



Ottawa, Tuesday, September 4, 1990

Review No.: RR-89-012

IN THE MATTER OF a review, under section 76 of the *Special Import Measures Act*, of the finding of material injury of the Anti-dumping Tribunal dated January 24, 1975, continued on August 24, 1984, and of the findings of material injury of the Canadian Import Tribunal dated April 26, 1985, February 14, 1986, and November 3, 1987, respecting:

**PHOTO ALBUMS WITH SELF-ADHESIVE LEAVES ORIGINATING IN OR EXPORTED FROM JAPAN, THE REPUBLIC OF KOREA, HONG KONG AND THE UNITED STATES OF AMERICA; SELF-ADHESIVE LEAVES ORIGINATING IN OR EXPORTED FROM HONG KONG, THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KOREA; PHOTO ALBUMS WITH SELF-ADHESIVE LEAVES (IMPORTED TOGETHER OR SEPARATELY) ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA; AND PHOTO ALBUMS WITH SELF-ADHESIVE LEAVES (IMPORTED TOGETHER OR SEPARATELY) AND SELF-ADHESIVE LEAVES ORIGINATING IN OR EXPORTED FROM SINGAPORE, MALAYSIA AND TAIWAN**

### **ORDER**

The Canadian International Trade Tribunal, under the provisions of section 76 of the *Special Import Measures Act*, has conducted a review of the following findings of material injury:

- the finding of the Anti-dumping Tribunal dated January 24, 1975, respecting photo albums with self-adhesive leaves originating in Japan and the Republic of Korea in Inquiry No. ADT-4-74, continued in Review No. R-3-84 on August 24, 1984;
- the finding of the Canadian Import Tribunal dated April 26, 1985, respecting photo albums with self-adhesive leaves originating in or exported from Hong Kong and the United States of America and self-adhesive leaves originating in or exported from Hong Kong, the United States of America and the Republic of Korea in Inquiry No. CIT-18-84;
- the finding of the Canadian Import Tribunal dated February 14, 1986, respecting photo albums with self-adhesive leaves (imported together or separately) originating in or exported from the People's Republic of China in Inquiry No. CIT-10-85; and
- the finding of the Canadian Import Tribunal dated November 3, 1987, respecting photo albums with self-adhesive leaves (imported together or separately) and self-adhesive leaves originating in or exported from Singapore, Malaysia and Taiwan in Inquiry No. CIT-5-87.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby:

- a) continues, without amendment, the above findings in respect of goods originating in the Republic of Korea, Hong Kong, the People's Republic of China, Singapore, Malaysia and Taiwan;
- b) rescinds the finding dated January 24, 1975, as continued on August 24, 1984, in respect of goods originating in Japan; and
- c) rescinds the finding dated April 26, 1985, in respect of goods originating in the United States of America.

W. Roy Hines  
W. Roy Hines  
Presiding Member

John C. Coleman  
John C. Coleman  
Member

Charles A. Gracey  
Charles A. Gracey  
Member

Robert J. Martin  
Robert J. Martin  
Secretary



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*Special Import Measures Act* - Whether to continue, with or without amendment, or to rescind the finding and review finding of the Anti-dumping Tribunal and the findings of the Canadian Import Tribunal relating to the above-mentioned goods.

**DECISION:** Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby: (a) continues, without amendment, the findings in respect of goods originating in the Republic of Korea, Hong Kong, the People's Republic of China, Singapore, Malaysia and Taiwan; (b) rescinds the finding dated January 24, 1975, as continued on August 24, 1984, in respect of goods originating in Japan; and (c) rescinds the finding dated April 26, 1985, in respect of goods originating in the United States of America.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	May 22 and 23, 1990
Date of Order & Reasons:	September 4, 1990
Tribunal Members:	W. Roy Hines, Presiding Member John C. Coleman, Member Charles A. Gracey, Member
Director of Research:	Marcel Brazeau
Research Managers:	André Renaud Richard Cossette
Statistical Officer:	Gilles Richard
Registration and Distribution Clerk:	Molly C. Hay

**Participants:**

John D. Richard, Q.C.  
for Desmarais & Frère Ltd./Ltée

Gerry Hunt  
Product Manager  
Candym Enterprises Limited

**Witnesses:**

André Deschamps  
Vice-President and CEO  
Desmarais & Frère Ltd./Ltée

Marius St.-Amand  
Treasurer  
Desmarais & Frère Ltd./Ltée

William Campbell  
Vice-President, Sales  
Ontario & Western Canada  
Desmarais & Frère Ltd./Ltée

Gerry Desmarais  
Chairman  
Desmarais & Frère Ltd./Ltée

Gerry Hunt  
Product Manager  
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Banner Educational Products Ltd.

