



Ottawa, Thursday, February 25, 1993

Review No.: RR-92-003

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 February 26, 1988, in Inquiry No. CIT-11-87, respecting:

PHOTO ALBUMS WITH POCKET, SLIP-IN OR FLIP-UP STYLE SHEETS (IMPORTED TOGETHER OR SEPARATELY), AND REFILL SHEETS THEREOF, ORIGINATING IN OR EXPORTED FROM JAPAN, THE REPUBLIC OF KOREA, THE PEOPLE'S REPUBLIC OF CHINA, HONG KONG, TAIWAN, SINGAPORE, MALAYSIA AND THE FEDERAL REPUBLIC OF GERMANY

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 February 26, 1988, in Inquiry No. CIT-11-87.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the above-mentioned finding without amendment.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Desmond Hallissey

Desmond Hallissey
Member

Lise Bergeron

Lise Bergeron
Member

Michel P. Granger

Michel P. Granger
Secretary



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MALAYSIA AND THE FEDERAL REPUBLIC OF GERMANY**

Special Import Measures Act - Whether to rescind or continue, with or without amendment, the finding made by the Canadian Import Tribunal on February 26, 1988, in Inquiry No. CIT-11-87.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: January 18 and 19, 1993
Date of Order and Reasons: February 25, 1993

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

Director of Research: Réal Roy
Research Officer: Daryl Poirier
Statistical Officer: Sonya McEachern

Counsel for the Tribunal: David M. Attwater

Registration and
Distribution Officer: Pierrette Hébert

Participants: John D. Richard, Q.C.
for Desmarais & Frère Ltd.
(Manufacturer)

Peter A. Magnus
for Climax Paper Converters, Limited

Robert H. Wilkinson, MBA
President
Paget Industries Inc.
(Exporters/Importer)

Witnesses:

André Deschamps, CA
Executive Vice-President and
Chief Operating Officer
Desmarais & Frère Ltd.

Claude Desmarais
President
Desmarais & Frère Ltd.

Vytas E. Gruodis
Vice-President
Marketing and Sales
Desmarais & Frère Ltd.

M. St-Amand, CGA, CMA
Controller
Treasurer
Desmarais & Frère Ltd.

Garry L. Bilton
Product Manager
Black Photo Corporation

Alan Cheung
Vice-President
Climax Paper Converters (Canada), Ltd.

Robert H. Wilkinson, MBA
President
Paget Industries Inc.

Address all communications to:

The Secretary
Canadian International Trade Tribunal
20th Floor
Journal Tower South
365 Laurier Avenue West
Ottawa, Ontario
K1A 0G7



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

STATEMENT OF REASONS

BACKGROUND

This is a review under subsection 76(2) of the *Special Import Measures Act*¹ (SIMA) of the finding made by the Canadian Import Tribunal (the CIT) on February 26, 1988, in Inquiry No. CIT-11-87, concerning photo albums with pocket, slip-in or flip-up style sheets (imported together or separately), and refill sheets thereof, originating in or exported from Japan, the Republic of Korea, the People's Republic of China, Hong Kong, Taiwan, Singapore, Malaysia and the Federal Republic of Germany.

Pursuant to subsection 76(2) of SIMA, the Canadian International Trade Tribunal (the Tribunal) initiated a review of the finding and issued a notice of review on October 19, 1992. This notice was forwarded to all known interested parties and was published in Part I of the October 31, 1992, edition of the Canada Gazette.

As part of this review, the Tribunal sent questionnaires to known manufacturers and importers of the subject goods. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared 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 finding, the notice of review, and public and confidential sections of replies to the questionnaires. Questionnaire responses and *in camera* submissions by Desmarais & Frère Ltd. (Desmarais) in Review No. RR-89-012 and Inquiry No. NQ-90-003 also formed part of the record of this review. All public exhibits were made available to interested parties, while protected exhibits were provided to independent counsel only.

