of domestic sales to imports and reduced production volumes had a severe impact on the domestic industry's financial performance. Gross margins declined between 1992 and 1993 and were negative in 1994, with losses at the net income level recorded in both 1993 and 1994. In 1995, although selling prices increased more than the rise in tablet paper and other direct costs, improving gross margins significantly, the loss of volume led to substantially higher per unit general, selling, administrative and financial expenses, leaving the domestic industry with a net loss before taxes. Counsel for the importers and for the exporter did not contest this assessment of the domestic industry's performance.

Despite the clear indication of injury to the domestic industry, the Tribunal cannot make a finding of material injury under section 43 of SIMA, as the injury cannot be attributed to dumped imports.

#### Threat of Material Injury

Having found that dumped imports of refill paper have not caused material injury to the domestic industry, the Tribunal must turn its attention to whether imports of dumped refill paper are threatening to cause material injury to the domestic industry. In considering this question, the Tribunal is guided by subsection 37.1(2) of the Regulations, which prescribes the following factors: whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada; whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods; the magnitude of the margin of dumping in respect of the dumped goods; and other relevant factors.

As noted earlier, subsection 37.1(3) of the Regulations prescribes additional factors that the Tribunal may consider in determining whether dumped or subsidized goods are threatening to cause material injury to the domestic industry. The Tribunal must determine whether there is a causal relationship between the dumping and subsidizing of the goods and the threat of material injury and ensure that injury caused by other factors is not attributed to the dumped and subsidized imports. Finally, the Tribunal notes that, in making a finding of threat of material injury to the domestic industry, subsection 2(1.5) of SIMA requires that the

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50. *Protected Pre-Hearing Staff Report*, July 22, 1996, Tribunal Exhibit NQ-96-001-7 (protected), Administrative Record, Vol. 2 at 25.



“circumstances in which the dumping or subsidizing of [the subject] goods would cause injury [be] clearly foreseen and imminent.”

Imports of refill paper from Indonesia grew from less than 10 percent to almost 40 percent of the domestic market over the period of inquiry.<sup>51</sup> The Deputy Minister found that 63 percent of the imports during the period of investigation were dumped, with an overall weighted average margin of dumping of 3.3 percent, expressed as a percentage of normal value.

The increase in imports, particularly between 1994 and 1995, has been large, but there is no evidence to indicate a likelihood of substantially increased imports. All refill paper found to be dumped was imported by Hilroy and was not disruptive to prices in the Canadian market. According to uncontroverted testimony, Hilroy stopped importing refill paper from Indonesia in 1996 and stated its intent to continue in-house production of refill paper. This means that, in 1996, there are unlikely to be any imports of refill paper from Indonesia by Hilroy at dumped prices.

Direct sales of refill paper by Tjiwi Kimia to retail accounts in Canada were found to be undumped. There is, therefore, no basis upon which the Tribunal can conclude that exports of refill paper sold to mass retailers in the future are likely to be dumped and, thus, pose a threat to the domestic industry.

More generally, the Tribunal heard testimony regarding Tjiwi Kimia’s policy for allocating available capacity. The witness for Tjiwi Kimia indicated that, during the peak production season, normally February through June, Tjiwi Kimia experienced capacity constraints that led to a rationing of production.<sup>52</sup> Tjiwi Kimia reported that it allocated available production capacity on the basis of the highest returns for competing products offered for sale in markets around the world. The witness for Tjiwi Kimia also testified that there have been no new additions to Tjiwi Kimia’s production capacity since 1990.<sup>53</sup> The Tribunal thus finds that there is no likelihood of a substantial increase in the volume of dumped imports into Canada from Indonesia.

Moreover, the Tribunal observes that, if Tjiwi Kimia attempts to recover the large volume of sales lost as a result of Hilroy’s return to in-house production in 1996, it is likely to be in direct competition with Canadian suppliers selling primarily to retailers. As already noted, the Deputy Minister found that Tjiwi Kimia’s sales to mass retailers were undumped.