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Ottawa, Tuesday, September 4, 1990

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IN THE MATTER OF a review, under section 76 of the *Special Import Measures Act*, of the finding of material injury of the Anti-dumping Tribunal dated January 24, 1975, continued on August 24, 1984, and of the findings of material injury of the Canadian Import Tribunal dated April 26, 1985, February 14, 1986, and November 3, 1987, respecting:

**PHOTO ALBUMS WITH SELF-ADHESIVE LEAVES ORIGINATING IN OR EXPORTED FROM JAPAN, THE REPUBLIC OF KOREA, HONG KONG AND THE UNITED STATES OF AMERICA; SELF-ADHESIVE LEAVES ORIGINATING IN OR EXPORTED FROM HONG KONG, THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KOREA; PHOTO ALBUMS WITH SELF-ADHESIVE LEAVES (IMPORTED TOGETHER OR SEPARATELY) ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA; AND PHOTO ALBUMS WITH SELF-ADHESIVE LEAVES (IMPORTED TOGETHER OR SEPARATELY) AND SELF-ADHESIVE LEAVES ORIGINATING IN OR EXPORTED FROM SINGAPORE, MALAYSIA AND TAIWAN**

TRIBUNAL: W. ROY HINES, Presiding Member  
JOHN C. COLEMAN, Member  
CHARLES A. GRACEY, Member

**STATEMENT OF REASONS**

**SUMMARY**

This is a review, under section 76 of the *Special Import Measures Act* (SIMA), by the Canadian International Trade Tribunal (the Tribunal) of the finding of material injury of the Anti-dumping Tribunal (ADT) dated January 24, 1975, and continued on August 24, 1984, and of the findings of material injury of the Canadian Import Tribunal (CIT) dated April 26, 1985, February 14, 1986, and November 3, 1987, respecting photo albums and self-adhesive leaves. In conducting its review of the findings, the Tribunal addressed two essential questions - What is the likelihood of a resumption of dumping by the exporting countries if the findings under review are rescinded? Is there a likelihood of material injury to the domestic industry from such resumed dumping?

With respect to the likelihood of a resumption of dumping, the evidence leads the Tribunal to conclude that exporters from Japan and the United States are not likely to resume injurious dumping and that the findings applicable to those two countries should be rescinded. The evidence indicates that both Japan and the United States have had relatively small market shares. Imports from Japan are low in volume and largely restricted to high-priced albums. In 1985, one of the concerns of Desmarais & Frère Ltd./Ltée (Desmarais), the major domestic producer and complainant in all cases, was that many of the imports from the United States were merely transshipments from subject countries. Such transshipments are now unlikely given the subsequent finding of injury in the United States against dumped imports from the Republic of Korea (Korea) and Hong Kong. Moreover, the activity of US producers has diminished since 1986.

However, the Tribunal concluded that there is a strong likelihood of resumed dumping of the subject goods by Korea, Hong Kong, the People's Republic of China (China), Singapore, Malaysia and Taiwan. The Tribunal's decision is based on the past history of country switching of dumped imports causing material injury, the dumping activity in international markets by exporters from many of these countries and the inability of the low-priced imports to compete in the Canadian market at, or above, normal values.

Turning to the question of likelihood of material injury to the domestic industry from such resumed dumping, the Tribunal noted that the Canadian industry had its best year in almost a decade, in 1988. However, prices were only marginally higher than in the early 1980s, and Desmarais showed only a slight profit on the subject goods. This benefit was short-lived because of renewed price pressures from new sources of low-priced imports, namely, Indonesia and Thailand. These had a negative effect on prices and the industry's profits. The now familiar scenario of defensive responses by the industry to the low import prices, with consequential price suppression and financial deterioration, was repeated for the fifth time. In sum, the Tribunal is persuaded by the evidence, as it relates to prices, sales and profits, that the industry is likely to be materially injured by a resumption of dumping.