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

Public and *in camera* sessions were held in Ottawa, Ontario, on January 18 and 19, 1993.

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

Climax Paper Converters, Limited (Climax) was represented by counsel at the hearing. It submitted evidence and made argument in support of rescinding the finding.

Paget Industries Inc. (Paget) was represented by its president, submitted evidence and made argument in support of rescinding the finding.

PRODUCT

Under consideration in this review are photo albums with pocket, slip-in or flip-up style sheets (imported together or separately), and refill sheets thereof, originating in or exported from Japan, the Republic of Korea (Korea), the People's Republic of China (China), Hong Kong, Taiwan, Singapore, Malaysia and the Federal Republic of Germany (Germany). These albums are used to store photographs in individual pockets made of transparent film. They are largely interchangeable with self-adhesive photo albums which hold the photographs in place with an adhesive sheet and which are also subject to anti-dumping measures.²

DOMESTIC INDUSTRY

Desmarais of Longueuil, Quebec, is the major Canadian manufacturer of photo albums with pocket style sheets and accounts for approximately 80 percent of the domestic production of the subject goods. It is the only fully integrated manufacturer of the subject goods in Canada. It is also one of the leading North American manufacturers. The company was founded in 1951 and incorporated in 1957.

There are three other known Canadian manufacturers of the subject goods. The second largest manufacturer, also located in Quebec, is Belt Stationery Mfg Ltd. (Belt) of Montréal. The remaining two manufacturers are Techmatic Mfg Inc. (Techmatic) of Brampton, Ontario, and Hutchings & Patrick Inc. of Ottawa, Ontario.

2. *Photo Albums with Self-Adhesive Leaves Originating in Japan and the Republic of Korea* (ADT-4-74), altered September 4, 1990, in Review No. RR-89-012; *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* (CIT-18-84), altered September 4, 1990, in Review No. RR-89-012; *Photo Albums with Self-Adhesive Leaves (Imported Together or Separately) Originating in or Exported from the People's Republic of China* (CIT-10-85), continued September 4, 1990, in Review No. RR-89-012; *Photo Albums with Self-Adhesive Leaves (Imported Together or Separately) and Self-Adhesive Leaves Originating in or Exported from Singapore, Malaysia and Taiwan* (CIT-5-87), continued September 4, 1990, in Review No. RR-89-012; and *Photo Albums with Self-Adhesive Leaves, Imported Together or Separately, and Self-Adhesive Leaves, Originating in or Exported from Indonesia, Thailand and the Philippines* (NQ-90-003).

Desmarais alone represents the domestic industry for purposes of subsection 42(3) of SIMA.

SUMMARY OF THE 1988 FINDING

On February 26, 1988, in Inquiry No. CIT-11-87, the CIT found that the dumping in Canada of photo albums with pocket, slip-in or flip-up style sheets (imported together or separately), and refill sheets thereof, originating in or exported from Japan, Korea, China, Hong Kong, Taiwan, Singapore, Malaysia and Germany, had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

The CIT noted that Inquiry No. CIT-11-87 was the continuation of a trend which had transpired over the course of the preceding 13 years with respect to photo albums, noting, in particular, the significant margins of dumping which had occurred and the tendency to switch from country to country to source products at dumped prices. In the above-noted inquiry on pocket photo albums, seven of the countries found by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) to have been dumping by substantial margins were found to have caused material injury to the production in Canada in previous inquiries concerning photo albums with self-adhesive leaves.

In the case of Inquiry No. CIT-11-87, the market for the subject pocket photo albums grew rapidly during the period from 1984 to 1987. During that period, Desmarais, the major Canadian manufacturer of the subject goods, lost 23 percentage points of market share to dumped imports. Although Desmarais' sales and production volumes increased during that period, this resulted from price competition by Desmarais and led to sharp declines in the company's profitability during 1986 and 1987. A suggestion that Desmarais' loss of business was due to competition from other Canadian manufacturers was not accepted by the CIT. The competition from other Canadian manufacturers was judged to have been materially assisted by the purchase of imported sheets which were found to have been dumped at substantial margins.