The Tribunal finds that there is no positive evidence of an imminent or foreseeable threat of material injury to the domestic industry.

### **Spiral-Bound Notebooks**

In considering whether imports of spiral-bound notebooks have caused material injury to the domestic industry, the Tribunal has examined the relevant economic indicators shown in Table 3. The table shows actual figures for the volume and value of the apparent market. Due to the confidentiality of the remaining statistics, they are presented as indices, with the value for 1992 equal to 100. As with refill paper, the Tribunal has not looked at these indicators in isolation. It has attempted to understand any

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51. *Ibid.*

52. *Transcript of In Camera Session*, Vol. 3, September 5, 1996, at 355.

53. *Ibid.* at 353.

interrelationships among them and especially to place them in context, recognizing the market dynamics during the inquiry period.

As with the market for refill paper, consolidation within the retailing sector in Canada has placed additional competitive pressure on suppliers of spiral-bound notebooks that must compete for fewer but larger accounts.<sup>54</sup> The Tribunal also heard that brand name recognition has provided some suppliers with a competitive advantage in selling spiral-bound notebooks.

	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>
<b>Total Market</b>				
Volume (000 books)	8,752	9,350	10,782	11,509
Value (\$000)	5,933	5,904	7,371	10,464
<b>Production</b>				
Domestic Industry	100	60	330	293
Other Producer	100	62	35	24
<b>Exports</b>				
	-	-	-	-
<b>Sales from Production</b>				
Domestic Industry	100	79	133	189
Other Producer	100	66	34	22
<b>Sales from Imports</b>				
Indonesia				
Domestic Industry	100	55	-	-
Other Producer <sup>1</sup>	-	100	219	264
Direct Imports <sup>1</sup>	-	100	46	116
Brazil				
Other Producer	100	80	160	159
Direct Imports	100	114	119	76
Non-Subject Countries	100	128	187	215
<b>Financial</b>				
Domestic Industry				
Gross Margin	100	80	73	158
Net Income Before Taxes	100	39	(4)	28
Other Producer				
Gross Margin	100	70	31	61
Net Income Before Taxes	(100) <sup>2</sup>	201	138	236
1. No imports were reported for 1992; 1993 was used as the base year.				
2. Denotes a loss in 1992.				

54. Manufacturer's Exhibit A-6 (protected) at 2, Administrative Record, Vol. 12.

Several features of the market for spiral-bound notebooks are, however, in sharp contrast to the market for refill paper. The market for spiral-bound notebooks increased by 32 percent between 1992 and 1995. Spiral-bound notebooks are highly differentiated, with a large range of notebook dimensions, page counts, page rulings, dividers, cover materials and cover designs. The market for spiral-bound notebooks is also much broader than that for refill paper, going beyond the highly seasonal back-to-school market and into office supply. Finally, domestic industry sales of refill paper from domestic production accounted for 100 percent of its total refill paper sales. For spiral-bound notebooks, the domestic industry's sales from domestic production accounted for approximately 40 percent of its total sales between 1992 and 1994. In 1995, sales from domestic production increased to approximately 60 percent of total sales, as Fanco began replacing imports from China with domestic production. The Tribunal is, therefore, of the opinion that the domestic industry has been unable, throughout most of the period of inquiry, to competitively supply the full range of spiral-bound notebooks from domestic production.

The Tribunal notes that there was a dramatic shift in the sources of supply for spiral-bound notebooks over the period of inquiry. In 1992, 65 percent of spiral-bound notebook sales were made from Canadian production,<sup>55</sup> but, by 1995, Canadian production accounted for only 22 percent of total domestic sales.<sup>56</sup> The Tribunal has defined the domestic industry as excluding Hilroy and notes that, over the same period, 1992 to 1995, total sales by the domestic industry, including imports, increased by 31 percent. Excluding sales from imports, the domestic industry increased its sales from domestic production by 89 percent. While production by the domestic industry increased significantly over the period, sales from domestic production remained below 15 percent of the total apparent market.