Accordingly, the Tribunal concluded that the subject findings, with the exception of the findings against Japan and the United States, should be continued without amendment.

## **BACKGROUND**

This is a review, under section 76 of SIMA, of the following findings of material injury:

- the finding of the ADT dated January 24, 1975, respecting photo albums with self-adhesive leaves originating in Japan and Korea in Inquiry No. ADT-4-74, continued in Review No. R-3-84 on August 24, 1984;
- the finding of the CIT dated April 26, 1985, respecting photo albums with self-adhesive leaves originating in or exported from Hong Kong and the United States of America and self-adhesive leaves originating in or exported from Hong Kong, the United States of America and Korea in Inquiry No. CIT-18-84;
- the finding of the CIT dated February 14, 1986, respecting photo albums with self-adhesive leaves (imported together or separately) originating in or exported from China in Inquiry No. CIT-10-85; and
- the finding of the CIT dated November 3, 1987, respecting photo albums with self-adhesive leaves (imported together or separately) and self-adhesive leaves originating in or exported from Singapore, Malaysia and Taiwan in Inquiry No. CIT-5-87.

Pursuant to section 76 of SIMA, the Tribunal initiated a review of the findings and issued a notice of review on November 27, 1989. This notice was forwarded to all

known interested parties and was published in Part I of the December 9, 1989, edition of the Canada Gazette.

As part of this review, the Tribunal sent detailed questionnaires to known manufacturers and importers of the subject goods. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared both public and protected pre-hearing staff reports relative to the review. In addition, the record of this review consists of all relevant documents, including the original findings, the notice of review and public and confidential/protected sections of replies to the questionnaires. All public exhibits were made available to interested parties and protected exhibits, to independent counsel only.

Public and *in camera* sessions were held in Ottawa, Ontario, on May 22 and 23, 1990.

Desmarais, a domestic manufacturer of the subject goods, was represented by counsel at the hearing, submitted evidence and made argument in support of continuing the findings.

Candym Enterprises Limited (Candym), a prospective importer of the subject goods, submitted evidence and made argument in support of an exclusion from the finding applicable to Singapore, Malaysia and Taiwan to import certain albums that are not, allegedly, in direct competition with Canadian manufactured goods.

In addition, the Tribunal invited a witness from Banner Educational Products Ltd. (Banner), the second largest domestic producer of the subject goods, and a witness from Black Photo Corporation (Black), a large retailer of photographic equipment and purchaser of photo albums from Desmarais and offshore sources, to answer questions put by the members of the Tribunal and by counsel.

## **THE PRODUCT**

Under consideration in this review are photo albums with self-adhesive leaves and separate self-adhesive leaves. The albums are composed of individual leaves that are joined together with covers mainly in the three-ring or coil-bound formats. The leaves are made up of a light cardboard coated with a special type of pressure-sensitive adhesive on each side and further covered by a transparent film that can be peeled back. The adhesive holds a photograph laid against it, but it is not a permanent adhesive and will readily release the photograph without leaving any adhesive material on it. Once a photograph is laid on the adhesive covered cardboard, the transparent film can be laid over the photograph, thus providing it with protection.

The coil-bound albums are generally used as promotional items by large retailers throughout Canada. They have been surpassed in popularity by the three-ring photo album format, with a greater number of leaves, usually 50. Individual self-adhesive leaves are sold either as refills, usually marketed in packages of 4, 10 or 20 leaves, or in bulk to other producers of photo albums.

## **THE DOMESTIC INDUSTRY**

Desmarais of Longueuil, Quebec, has been the major Canadian producer of photo albums with self-adhesive leaves since it commenced production in the early 1970s. The company was founded in 1951 and incorporated in 1957. The Groupe Quebecor Inc., a Canadian holding company with substantial Canadian printing and publishing interests, acquired majority ownership in 1987. Desmarais employs over 400 people in peak periods, manufacturing photo albums, transparency slide mounts, heat-sealed plastic articles and laminations and extrusions of polymers. It is the only fully integrated manufacturer of the subject goods in Canada. The company produces coil-bound, post-bound and three-ring albums, as well as individual self-adhesive leaves.

