



Ottawa, Friday, May 22, 1992

Review No.: RR-91-006

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian Import Tribunal on August 19, 1988, in Review No. R-4-88, continuing without amendment the finding of likelihood of material injury made by the Canadian Import Tribunal on October 27, 1987, in Inquiry No. CIT-4-87, respecting:

**CERTAIN CHEMICALLY PRESENSITIZED ALUMINUM OFFSET
PRINTING PLATES PRODUCED BY OR ON BEHALF OF
HOWSON-ALGRAPHY OF THE UNITED KINGDOM**

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of the finding made by the Canadian Import Tribunal on August 19, 1988, in Review No. R-4-88, continuing without amendment the finding of likelihood of material injury made by the Canadian Import Tribunal on October 27, 1987, in Inquiry No. CIT-4-87.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal rescinds the said finding.

John C. Coleman

John C. Coleman
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Robert J. Martin

Robert J. Martin
Secretary



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**CERTAIN CHEMICALLY PRESENSITIZED ALUMINUM OFFSET
PRINTING PLATES PRODUCED BY OR ON BEHALF OF
HOWSON-ALGRAPHY OF THE UNITED KINGDOM**

Special Import Measures Act - Whether to rescind or continue, with or without amendment, the finding made by the Canadian Import Tribunal on August 19, 1988, in Review No. R-4-88, continuing without amendment the finding of likelihood of material injury made by the Canadian Import Tribunal on October 27, 1987, in Inquiry No. CIT-4-87.

Place of Hearing by Way of

Written Submissions:

Ottawa, Ontario

Date of Order and Reasons:

May 22, 1992

Tribunal Members:

John C. Coleman, Presiding Member
Kathleen E. Macmillan, Member
Arthur B. Trudeau, Member

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Du Pont (U.K.) Ltd.

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(Manufacturer)

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(Manufacturer)

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**CERTAIN CHEMICALLY PRESENSITIZED ALUMINUM OFFSET
PRINTING PLATES PRODUCED BY OR ON BEHALF OF
HOWSON-ALGRAPHY OF THE UNITED KINGDOM**

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
KATHLEEN E. MACMILLAN, Member
ARTHUR B. TRUDEAU, Member

STATEMENT OF REASONS

THE BACKGROUND

On November 12, 1991, the Canadian International Trade Tribunal (the Tribunal) received a request from Du Pont Canada Inc. for an immediate rescission of the finding made by the Canadian Import Tribunal (the CIT) on October 27, 1987, in Inquiry No. CIT-4-87, respecting certain chemically presensitized aluminum offset printing plates produced by or on behalf of Howson-Algraphy of the United Kingdom, which was continued without amendment in Review No. R-4-88 on August 19, 1988. Du Pont Canada Inc. made its request on the basis that Hoechst Canada Inc. (Hoechst), the sole Canadian producer, intended to cease production in Canada, and it was reasonable to conclude that the dumping was no longer likely to cause injury.

On February 14, 1992, the Tribunal issued a notice of review, and a copy was published in Part I of the February 22, 1992, edition of the Canada Gazette. In accordance with subsection 76(3) of the *Special Import Measures Act*¹ (SIMA), the notice stated that the Tribunal was satisfied that a review pursuant to subsection 76(2) was warranted in light of the fact that Hoechst had announced that it would phase out production in Canada in 1992. The notice requested " ... the views of interested parties on why this finding should not be rescinded on June 30, 1992, or at such earlier date as the Tribunal may determine." The notice also stated that a public hearing was not scheduled for the review.

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

Submissions were received from Hoechst Celanese Corporation (Hoechst Celanese) of New Jersey, Du Pont Canada Inc. and Du Pont (U.K.) Ltd. (Du Pont), Horsell Graphic Industries (Horsell), Kodak Canada Inc. (Kodak) and Imprimerie Qualimax, Division de Groupe Unimédia Inc. (Qualimax). Also, Hoechst Celanese requested that the submissions that it had filed with the Tribunal, when the decision to review the finding was under consideration, be transferred to the review file.

On March 24, 1992, copies of all public submissions received to date were sent to each of the interested parties, while confidential/protected exhibits were only provided to independent counsel who had signed undertakings of non-disclosure. They were given until April 7, 1992, to submit any comments concerning the submissions. Du Pont was the only party to provide comments.

The subject goods are certain chemically presensitized aluminum offset printing plates. The CIT found that the dumping in Canada of the subject goods produced by or on behalf of Howson-Algraphy of the United Kingdom, with certain exclusions, was likely to cause material injury to the production in Canada of like goods. The Tribunal excluded positive working plates, negative working plates presensitized on both sides and negative working plates exceeding 46 in., in two dimensions, and having a gauge exceeding 0.015 in. In its 1987 inquiry, the CIT found that the dumping of the subject goods in Canada by other exporters in the United Kingdom and exporters in Japan had not caused, was not causing and was not likely to cause material injury to the production in Canada of like goods. On August 19, 1988, following a request for an exclusion, the CIT reviewed its original finding and continued it without amendment.

Offset plates are manufactured by chemically coating aluminum sheets and cutting the sheets to required dimensions. The plate receives an image by placing film on the plate and exposing it to light. The plate is then developed using either aqueous or solvent chemistry. In the case of negative plates, the area of coating exposed to light through a negative film hardens, and the area of unexposed coating is washed off during development. Presensitized plates are utilized by commercial printers and newspapers which use the offset printing process.

Hoechst is the sole Canadian producer of the subject goods. In this review, Hoechst Celanese of New Jersey usually acted on behalf of Hoechst.