Evidence before the Tribunal indicated that Spiral's domestic sales were primarily from domestic production, although it did have a small volume of sales from imports in 1992 and 1993. Its sales of spiral-bound notebooks increased by almost 84 percent over the period of inquiry. Fanco's sales from imports throughout the period of inquiry were substantially larger than its sales from domestic production. They accounted for approximately 57 to 77 percent of its total sales over the period. Fanco's primary source of imports has been China and was, to a lesser extent, Indonesia in 1992 and 1993.

The Tribunal heard evidence regarding Fanco's investment in its production capacity of spiral-bound notebooks during the winter of 1994-95, which has allowed it to replace its imports from China with domestically produced spiral-bound notebooks. Installation of the new nine-robot machine has doubled Fanco's production capacity of spiral-bound notebooks and enabled it to expand its range of domestically manufactured products. For the 1996 back-to-school season, Fanco stopped importing from China.

The Tribunal notes that the growth in sales by the domestic industry from domestic production has largely been at the expense of their sales from imports. Furthermore, Fanco's increased production capacity will require it to secure significant additional production volumes in order to realize the potential efficiencies of this new capacity. To achieve these efficiencies, the Tribunal notes that Fanco has adopted a strategy of targeting large accounts in Canada and the United States.

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55. *Protected Pre-Hearing Staff Report*, revised August 21, 1996, Tribunal Exhibit NQ-96-001-7C (protected), Administrative Record, Vol. 2 at 170.

56. *Ibid.*

In 1992, Hilroy was the largest producer of spiral-bound notebooks, with sales from domestic production accounting for over half of the total domestic market. In that year, Hilroy's sales from imports accounted for less than 5 percent of its total sales. According to the witness for Hilroy, Hilroy could not compete on the basis of costs with Fanco's imports of spiral-bound notebooks from China. Moreover, the witness for Hilroy testified that, as a result of being put up for sale by its parent company, Abitibi-Price Inc., Hilroy did not have capital available to invest in more cost-efficient equipment.<sup>57</sup>

In 1993, Hilroy ceased production on two of its less cost-efficient, 2-step spiral-bound notebook production lines and began sourcing the subject notebooks from Indonesia in order to continue serving its customer base. By 1995, Hilroy's sales from domestic production had declined by over 75 percent from its 1992 levels, while its total sales had grown by 42 percent. For 1996, the witness for Hilroy reported that sales of spiral-bound notebooks would be predominately supplied by imports from its parent company, Mead School & Office Products, in the United States.<sup>58</sup>

The Tribunal has already observed that, over the period of inquiry, Fanco relied heavily on imports of spiral-bound notebooks to complete its product line. It has only been since mid-1995 that it has been able to replace imports with domestic production on its new machine. Hilroy, on the other hand, has moved in the opposite direction, increasing its reliance on imports of spiral-bound notebooks, initially from Indonesia, and, beginning in 1995, shifting its sourcing from Indonesia to the United States. The Tribunal notes that, throughout most of the period of inquiry, Fanco and Hilroy competed in the marketplace primarily with imported spiral-bound notebooks.

Against this background, the Tribunal has considered the impact of imports of spiral-bound notebooks on the domestic market. Total sales of spiral-bound notebooks imported from Brazil and Indonesia increased significantly over the period. In 1992, sales from imports of spiral-bound notebooks from the subject countries totalled 2.1 million notebooks. By 1995, sales of the subject notebooks had increased to 6.9 million notebooks, an increase of over 300 percent. Imports from Indonesia accounted for all of the increase during this period, as imports from Brazil declined by almost 12 percent.