Over the years, a number of firms have produced the subject goods, in whole or in part, in Canada. These include William E. Coutts Company, Limited, Willowdale, Ontario; Hutchings & Patrick Inc., Ottawa, Ontario; Crown Photo Album Co. Inc., Richmond Hill, Ontario; and Banner Educational Products Ltd., Ville d'Anjou, Quebec. The first three companies buy leaves and incorporate them into albums of their own manufacture. They have produced low volumes since 1987, with Hutchings & Patrick Inc. ceasing its production of albums in 1989. On the other hand, Banner, which had produced albums with self-adhesive leaves intermittently in the past, from imported leaves, began manufacturing leaves and producing significant quantities of albums in the three-ring format in 1987.

## **SUMMARY OF 1975 FINDING**

On January 24, 1975, the ADT found that the dumping of photo albums with self-adhesive leaves originating in Korea had caused, was causing and was likely to cause material injury to domestic production and that the dumping of the subject goods from Japan was likely to cause material injury to domestic production. No material injury was found respecting the component parts of photo albums with self-adhesive leaves (including separate self-adhesive leaves) originating in Japan and Korea.

In its consideration of material injury with respect to photo albums, the ADT heard evidence that indicated that Japanese imports had declined as a percentage of the total apparent Canadian market and that Japanese average unit prices were greater than Korean unit prices for photo albums. As a result, the ADT was unable to conclude that the dumping of photo albums with self-adhesive leaves from Japan had caused or was causing material injury to Canadian production, but found that such dumping was likely to cause material injury. Japan had offered, and was prepared to offer, large quantities of photo albums with self-adhesive leaves to Canadian buyers at dumped prices. The ADT concluded that this would have a tendency to inhibit the efforts of Canadian producers to improve their market share, and, as such, would constitute a threat of material injury to Canadian production.

While the Japanese share of the Canadian market for photo albums with self-adhesive leaves was declining, it was accruing, for the most part, for Korean producers and, to a lesser degree, for Canadian producers, and there was every indication that the Korean share of the market would continue to remain important. On the basis of the evidence, the ADT was satisfied that the dumped Korean imports prevented Desmarais from increasing its prices commensurate with increasing costs,



which it considered to be a form of price degradation. Also, the ADT was satisfied that Desmarais was unable to take that share of the domestic market (particularly in that important sector constituted by the retail chains) that it could reasonably have expected to capture, principally because of price. And, finally, the ADT was convinced that Desmarais' low volume and poor profitability were directly related to the intense competition from the dumped imports. As a result of the cumulative effect of the foregoing, the ADT concluded that the dumped imports of photo albums with self-adhesive leaves from Korea had caused, were causing and were likely to cause material injury to the production in Canada of like goods.

Components of photo albums with self-adhesive leaves were included in the preliminary determination by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister), without greater specificity, as the class of goods into which the ADT was to inquire. Information available to the ADT indicated that the only component found to be dumped were the separate self-adhesive leaves. The only other evidence regarding components was for covers only. However, the ADT concluded that, while it was conceivable that an importer could commence assembly operations in Canada with imported covers, this was pure speculation, inasmuch as there was no evidence that only covers were imported into Canada, nor any indication of an intention of going into such production.

With respect to self-adhesive leaves, considered to be components as well as refills, the evidence indicated that Desmarais took only one year, from the commencement of production of self-adhesive leaves, to displace Japan as leader in the market. There was also every indication that Desmarais would further improve its market share. Korea was found to have no significance in the market. Given Desmarais' quick and substantial market penetration, its profitability and the absence of any evidence of injury from dumped imports, the ADT concluded that there was no injury or likelihood of injury to Canadian production of separate self-adhesive leaves.

#### **SUMMARY OF REVIEW OF 1975 FINDING**

In the 1984 review of the 1975 finding on photo albums with self-adhesive leaves from Japan and Korea, the ADT found no reason to rescind or amend the said finding. It issued its review finding on August 24, 1984.