For the same reason, a request for an exclusion of refill sheets imported in bulk for incorporation into manufactured albums was also rejected. The CIT felt that to allow such an exclusion would only have permitted importers, as well as manufacturers, to import refill sheets at dumped prices, thereby further eroding Desmarais' market share. A request for an exclusion of refill sheets from Malaysia and Singapore was similarly denied, even though there were no imports of refill sheets from those countries during the Deputy Minister's period of investigation. However, the photo albums containing refill sheets which had been imported from those countries were found to have been dumped at significant margins. In the CIT's view, to exclude refill sheets from an injury finding would merely have provided those countries with a licence to dump refill sheets in Canada.

In summary, in view of the rapid market penetration made by dumped imports in 1986 and 1987 and the consequent impact on Desmarais' market share, price levels and profitability, the CIT found that the dumping of the subject goods had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

POSITION OF PARTIES

Domestic Industry

Counsel for Desmarais argued that the finding should be continued because the very nature of the industry made it vulnerable to unfair trade practices in the form of dumping.

Counsel claimed that Desmarais was vulnerable to resumed injurious dumping because of factors such as: (1) the price sensitivity of a commodity product; (2) the capital-intensive nature of photo album production and its sensitivity to plant loading and high volumes; (3) the small customer base for the subject goods in Canada, as 10 major retailers account for the majority of purchasing decisions; (4) the ease with which sourcing of imports can be switched from country to country; (5) the long history of dumping and consequent injury experienced by Desmarais; and (6) the pressure on Desmarais to maintain low prices in order to achieve required production volumes, even in the case of a small penetration of the Canadian market by dumped goods.

Counsel further argued that, unless Desmarais were given the opportunity to have the protection of the finding for another period of time, the substantial investment program which it had implemented, and which is still ongoing, would be seriously jeopardized, in that the injury which would result from the resumption of dumping from the subject countries would make Desmarais' operation uneconomical and would make it impossible for Desmarais to recover its investment.

Counsel argued that the evidence showed that there were no grounds for Desmarais to lose volume or sales other than through resumed injurious dumping. He noted that the witness from Black Photo Corporation (Black) indicated that quality and price were major considerations in Black's buying decisions and that, when choosing between two sources offering goods of comparable quality, price was the determining factor.

In this connection, counsel drew the Tribunal's attention to the substantial advances against export price, imposed by the Department of National Revenue (Revenue Canada) on imports of the subject goods from the eight subject countries, as indicative of the depth of the dumping that could recur should the finding be rescinded.

Counsel for Desmarais drew particular attention to the other two participants at this review hearing: Climax and Paget. With respect to Climax, it was counsel's view that it is only the finding that stands between it and a massive invasion of the Canadian market. This view was based on the fact that Climax has the necessary contacts in Canada through the distribution of other products to department stores, retailers and others. It also has the capacity to enter the Canadian market in a massive way in terms of volume of goods. Counsel cited the evidence provided by Climax of its sales growth experience in Europe with photo albums and other products, as well as Climax's evidence concerning its global market share for albums, as well as for other products. In counsel's view, Climax could easily, and would, focus its attention on the Canadian market for pocket photo albums should the finding be rescinded. With respect to Paget, counsel submitted that Mr. Robert H. Wilkinson's testimony showed that he would take

advantage of the rescission of the finding by importing photo albums with pocket style leaves directly from the subject countries.

Exporters/Importer

Counsel for Climax, a Hong Kong-based manufacturer and exporter of the subject goods, argued that the entire finding should be rescinded because no evidence of dumping had been advanced. Alternatively, counsel asked that the Tribunal exclude, from any continuation of the finding, exports to Canada of the subject goods manufactured by Climax.