The Tribunal first looked at imports from Indonesia. Their volume increased eightfold between 1992 and 1995, increasing their share of the domestic market from less than 10 percent to almost 50 percent.<sup>59</sup> Imports by Hilroy accounted for most of this increase. The largest annual increases in imports occurred in 1993 and 1994, when Hilroy replaced substantial portions of its domestic production with imports from Indonesia. Hilroy purchased 92 percent of the subject notebooks from Indonesia during the period reviewed by the Deputy Minister.<sup>60</sup> Of the 19 styles imported by Hilroy, only 7 were found to have been dumped, with a weighted average margin of dumping of 5.1 percent. The overall weighted average margin of dumping was less than 0.2 percent.

A key question for the Tribunal is whether imports of spiral-bound notebooks by Hilroy have injured the domestic industry. In addressing this question, the Tribunal examined average selling prices of the

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57. *Transcript of In Camera Session*, Vol. 2, September 4, 1996, at 222.

58. *Ibid.* at 226.

59. *Protected Pre-Hearing Staff Report*, July 22, 1996, Tribunal Exhibit NQ-96-001-7 (protected), Administrative Record, Vol. 2 at 25.

60. *Ibid.* Schedule 6.

three highest volume spiral-bound notebooks over the 1992 to 1995 period, including the 80-page, the 108-page and the 200-page notebooks. The Tribunal also examined Fanco's injury allegations, which, it notes, contained no precise allegations against Hilroy.

Hilroy's average selling prices of the three styles of notebooks to retail accounts were, in most cases, substantially higher than Fanco's average selling prices, although the premium realized by Hilroy has been declining over time.<sup>61</sup> Hilroy's weighted average selling prices to both retail and wholesale accounts were also found to be generally higher than Fanco's average selling prices. Fanco's lower average pricing is consistent with evidence before the Tribunal that it has been the price leader in the domestic market.<sup>62</sup> The witness for Hilroy also stated that price competition from Fanco is expected to intensify, as Fanco attempts to secure additional volumes to further utilize its new production capacity.<sup>63</sup>

The Tribunal is, therefore, not convinced that Hilroy used imports from Indonesia to capture market share from the domestic industry. In fact, the Tribunal notes that the domestic industry was able to maintain its market share over the period of inquiry, while Hilroy's increased share of the domestic market was achieved primarily at the expense of Brazil. Moreover, Fanco has been unable to recover previously lost accounts, even though Hilroy has switched to imports from the United States. The Tribunal notes that Fanco believes these imports to be undumped.

Accordingly, sales from imports by Hilroy were not, in the Tribunal's opinion, disruptive to prices in the Canadian market. To find that Hilroy's imports had an impact on the domestic industry, the Tribunal would have to have seen evidence of direct competition and a resulting loss of sales or price suppression or price erosion by the domestic industry. Moreover, the Tribunal did not hear evidence that would lead it to believe that it was the dumping that enabled Hilroy to maintain its existing customer base.

The Tribunal then examined direct imports of spiral-bound notebooks from Indonesia by mass retailers. Direct imports of spiral-bound notebooks by retailers began in 1993 and accounted for the remaining 8 percent of imports from Indonesia reviewed by the Deputy Minister during the period of investigation. Only one of the five styles of spiral-bound notebooks examined by the Deputy Minister was found to be dumped, at a weighted average margin of dumping of 5.5 percent, expressed as a percentage of normal value. The overall weighted average margin of dumping was less than zero.

In contrast to the market for refill paper, direct imports from Indonesia by retailers and wholesale distributors accounted for a much smaller share of total sales in Canada, representing 5 percent or less of the apparent market over the period of inquiry. Notwithstanding the small volume of direct imports, the Tribunal notes that these imports represented 27 percent of the domestic industry's sales from domestic production in 1995 and a substantial portion of the lost sales allegations made by Fanco.

Fanco's allegations of lost sales, price suppression and price erosion focused on direct import competition at accounts such as Zellers, Westfair and The Real Canadian Superstore. These were the same accounts at which Fanco lost refill paper sales at undumped prices. Sales of particular spiral-bound notebooks were reported to have been lost as early as 1992, some of which were never recovered over the

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61. *Ibid.* at 36-37.

62. *Transcript of Public Session*, Vol. 2, September 4, 1996, at 296.