The evidence indicated that the factors, nine years earlier, that prompted the ADT to find material injury in January 1975 were still present, namely, the presence of dumped photo albums with self-adhesive leaves from Japan and Korea, depressed prices and unprofitable industry sales. The evidence also amply demonstrated the vulnerability of the industry by its inability to increase sales since 1981, to increase selling prices or to operate profitably. In fact, during that period of time, the industry lost a significant share of the market, and price competition in the marketplace intensified. With regard to the question of the possible resumption of dumping and whether or not such dumping was likely to cause renewed material injury to the domestic production of like goods, the evidence indicated that the dumping had never ceased.

As a result, the ADT concluded that, while imports from sources other than Japan and Korea had undoubtedly contributed to the problems facing the industry in the last few years, important volumes of the subject goods from the named countries, offered at extremely low prices, continued to be present in the market. It also stated that, except for the finding in place, the situation would be much worse. As a result, the ADT found no reason to rescind or amend the finding under review.

### **SUMMARY OF 1985 FINDING**

On April 26, 1985, the CIT found that the dumping of photo albums with self-adhesive leaves originating in or exported from Hong Kong and the United States, and self-adhesive leaves originating in or exported from Hong Kong, the United States and Korea had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

The inability of Desmarais, still the major Canadian producer, to increase sales of photo albums with self-adhesive leaves in an expanding market since 1981, the suppression and degradation of selling prices and their direct impact on the company's profits for the subject goods led the CIT to conclude that the injury suffered by Desmarais was material. Evidence of significant import penetration of the subject goods from the subject countries and uncontradicted evidence of lost accounts and sales to dumped imports also led the CIT to the conclusion that the dumping of photo albums with self-adhesive leaves from Hong Kong and the United States had caused and was causing material injury to the production in Canada of like goods. The level of importation of dumped goods, at the time, led the CIT to further conclude that Desmarais was likely to suffer injury if the dumping on such a scale was allowed to continue uninhibited, there being no apparent reason to believe that such volume would shrink in the absence of anti-dumping duties.

With respect to self-adhesive leaves, the CIT determined, in the absence of evidence to the contrary, that the dumping of the separate leaves had probably caused Desmarais to lose substantial sales of the separate leaves to a potential account, identified as one large importer of leaves that incorporated these leaves into a three-ring cover of its own manufacture. The CIT further concluded that, since the leaves represented a significant portion of the completed album, the purchase of low-priced leaves had allowed this importer to underprice Desmarais on the sale of the finished albums.

### **SUMMARY OF 1986 FINDING**

On February 14, 1986, the CIT found that the dumping of photo albums with self-adhesive leaves (imported together or separately) originating in or exported from China had caused, was causing and was likely to cause material injury to the domestic production of like goods.

At about the time that the 1985 finding was issued, Desmarais became aware that Climax Paper Converters, Limited of Hong Kong had advised purchasers in Canada that it was moving the production of its photo albums and leaves from Hong Kong to China. Since the finding, Desmarais had increased its sales by a large percentage, while sales from imports had declined by about 50 percent, with most of that decline accounted for

by a sharp reduction in sales of imports from countries that had been found to be dumping and causing injury in the 1985 finding.

The CIT was persuaded by the evidence that, faced with the threat of dumped imports from China, Desmarais had no choice but to maintain low prices or even reduce them in order to maintain sales volume. As a result, the company continued to suffer significant financial losses in 1985, although showing improvement in production, sales and plant loading. Notwithstanding the low penetration of the Canadian market by the dumped goods, the CIT found that the dumping of the subject goods from China had caused and was causing material injury to Desmarais' production of like goods.

The evidence also disclosed that the volume shipped to Canada represented a fraction of available production capacity in China. Furthermore, the evidence disclosed that equipment and machinery could be moved rapidly to another location, that employees could be trained quickly and, consequently, that the rated capacity of the plant could be increased easily and swiftly. For those reasons, the CIT was convinced that the continued dumping of photo albums from China was likely to cause material injury to Desmarais' production of like goods.

Desmarais had also submitted that retroactive application of anti-dumping duties in the instant case was warranted. However, the CIT found that the volume of imports was modest when compared to the total Canadian market or to Desmarais' sales for the same period. Moreover, despite the emergence of China as a supplier in the second half of 1985, total imports of the subject goods from all sources had declined substantially since 1983. The CIT was, therefore, not persuaded that the importation of the subject goods from China was "massive."