The U.K. assets of Howson-Algraphy, the exporter, were acquired by Du Pont-Howson Ltd. on July 11, 1989, as part of a worldwide acquisition made by E.I. Du Pont de Nemours & Company. Subsequently, on December 29, 1990, the U.K. assets of Du Pont-Howson Ltd. were acquired by Du Pont (U.K.) Ltd.

THE POSITION OF PARTIES

Kodak and Qualimax stated that neither company had comments to make on the review. Horsell indicated that the company had no objections to the finding being rescinded.

Hoechst Celanese in its submission of March 20, 1992, confirmed that Hoechst would cease production of litho plate in Canada during June 1992, but that it would continue to sell Canadian production through the balance of 1992. The company, therefore, requested that the finding be continued through to December 31, 1992.

Du Pont submitted that the finding should be rescinded on a number of grounds. Du Pont stated that, in the absence of language binding successors and assigns, there is no basis upon which an injury finding against goods produced by a specified entity can subsequently be applied to, or imposed upon, a separate legal person at arm's length with the specified entity who takes over the production of such goods. Du Pont, therefore, submitted that the finding be rescinded retroactively to the date that the U.K. assets were acquired by either E.I. Du Pont de Nemours & Company or Du Pont (U.K.) Ltd.

Du Pont alternatively submitted that the finding be rescinded on the date that the production of the subject goods will cease. According to Du Pont, for a finding to be continued under SIMA, there must be evidence of future material injury to the production in Canada of like goods. There can no longer be material injury if there is no domestic production in Canada. Article 3 of the Anti-Dumping Code² (the Code) provides that the effect of the dumped imports shall be assessed in relation to the domestic production of the like product. This suggests that, where there is no domestic production, there can be no injury. Article 9 of the Code states that an anti-dumping duty shall remain in force only so long as, and to the extent necessary, to counteract dumping which is causing injury. Hoechst's request for a continuation, beyond the date Canadian production ceases, to cover the sales of domestically produced inventories is not a sufficient basis for continuing the finding after production stops.

Du Pont noted that the Tribunal, in determining if a finding should be continued, must consider whether there is a likelihood that materially injurious dumping will result if the finding is rescinded. Du Pont cited a number of facts which are illustrative of the company's intention not to engage in dumping since the finding. Du Pont stated that dumping of the subject goods has been negligible and inconsequential, and non-existent since January 1991. There has been a substantial change in the management of the business, and in late 1990, Du Pont (U.K.) Ltd. changed its method of distribution. To avoid the application of section 25 of SIMA, Du Pont (U.K.) Ltd. now exports the subject goods to independent distributors in Canada at prices which are at, or above, the normal values established by the Department of National Revenue for Customs and Excise in October 1990.

As well, Du Pont (U.K.) Ltd. will not engage in dumping upon the rescission of the finding. Du Pont (U.K.) Ltd. is currently operating at close to capacity to serve its markets in the United Kingdom and elsewhere in Europe and will continue to do so for the foreseeable future. Prices in Europe have been relatively firm over the past several years and Du Pont (U.K.) Ltd. has retained its market share without a substantial erosion of its profit margins. Given these factors and the negligible or non-existent returns to be earned from dumping the subject goods in Canada, there is little incentive for the company to dump the subject goods in Canada. Du Pont expects Canadian demand and prices for the subject goods will weaken in the longer term. Du Pont also noted that the Canadian dollar has appreciated relative to the British pound, making it easier for Du Pont (U.K.) Ltd. to continue to sell into the Canadian market without having to dump. Du Pont (U.K.) Ltd. wants the finding rescinded because it is hampering the company's ability to supply its Canadian customers with other graphic art materials.

2. *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*, Geneva, April 12, 1979, GATT BISD 265 (1980).

Du Pont submitted that, even if the Tribunal determines that Du Pont (U.K.) Ltd. is likely to resume dumping, such dumping cannot materially injure the production in Canada of like goods, as there will be no domestic production. Du Pont also cited other factors in support of the conclusion that dumping has not and will not cause material injury. Du Pont estimates that Hoechst's Canadian market share has decreased by about one quarter since 1987, despite the finding. It is U.S. producers who are driving competition in the Canadian market. Finally, Du Pont believes that Hoechst has lost customers because it does not have the ability to supply a full range of graphic art materials to its Canadian customers.

THE REASONS FOR DECISION

The Tribunal concludes, based on the evidence and the submissions received in the context of this review, that the finding should be rescinded as of the date of this order.

The prime reason in support of this action is the fact that the sole domestic producer, for some time now, has announced plans to cease production of these goods in Canada on or before June 1992. As a result, there is no basis upon which the finding should be continued in the absence of production in Canada or plans for the establishment of production in Canada of like goods.

The issue was raised by the domestic producer that the finding should continue to be in force until the end of this year upon completion of the liquidation of domestic inventories of these goods.

The Tribunal does not find this argument persuasive, as Hoechst, the sole producer, has announced definite plans to cease domestic production by mid-year and, indeed, that its clients' needs during a large part of 1992 would be serviced with imported products. In such circumstances, the Tribunal is of the view that the finding has now served its purpose and should be rescinded as of the date of this order.

The Tribunal sees no reasons to rescind the original finding, as requested by counsel for Du Pont, because of the change in ownership of the named exporter in the original finding. Subsection 43(1) of SIMA, read in the context of Article 8 of the Code, clearly suggests that the intent underlying the identification of the suppliers is to identify the source of dumping. Therefore, a change in ownership has no direct impact on the finding.

CONCLUSION

For the foregoing reasons, the Tribunal concludes that the finding has served its purpose and hereby rescinds the finding.

John C. Coleman

John C. Coleman

Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan

Member

Arthur B. Trudeau

Arthur B. Trudeau

Member