Counsel's argument was based largely on Articles 3 and 9 of the GATT Anti-Dumping Code³ (the Code). More specifically, counsel argued that "in conducting a review inquiry and in arriving at a conclusion as to whether the injury finding should remain in place or be rescinded, ... it is very clear that what the Tribunal is doing is essentially making a future injury finding ... [and] ... you must be satisfied ... that there is evidence of a likelihood of dumping resuming."⁴

With respect to future injury, counsel quoted paragraph 6 of Article 3 of the Code which requires that a determination of threat of injury be based on facts and not merely on allegation, conjecture or remote possibility and that the change in circumstances which would create a situation in which the dumping would cause injury be clearly foreseen and imminent. Counsel argued that everything that Desmarais had done in terms of investment, improved efficiency, innovation, etc., could be taken to show that Desmarais was now far better positioned to withstand international competition in the domestic market than was the case five years ago.

Counsel contended that the only evidence of likelihood of dumping that counsel for Desmarais put forward pertained to the advances established by Revenue Canada in 1989 for application against imports of the subject goods from the subject countries. In counsel's view, the lack of evidence of any likelihood of resumed dumping supported a rescission of the finding. Counsel further argued that a previous retroactivity finding⁵ of the Tribunal on self-adhesive photo albums imported from Indonesia, Thailand and the Philippines would serve as a warning to the importing community should the finding on pocket photo albums be rescinded.

Mr. Wilkinson, President of Paget, argued that no evidence had been presented to suggest that dumping would recur from the subject countries. Accordingly, the subject goods were not being dumped, and the finding should be rescinded.

3. *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*, signed in Geneva on April 12, 1979.

4. Transcript, January 19, 1993, at 24 and 25.

5. *Photo Albums with Self-Adhesive Leaves, Imported Together or Separately, and Self-Adhesive Leaves, Originating in or Exported from Indonesia, Thailand and the Philippines* (NQ-90-003). In addition to a finding of material injury, it was found that the material injury had been caused by reason of the fact that the dumped goods constituted a massive importation into Canada, as provided by subparagraph 42(1)(b)(ii) of SIMA.

ECONOMIC INDICATORS

Desmarais was the only domestic manufacturer of the subject goods to respond fully to the Tribunal's manufacturer's questionnaire. Consequently, virtually all of the data relating to the performance of the domestic industry over the period of review are confidential to that company.

The apparent market for pocket photo albums grew steadily from 1988 to 1990, before declining by several percentage points in 1992. Overall growth in the apparent market from 1988 to 1992 is estimated to have been 41 percent.

Sales by domestic manufacturers increased slightly from 1988 to 1992, while market share held by domestic manufacturers decreased by 24 percentage points over the same period.

Subsequent to the finding of material injury on February 26, 1988, imports from the subject countries fell by more than 90 percent in 1988 from their level in the first nine months of 1987. Those imports remained at, or below, the 1988 level until 1992. In 1992, it is estimated that imports from the subject countries increased by more than 80 percent from their level in 1988. Even so, those same imports only increased their share of the Canadian market for pocket photo albums from 5 percent in 1988 to 6 percent in 1992.

Imports from non-subject countries increased their share of the apparent market for the subject goods from 1 percent in 1988 to 24 percent in 1992. Imports from the United States accounted for 84 percent of imports from all non-subject countries in 1992 and for 21 percent of the total market in 1992.

Desmarais invested heavily from 1988 to 1992, including investments in the most up-to-date technology available for the production of photo album covers. It also vertically integrated into polymer extrusion and added conversion lines primarily to make polypropylene pages for pocket photo albums. Although some older equipment was displaced by these investments, the productivity of the new equipment resulted in increased capacity to produce both photo album covers and pages.

Employment in the production of the subject photo albums and components from 1988 to 1990 increased in accordance with the increase in production of these goods. Employment levels in 1991 then dropped to below the level of 1988, with most of this decrease taking place in the production of component parts. The decrease in employment in the production of the total subject goods in 1991 was consistent with the decrease in production of the subject goods in the same year. This overall decline in employment continued into the first nine months of 1992.