### **SUMMARY OF 1987 FINDING**

On November 3, 1987, the CIT found that the dumping of photo albums with self-adhesive leaves (imported together or separately) and self-adhesive leaves originating in or exported from Singapore, Malaysia and Taiwan had caused, was causing and was likely to cause material injury to the domestic production of like goods.

In its consideration of material injury, the CIT noted that this was its third inquiry within the short space of three years and the fourth inquiry on similar goods during the last thirteen years. There was, therefore, a history of dumping and of injury to the only large Canadian producer, Desmarais, that had commenced long before the entry of dumped imports from Singapore, Malaysia and Taiwan. With the findings in place since 1984, the Canadian producer had enjoyed a recovery in its sales volume, but, as had happened before, the sourcing of dumped imports simply switched to other countries, namely, Singapore, Malaysia and Taiwan. The now familiar scenario of defensive responses by Desmarais to the low import prices, with consequential price suppression and financial losses, was once again repeated, leading the CIT to conclude that the injury caused to Desmarais' production by the dumped imports was material. The CIT further concluded that, failing the imposition of anti-dumping duty measures, there was a strong likelihood that material injury would continue, simply because Desmarais would be compelled to respond to low, dumped price levels in order to maintain volume.

With respect to Desmarais' submission that the level of imports from the subject countries was indicative of massive dumping, the CIT noted that, although dumped imports from the three subject countries accounted for almost three quarters of total imports in 1986, their combined share of the Canadian market was, nevertheless, below 15 percent. This was a modest share when compared with that of Desmarais and represented a displacement of other imports rather than an erosion of the domestic producer's share. Consequently, the CIT concluded that the dumped imports fell short of being "massive" under SIMA.

## **POSITION OF PARTIES**

### **Industry's Position**

Counsel for Desmarais argued that the findings under review should be continued. The succession of findings against various countries demonstrated a propensity, on the part of many foreign producers, to dump the subject goods in Canada. There was no reason to believe that the previously noted practice of country switching would not recur. As an example, counsel pointed to a complaint recently filed with the Deputy Minister concerning Indonesia, a relatively new source of supply.

The propensity to dump was also evidenced by an anti-dumping proceeding of the European Economic Community (the EEC) against imports of certain photo albums originating in Korea and Hong Kong and by a dumping finding in the United States against the same two countries.

Counsel argued that Desmarais was vulnerable to a resumption of dumping. Photo albums were a commodity-like, price-sensitive product. Without protection, the market was ripe for large orders at dumped prices, since some 10 customers accounted for about 70 percent of annual sales. Consequently, low price offers to one or two large retailers might establish price levels to all major accounts. In past findings, the CIT had noted that the production of photo albums was very capital-intensive and sensitive to plant loading and necessitated a high volume. Counsel added that, in fact, Desmarais had only benefited from the cumulative effect of the findings since 1988. Furthermore, it was really only with the finding of November 3, 1987, that Desmarais thought that "the hole in the dike had been plugged," as indicated by its financial results for 1988. However, Desmarais was denied breathing space, as it was faced with renewed price pressures from non-subject countries in 1989.

With respect to the United States in particular, Desmarais argued that there were still a number of producers in business, in addition to recent Korean transplants on the West Coast. The ongoing concern of Desmarais has been that goods imported from the United States might be goods originating in other subject countries and merely transhipped through that country.

Turning to the request for exclusion, counsel pointed out that neither Black nor Candym had approached Desmarais to supply them with lacquered or "fashion/decorative" albums, although Desmarais had previously sold such goods to them. Desmarais still made these products, and there was no basis for excluding them.

Banner requested the continuation of the findings, submitting that a rescission would cause serious damage to the Canadian industry. Banner commenced production in 1987 on the basis of favorable market conditions. In 1989, low-priced import competition returned and caused it to lose sales. Future investment in production equipment would depend on market circumstances. If price erosion continued, a return to importing would be considered as an alternative to domestic production.

### **Importers' Position**

Candym, a potential importer, requested an exclusion for imports of "fashion/decorative" higher priced albums from Malaysia and Taiwan. Its position was that these imports would be marketed through specialty gift stores and high-end department stores rather than the mass market outlets for the Canadian manufactured product.