63. *Transcript of In Camera Session*, Vol. 2, September 4, 1996, at 247.

period of inquiry. For 1995, the majority of the evidence concerned lost sales to the Zellers account. According to statements by Fanco, the loss of the refill paper sale to Zellers also cost it its sales of spiral-bound notebooks.<sup>64</sup> As noted above, the direct imports of refill paper by Zellers in 1995 were not found to have been dumped. Similarly, three of the four notebook styles imported by Zellers during the Deputy Minister's period of investigation were also at undumped prices.

The Tribunal then considered the impact of imports of spiral-bound notebooks from Brazil. Imports of spiral-bound notebooks from Brazil by retailers and wholesale distributors peaked in 1993 at 14 percent of the market and declined to 8 percent in 1995. Average selling prices of imports from Brazil, for the three high volume spiral-bound notebooks used by the Tribunal in its pricing analysis, indicated that these sales were made at some of the highest prices of any supplier in 1994 and 1995.<sup>65</sup>

While Fanco alleged, in some instances, to have lost sales to imports from Brazil, the evidence indicates that these imports were not typically sold to the accounts named in Fanco's allegations. Distribution of Brazilian imports of spiral-bound notebooks has been primarily to smaller accounts that require only a few styles rather than a complete line of spiral-bound notebooks. Witnesses expressed concerns regarding the quality of Brazilian spiral-bound notebooks. Hilroy, which imported a small volume of spiral-bound notebooks from Brazil during the period of inquiry, also cited problems with Brazil as a reliable source of supply and did not consider Brazil to be a major competitor. Zellers also considered Brazil, at best, to be a marginal player. Thus, despite the large margins of dumping found by the Deputy Minister, the Tribunal is not convinced that dumped imports from Brazil were disruptive to the domestic industry.

In summary, the Tribunal was not convinced that imports of spiral-bound notebooks that were found by the Deputy Minister to be dumped have caused material injury to the domestic industry. Notwithstanding that imports of spiral-bound notebooks from Indonesia by mass retailers represented only less than 5 percent of the total market in 1995, the Tribunal notes that these imports represented a substantial portion of sales lost by the domestic industry. Sales lost to direct imports were compounded by a 50 percent decline in Fanco's export sales of spiral-bound notebooks to the United States.

The loss of domestic and export sales of spiral-bound notebooks by the domestic industry led to a deterioration in its financial performance during the 1992 to 1994 period. Contribution margins, as well as net income, declined steadily over that period, with the domestic industry experiencing a small net loss in 1994. In 1995, selling prices increased significantly, raising gross margins to their highest level over the period of inquiry. Sales volumes, however, were not sufficient to offset substantially higher per unit general, selling, administrative and financial expenses, leaving the domestic industry with a significantly reduced net income before taxes relative to 1992 and 1993.

The Tribunal is, therefore, of the opinion that, had Fanco not lost these sales volumes, it would have been in a more competitive position vis-à-vis both its domestic and export sales. Accordingly, the Tribunal is of the view that imports of spiral-bound notebooks from Indonesia by mass retailers have caused material injury to the domestic industry. However, the Deputy Minister, having found that imports by mass retailers

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64. Manufacturer's Exhibit A-6 (protected) at 13, Administrative Record, Vol. 12.

65. *Protected Pre-Hearing Staff Report*, July 22, 1996, Tribunal Exhibit NQ-96-001-7 (protected), Administrative Record, Vol. 2 at 36-37.

had an overall weighted average margin of dumping of less than zero, this injury could not be attributed to dumping.

### Threat of Material Injury

Having found that dumped imports of spiral-bound notebooks have not caused material injury to the domestic industry, the Tribunal must turn its attention to whether imports of dumped spiral-bound notebooks are threatening to cause material injury to the domestic industry. In considering this question, the Tribunal was guided by the same relevant sections of the Regulations as for refill paper and must make the same determinations regarding a causal relationship between the dumping and any threat of material injury to the domestic industry which must be “clearly foreseen and imminent.”