Desmarais' net profit before taxes on the subject goods remained positive from 1988 to 1990. In both 1991 and 1992, the company reported a net loss on sales of the subject goods. The net loss before taxes in the first nine months of 1992 was greater than that in the comparable period in 1991.

Desmarais' average net selling prices for the subject photo albums have shown two different trends. Prices for mini-albums increased each year from 1988 to 1991, but decreased in 1992. Prices for mid-size and jumbo-size albums declined in every year from 1988 onward.

REASONS FOR DECISION

In past decisions, the Tribunal established two criteria that it must meet to continue a finding that is scheduled to expire pursuant to the provisions of subsection 76(5) of SIMA. First, the Tribunal must be satisfied that there is a likelihood of resumed dumping of imports if the finding is rescinded. Second, the Tribunal must be able to conclude that the resumption of dumping is likely to cause material injury to the production in Canada of like goods. Both criteria are examined in detail below.

LIKELIHOOD OF RESUMED DUMPING

By their very nature, reviews of findings of dumping and material injury tend to make it difficult for the domestic industry to produce meaningful evidence of future dumping of the subject goods in Canada by the named countries. In keeping with the purpose behind anti-dumping measures, a finding ordinarily serves to eliminate or discourage dumping of the subject goods from the countries found to have been dumping. Should findings not produce such consequences, they would be neither sought after nor imposed in the first instance.

Accordingly, evidence of the likelihood of resumed dumping in the event of rescission of a finding is usually more difficult to establish than the fact of dumping which originally took place. In the present review, those difficulties are compounded by the fact that exports from the named countries are subject to very high advances, such that exporters are frequently no longer able to compete in the Canadian market. A further complication arises when a review of normal values for the subject goods has not been undertaken for several years, as is the case here. A propensity to dump may still be discerned by reference to a number of different factors, including the pricing of the subject goods by the named countries in other foreign countries or the pricing of other related products produced by those same countries. Nevertheless, to predict the behaviour of exporters if a finding were to be rescinded would include drawing inferences from past and present actions.

In the present review, counsel for Desmarais pointed to previous decisions by the Tribunal and its predecessors with respect to self-adhesive photo albums. Self-adhesive photo albums can be considered surrogate products for pocket photo albums, since they are manufactured by the same companies which manufacture pocket photo albums, serve the same function of storing photographs and are, to a large extent, substitutable for pocket photo albums on the basis of price.

Counsel also argued that previous findings and orders, with respect to the rapid inroads made by imports into the market for self-adhesive photo albums, were evidence of the swiftness with which import penetration could take place and of the tendency of dumping countries to switch production to a non-subject country.

In this latter connection, the Tribunal finds the testimony of Mr. Alan Cheung, the witness for Climax, to be pertinent. Mr. Cheung testified that many Hong Kong manufacturers of photo albums had switched production from Hong Kong to China. While both Hong Kong and China are subject countries in respect of their exports of photo albums to Canada, the Tribunal notes that there is an injury finding by the United States against Hong Kong, but not against China, in respect of these goods. Mr. Cheung testified that Climax itself no longer manufactured photo albums in its

Hong Kong plant, and that all production of photo albums was now carried out in one of its two plants in China. The Tribunal observes that total sales of photo albums by Climax remained essentially unchanged from 1989 to 1992 and that, by far, the largest single purchaser of those photo albums in 1992 was the United States. Mr. Cheung further stated that, although photo albums are currently being produced at only one of Climax's three production facilities, the equipment in the remaining two facilities can also be used for the production of photo albums. More particularly, Mr. Cheung acknowledged that Climax currently had excess capacity for the production of the subject photo albums and that the vast majority of its sales of photo albums, including the subject goods, was to export markets.