Black was of the view that lacquered albums should be excluded because they are not readily available in Canada and that imports of albums made in the United States should also be excluded.

### **THE EVIDENCE**

Domestic production of photo albums doubled between 1984 and 1989; that of leaves almost tripled. During the same period, imports from the subject countries virtually disappeared from the Canadian market. Domestic producers succeeded in increasing their share of the market from just over 50 percent in 1984 to over 90 percent of the market for photo albums with self-adhesive leaves in 1989. However, this improvement was achieved in a climate of uncertainty, as prices increased only marginally during the period. In the past three years, Desmarais succeeded in eliminating substantial losses incurred in 1984, 1985 and 1986, but only managed to break even.

In 1989, the industry came under renewed price pressures from non-subject countries, most notably Indonesia, which succeeded in capturing some six percent of the market within one year. This low-price competition adversely affected the financial returns of both Desmarais and Banner.

In 1987, after the finding against Singapore, Malaysia and Taiwan, Banner commenced production of leaves and albums in Canada. Desmarais also invested substantial sums in the updating of its production facilities and in the area of research and development.

The price sensitivity of photo albums is related to market structure where only about 10 merchandisers account for more than two-thirds of the market. The loss, in whole or in part, of any one of these accounts has substantial effects on the prices and profits of the Canadian industry. Price concessions to any one account usually bring about a general price decline in the entire marketplace.

The evidence adduced at the hearing indicates that domestically produced albums are generally of higher quality than most imports from the subject countries, but that the ultimate consumer is not in a position to judge or compare quality, as albums are

generally sold in sealed packages. Price, therefore, becomes the overriding factor in the mind of the consumer.

Leaves may represent as much as 70 percent of the cost of producing a complete album, depending on the type and quality of the cover used and the number of leaves in the albums.

### **REASONS FOR DECISION**

In reviewing findings to determine whether they should be continued, with or without amendment, or rescinded, the Tribunal addresses two basic questions. Firstly, is there a likelihood of resumed dumping by exporting countries if the findings under review are rescinded? Secondly, is there a likelihood of material injury to the domestic industry from such resumed dumping? A causal link must be established between the likelihood of resumed dumping and material injury that may be caused to the domestic industry. In the absence of an affirmative decision with respect to the likelihood that a resumption of dumping will occur, the Tribunal could not continue the findings under review, as any potential injury could not be attributed to dumping.

The Tribunal notes that there are four findings under review and that dumped imports have generally switched from country to country as findings were issued.

### **LIKELIHOOD OF RESUMPTION OF DUMPING**

The first finding issued in 1975, and reviewed in 1984, involved photo albums from Japan and Korea. Self-adhesive leaves were excluded. Since the early 1980s, imports from Japan have been negligible in terms of volume, and Japan's market share has never been more than one percent. Furthermore, on the basis of average prices, imports from Japan appear to have been largely restricted to high-priced albums. Korea, on the other hand, was a major supplier of inexpensive albums until 1987. Leaves from that source were also included in the second finding issued in 1985. The margins of dumping on imports from that country were very high.

The 1985 finding involved photo albums and leaves from Hong Kong and the United States and leaves from Korea. Hong Kong had been the major foreign supplier during the previous four years. The United States was a significant supplier in 1984 and 1985. However, it has never had more than two percent of the market since 1986. Moreover, as indicated by Desmarais, one of its major concerns at the time of the 1985 finding was that many of the imports from the United States were merely transshipments into Canada from subject countries. Such transshipments are now unlikely, given the subsequent finding of injury by the United States International Trade Commission in December 1985 against dumped imports of photo albums and photo album filler pages from Hong Kong and Korea. Furthermore, the evidence shows that the activity of US producers has diminished since 1986. While Desmarais submitted that Korea had transplanted production to the United States, it did not provide evidence of the transplants' pricing activities compared to already established US producers or of their intentions, if any, for the Canadian market. Finally, the evidence shows that Desmarais sells the subject goods in the United States.

Korea and Hong Kong are the subject of a current investigation by the EEC into imports of photo albums of all kinds. It is also worth noting that, in a recent review, US authorities concluded that imports from Taiwan, Singapore, Malaysia and Hong Kong are deemed to be products of Korea for purposes of anti-dumping duties.