Imports of spiral-bound notebooks from the subject countries grew from 24 percent of the total apparent market in 1992 to 60 percent in 1995. Imports from Indonesia alone increased from less than 10 percent to almost half of the apparent market. The Deputy Minister found that 67 percent of spiral-bound notebooks from Indonesia were dumped, with an overall weighted average margin of dumping of 2.4 percent, expressed as a percentage of normal value.

The largest annual increases in imports of spiral-bound notebooks from Indonesia occurred in 1993 and 1994. Imports from Indonesia continued to grow in 1995, with 92 percent of the spiral-bound notebooks examined by the Deputy Minister being imported by Hilroy. Sales from imports by Hilroy were, in the Tribunal’s opinion, not disruptive to prices in the Canadian market and were frequently above Fanco’s average selling prices. The Tribunal expects the level of imports to decline significantly in 1996 and beyond, given that Hilroy, which has accounted for the overwhelming majority of imports from the subject countries, has now shifted its source of spiral-bound notebooks to its parent company in the United States.

All other spiral-bound notebooks from Indonesia were imported directly by mass retailers. Only one of the five styles of spiral-bound notebooks imported from Tjiwi Kimia by mass retailers was found to be dumped, but the overall weighted average margin of dumping for the five styles of spiral-bound notebooks was less than zero. Therefore, there is no basis upon which the Tribunal can conclude that exports of spiral-bound notebooks sold to mass retailers are likely to be dumped and, thus, pose a threat to the domestic industry.

More generally, the Tribunal heard testimony regarding Tjiwi Kimia’s policy for allocating available capacity. As in the case of refill paper, Tjiwi Kimia experiences capacity constraints during its peak production season, which requires it to ration production.<sup>66</sup> The allocation of available production capacity was reported to be on the basis of the highest returns for competing products offered for sale in markets around the world served by Tjiwi Kimia. There was no evidence presented by parties indicating any new or planned additions to Tjiwi Kimia’s production capacity.<sup>67</sup> In addition, as already noted with respect to refill paper, the Tribunal considers that any attempt by Tjiwi Kimia to recover the large volume of sales to Hilroy that were lost in 1996 would be directed primarily at mass retailers. Tjiwi Kimia’s sales to mass retailers were, for the most part, found to be undumped.

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66. *Transcript of In Camera Session*, Vol. 3, September 5, 1996, at 355.

67. *Ibid.* at 353.

In the case of Brazil, despite high margins of dumping found by the Deputy Minister, the Tribunal observes that import volumes declined over the period of inquiry. As a result, imports of spiral-bound notebooks from Brazil have not been able to maintain their market share. The Tribunal notes that imports from Brazil have not been price-competitive with other sources of supply and have primarily served niche markets dominated by small accounts. The quality and reliability of supply is also perceived by market participants to be inferior to domestically produced like goods and other subject imports. In the Tribunal's opinion, there is no indication of a likelihood of increased imports which poses an imminent and foreseeable threat of material injury to the domestic industry.

The Tribunal thus finds that there is no positive evidence of an imminent or foreseeable threat of material injury to the domestic industry.

### **CONCLUSION**

The Tribunal found both interesting and perplexing that, despite the large body of evidence respecting injury to the domestic refill paper and spiral-bound notebook industries as a result of low-priced imports, there was almost a complete lack of evidence attributing that injury to dumping. While the Tribunal is persuaded that there has been injury, it was unable to find the required causal link between that injury and dumping.

For all the foregoing reasons, the Tribunal finds that the dumping in Canada of refill paper, also known as filler paper or looseleaf paper, originating in or exported from Indonesia, has not caused material injury to the domestic industry and is not threatening to cause material injury to the domestic industry, and that the dumping in Canada of notebooks with a coiled or spiral binding, originating in or exported from Indonesia and Brazil, has not caused material injury to the domestic industry and is not threatening to cause material injury to the domestic industry.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Desmond Hallissey  
Desmond Hallissey  
Member