The witness for Desmarais drew a connection between the shrinkage in lead times for orders and the existence of excess capacity in the subject countries. He stated that the lead time, some years ago, to receive an order of the subject goods from offshore suppliers had been as much as several months. Today, he alleged, the lead time for embarkment of the subject goods is several weeks, which he interpreted as an indication of the existence of unfilled capacity. He further stated that information that he had gathered from distributors in Europe was that those distributors were witnessing huge unused capacity in Southeast Asia.

It is indicative that Mr. Wilkinson did not dispute Desmarais' claim that lead times had diminished in Asia. Rather, his evidence tended to be corroborative of Desmarais' claim. Mr. Wilkinson commented that reduced lead times were a normal occurrence in a recession. He stated that he had travelled extensively in Southeast Asia and had observed that firms in that area which produced North American-type products, such as photo albums, tended to develop capacity to service the U.S. market. He added that his experience had been that manufacturers in Asia are quite substantial.

With respect to imports from the other subject countries, the Tribunal notes that the injury finding in 1988 resulted in a large decrease in imports from their level in 1987. Total imports of the subject goods declined by more than 90 percent in 1988 from their level in the first nine months of 1987 and remained at, or below, that reduced level throughout 1991. Indications are that, in 1992, aggregate imports from the eight subject countries will have more than doubled from their level in 1991.

While not all the subject countries increased their exports to Canada over the period of review, it is noted by the Tribunal that information provided by Revenue Canada suggests that exports from manufacturers in China will increase fairly substantially in 1992 over previous levels. Counsel for Climax pointed out to the Tribunal that Revenue Canada based its projected 1992 imports of the subject goods partly on 1991 enforcement data and that use of 1990 enforcement data would produce much lower estimates for 1992. Although the Tribunal surmises that Revenue Canada was only using the most current data available to make its projections, it agrees with counsel's submission in this regard. However, the Tribunal observes that, whatever the methodology, the conclusion will still be similar. While Revenue Canada had projected a fivefold increase in imports from China in 1992, the methodology suggested by counsel would result in a tripling of imports.

As noted earlier, both Korea and Hong Kong are subject to injury findings in the United States against photo albums and refill sheets of all kinds. Similarly, injury findings have been in place in Canada for some time in respect of self-adhesive photo

albums imported from suppliers in six of the eight subject countries in this review, namely, Korea, Hong Kong, China, Singapore, Malaysia and Taiwan. In addition, an injury finding was made as recently as January 1991 in respect of self-adhesive photo albums imported into Canada from Indonesia, Thailand and the Philippines. Those three countries had not previously been significant exporters of self-adhesive photo albums to Canada and are not subject countries in this review of pocket photo albums. In that connection, the Tribunal observes that Indonesia, Thailand and the Philippines have recently emerged as suppliers of pocket photo albums to the Canadian market. While the Philippines and, to a lesser extent, Indonesia both made significant inroads into the Canadian market for the subject goods from 1990 through 1992, Thailand has tended to be a more tentative player. In conjunction with imports from the United States, imports from these three countries have added to the volume and price competition for the subject goods in the Canadian market.

Mr. Garry L. Bilton, Product Manager for Black, testified on conditions in the Canadian market for photo albums and, in particular, on the major considerations taken into account by Black when sourcing photo albums. Mr. Bilton stated that quality and price were prime considerations and that quality was particularly important to Black because much of the product sold by it bore Black's name. However, Mr. Bilton conceded that, if all other factors were identical, a relatively small price differential could swing the buying decision towards the lower-priced product. The "price-sensitive" nature of photo album purchasing decisions had been brought forward by Mr. André Deschamps in relation to the concentration of purchasing decisions in the hands of very few merchandisers in Canada. This price sensitivity was also confirmed by Mr. Cheung in his testimony.