In 1986, the third finding, namely, the one against China, was made primarily on the basis of offers in the Canadian marketplace and evidence that production facilities were being moved from Hong Kong to China. By then, imports from Hong Kong had virtually disappeared. In 1985, albums from Hong Kong accounted for about 10 percent of the Canadian market, down from approximately 30 percent the previous year. It may, therefore, be argued that these imports, as well as those from Korea, all low-priced, could not compete in the Canadian market at normal values.

By 1986, low-priced imports from other sources, namely, Singapore, Malaysia and Taiwan, had appeared in the Canadian marketplace in significant quantities. These were found to be dumped and causing injury to domestic production in November 1987. By then, the familiar scenario of defensive pricing and lost sales by the Canadian industry was repeating itself for the third time within three years. As was the case for Korea and Hong Kong, these sources of supply quickly disappeared following the finding. In 1988, the domestic industry enjoyed its best year in almost a decade.

In 1989, imports from non-subject countries reappeared in the marketplace. These imports quickly acquired some 6 percent of the market within a year and accounted for over 80 percent of total imports of the subject goods.

On the basis of a complaint by Desmarais, the Department of National Revenue is now conducting an investigation to determine whether imports from Indonesia are being dumped.

In light of the foregoing, the Tribunal concludes that there is a strong likelihood of resumed dumping of the subject goods by Korea, Hong Kong, China, Singapore, Malaysia and Taiwan. The evidence also leads the Tribunal to conclude that exporters from Japan and the United States are not likely to resume injurious dumping. The findings applicable to those two countries should be rescinded.

### **LIKELIHOOD OF MATERIAL INJURY**

With respect to the second question, the likelihood of material injury to the industry resulting from such a resumption of dumping, the evidence shows that, in 1988, the Canadian industry had its best year in almost a decade. However, prices were only marginally higher than in the early 1980s, and Desmarais showed only a slight profit on the subject goods. Nevertheless, prices were on the rise and losses had been eliminated.

Following the continuation of the first finding, Desmarais' sales began to rise. However, it was faced with injurious competition from the dumping of low-priced imports from a number of countries, and, as each finding was issued, it was not able to increase prices to keep up with rising costs. The vulnerability of the industry to low-priced imports stems from the price sensitivity of the subject goods. This is derived from the nature of the goods themselves, their seasonality and the structure of the market. The subject goods are offered to consumers by retailers in heat-sealed, clear,

plastic envelopes or packages, so that it is difficult to assess the quality of the products. In the circumstances, price is the major determinant of the purchasing decision. In addition, the majority of sales occurs during a four-month period. Moreover, the structure of the market is such that the majority of the market is accounted for by relatively few large purchasers, with offerings of price reductions to one purchaser being inevitably and quickly translated into reductions to all purchasers. As a result, the industry is vulnerable to incursions of low-priced imports. For Desmarais, 10 of its largest customers account for approximately 70 percent of its total sales of the subject goods.

In this context, the Tribunal notes that, in 1988, the industry faced little competition from dumped imports. As dumping disappeared, the picture began to improve. From absorbing its largest loss on the sale of the subject goods in 1984, Desmarais gradually improved its financial situation and obtained its best results in 1988. However, those benefits were short-lived because of renewed price pressures from new sources of low-priced imports, namely, Indonesia and Thailand.

In sum, the Tribunal is persuaded by the evidence, as it relates to prices, sales and profits, that the industry is likely to be materially injured by a resumption of dumping.

### **EXCLUSION**

With respect to the requests for exclusion from the findings, both that of Candym for "fashion/decorative" albums and that of Black for albums with lacquered covers were based on the assumption that such products were not available from the domestic production. The evidence shows that Desmarais does produce such albums. Moreover, the Tribunal considers that the removal of the findings against the United States and Japan will allow such products to be obtained freely from these sources. Indeed, the record shows that most imports of high-priced albums, presumably decorative and lacquered cover albums, come from these two countries.

### **CONCLUSION**

In light of the foregoing, the Tribunal is of the view that the subject findings, with the exception of the findings against Japan and the United States, should be continued without amendment.

W. Roy Hines  
W. Roy Hines  
Presiding Member

John C. Coleman  
John C. Coleman  
Member

Charles A. Gracey  
Charles A. Gracey  
Member