In view of the foregoing, the Tribunal concludes that manufacturers of pocket photo albums in the subject countries will quickly return to the Canadian market either of their own volition or through being sought out by Canadian importers, if the finding is rescinded. The levels at which imports from those countries had previously penetrated the Canadian market are indicative of the potential volumes which could be directed towards the Canadian market. Indeed, the evidence showed that the production of photo albums by only one manufacturer (Climax), from only one of its plants, has made it one of the largest manufacturers of photo albums in the world. The Tribunal, therefore, concludes that, absent a continuation of the finding, imports of the subject goods from the subject countries will, in all probability, significantly increase from their current level to approach the peak level of 1987 that gave rise to Desmarais' complaint. Finally, a propensity to dump has also been demonstrated by the injury finding currently in place in the United States against imports of photo albums of all kinds from Taiwan and Hong Kong and by the injury findings currently in place in Canada against imports of self-adhesive photo albums from Hong Kong, Taiwan, Korea, China, Singapore and Malaysia. In addition, an investigation by the European Economic Community in 1990 into imports of photo albums of all kinds by Korea and Hong Kong culminated in a price undertaking by those two countries. Given the existence of excess production capacity for photo albums in general, the export orientation of much of that production capacity and the price pressures already being exerted in the Canadian market for pocket photo albums, the Tribunal considers it likely that imports of pocket photo albums from the subject countries will be dumped.

LIKELIHOOD OF MATERIAL INJURY

During the course of the hearing, counsel for Climax noted that Desmarais' statement of evidence and questionnaire reply had demonstrated that Desmarais had a state-of-the-art plant and that it had the techniques which enabled it to be a low-cost manufacturer. In counsel's assessment, this evidence supported his view that Desmarais was better positioned today to compete with international competition in the Canadian market than it had been at the time of the inquiry in 1987.

There is no dispute that Desmarais has taken advantage of the protection provided by the finding to make considerable investments in technology, training, and research and development. Nevertheless, while the Tribunal tends to agree that Desmarais is more competitive today than it was some years ago, it is satisfied that there will likely be a recurrence of material injury should the finding be rescinded and dumping resume.

In examining the question of whether material injury would recur, all of the circumstances surrounding the situation in the domestic market for pocket photo albums were considered. The improved efficiency of Desmarais' operations, in and of itself, does not negate the possibility of material injury recurring. The evidence has shown that the subject goods are very price sensitive and that plant loading is a significant factor in the financial health of Desmarais' operations. These two factors alone would suggest that dumping would not have to recur on a very large scale to have a materially injurious impact on Desmarais' operations. The evidence throughout the hearing pointed to the sensitivity of Desmarais' profit position to what might be considered as relatively minor declines in prices or sales volumes in other industries.

Desmarais is already experiencing considerable price pressure from suppliers of pocket photo albums in non-subject countries that have, in recent years, commenced exporting to Canada. The evidence presented by Desmarais concerning price decreases for the subject goods which it produces was neither challenged nor contradicted by opposing counsel. In fact, the witness for Black stated that photo album prices from manufacturers had come down significantly over the past few years. The investments that Desmarais has made, although helping it to cope with those price pressures, have not rendered it immediately and totally immune to competition from other photo album manufacturers, both in Canada and in non-subject countries, such as the United States.

It was noted, in the section "Economic Indicators," that the United States has assumed a strong position among exporters of the subject goods to Canada. The health of the U.S. photo album manufacturing sector was the subject of much debate throughout the hearing. While the witness for Desmarais argued that many large photo album manufacturers in that country had gone out of business or turned to imports for at least part of their photo album requirements, other witnesses contended otherwise. On balance, the Tribunal is persuaded by evidence given by the witnesses for Black, Climax and Paget that, in spite of several recent plant closures, a healthy, diverse and competitive photo album manufacturing industry still exists in the United States. While the original country of manufacture of some imports from the United States may be in dispute, there was no disagreement by parties to the hearing that imports of photo albums from the United States have assumed a major role in the Canadian market and have added to the diversity of product available to the domestic consumer. In addition to the United States, Canadian importers of pocket photo albums have also begun to

access product in other non-subject countries, such as Singapore, the Philippines and Thailand.

The evidence adduced at the hearing pointed not only to the existence of considerable total capacity to produce the subject goods in the subject countries, but also to the existence of considerable excess capacity in those countries. Climax alone, which is one of the largest global manufacturers of the subject goods, has achieved such stature with the production from only one of its three plants, although equipment is in place in all three plants to produce the subject goods. Should even a small portion of that idle capacity be reactivated and its output directed towards the Canadian market at dumped prices, there is considerably more than a remote possibility that the effect will be materially injurious to Desmarais' viability. The competition for market share between the subject countries, non-subject countries and other domestic manufacturers, such as Belt and Techmatic, would inevitably result in price pressures that would not be inconsequential.

If the resumption of dumping by the subject countries were to recur, it would in all likelihood exacerbate a situation which is already difficult for Desmarais. Evidence by Mr. Deschamps was to the effect that Desmarais' gross margins have been squeezed by the additional fixed costs resulting from its investments, and the lower prices and reduced sales volumes of recent years. The Tribunal is persuaded that further loss of sales volume and/or lower prices will have a further negative impact on Desmarais' gross profit margins for the subject goods.

The Tribunal finds that the positive action taken by Desmarais since the injury finding five years ago has already begun to improve Desmarais' competitive position in the domestic market. However, the full benefits which might normally have been expected to flow from those investments have not yet materialized, as a result of continued price pressures, particularly from imported products. For all the foregoing reasons, the Tribunal concludes that a resumption of dumping by the subject countries will likely be materially injurious to the production in Canada of pocket photo albums.

REQUEST FOR EXCLUSION

Counsel for Climax requested that, if the Tribunal decided to continue the finding, the Tribunal exclude exports to Canada of the subject goods manufactured by Climax.

This request was based on the grounds that Climax had not exported the subject goods to Canada during the last three years and, to the best of its knowledge, there were no exports by Climax during the entire period of review, that Climax had conducted itself in a proper fashion and should be permitted the chance to demonstrate that it has no interest or concern in dumping with respect to the Canadian market, and that the finding cannot be continued in perpetuity.

Counsel for Climax did not cite any precedent whereby a specific manufacturer had been excluded from continuation of a finding on the grounds that it had not exported subject goods to Canada since the finding. Furthermore, the advances on export price applied to imports of the subject goods into Canada from Hong Kong and China are, respectively, 175 percent and 168 percent. Not surprisingly, Mr. Cheung testified that Climax's absence from the Canadian market was due to those advances. The Tribunal notes that, while Climax may have temporarily removed itself from the

Canadian market for the subject goods, it did, however, increase its presence for other products that it produces. Evidence presented by Mr. Cheung showed that Canadian orders for those other products grew considerably over the period from 1989 to 1992 and may increase further in the future, as Mr. Cheung is now able to devote all of his time and effort to the Canadian operation. Prior to the fall of 1991, his responsibilities covered the western hemisphere, including the United States and South America.

Accordingly, to grant Climax an exclusion from a continuation of the finding would imply that its absence from the market denoted meritorious behaviour when, in fact, it denoted merely an inability or unwillingness to compete in the Canadian market in the face of those advances. It would also ignore the fact that Climax has established a network of new customers which, in conjunction with the accounts supplied by Climax prior to the injury finding, provides an avenue for Climax to supply an even larger portion of the Canadian market for pocket photo albums than that previously held. Consequently, the Tribunal concludes that a case has not been made for treating Climax differently from manufacturers of pocket photo albums from the other subject countries by excluding it from a continuation of the finding.

CONCLUSION

Having regard to the foregoing, the Tribunal concludes that the dumping of the subject goods from the subject countries is likely to resume if the finding is rescinded and that such resumed dumping will likely materially injure the production in Canada of pocket photo albums. Accordingly, the finding is continued without amendment.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Desmond Hallissey

Desmond Hallissey
Member

Lise Bergeron

Lise Bergeron
Member