



Ottawa, Wednesday, July 5, 1995

Review No.: RR-94-005

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding of material injury made by the Canadian International Trade Tribunal on July 6, 1990, in Inquiry No. NQ-89-004, concerning:

**REFILL PAPER, ALSO KNOWN AS FILLER OR LOOSELEAF
PAPER, ORIGINATING IN OR EXPORTED FROM THE
FEDERATIVE REPUBLIC OF BRAZIL**

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of its finding of material injury made on July 6, 1990, in Inquiry No. NQ-89-004.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the finding in respect of the dumping in Canada of refill paper originating in or exported from the Federative Republic of Brazil.

In addition, pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds the finding in respect of the subsidizing of refill paper originating in or exported from the Federative Republic of Brazil.

Raynald Guay
Raynald Guay
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

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Special Import Measures Act - Whether to rescind or continue, with or without amendment, the finding of material injury made by the Canadian International Trade Tribunal on July 6, 1990, in Inquiry No. NQ-89-004.

Place of Hearing: Ottawa, Ontario
Date of Hearing: May 15, 1995

Date of Order and Reasons: July 5, 1995

Tribunal Members: Raynald Guay, Presiding Member
Arthur B. Trudeau, Member
Lise Bergeron, Member

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Heather A. Grant

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Participant: Michael D. Vineberg
David J. Shapiro
for Fanco Products Canada Ltd.

(Manufacturer)

Witnesses:

Samuel Eidinger
President
Fanco Products Canada Ltd.

Harvey Eidinger
Vice-President
Fanco Products Canada Ltd.

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

Daniel S. Bell
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**REFILL PAPER, ALSO KNOWN AS FILLER OR LOOSELEAF
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FEDERATIVE REPUBLIC OF BRAZIL**

TRIBUNAL: RAYNALD GUAY, Presiding Member
ARTHUR B. TRUDEAU, 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 of material injury made by the Canadian International Trade Tribunal (the Tribunal) on July 6, 1990, in Inquiry No. NQ-89-004, concerning refill paper, also known as filler or looseleaf paper, originating in or exported from the Federative Republic of Brazil (Brazil).

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the finding and issued a notice of review² on January 30, 1995. This notice was forwarded to all known interested parties.

As part of this review, the Tribunal sent comprehensive questionnaires to Canadian manufacturers, importers and purchasers of refill paper. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports. As part of its research activities, the Tribunal's research staff met with domestic manufacturers and importers, in order to answer any questions pertaining to the questionnaires. In addition, the record of this review consists of all relevant documents, including the 1990 finding, the public and protected pre-hearing staff reports from the 1990 inquiry, the notice of review, public and confidential replies to the questionnaires and the public and protected pre-hearing staff reports for this review. All public exhibits were made available to interested parties, while protected exhibits were provided only to independent counsel who had filed a declaration and confidentiality undertaking with the Tribunal.

Public and *in camera* hearings were held in Ottawa, Ontario, on May 15, 1995.

One of the two major domestic producers, Fanco Products Canada Ltd. (Fanco), was represented by counsel at the hearing, submitted evidence and made argument in support of continuing the finding.

1. R.S.C. 1985, c. S-15.
2. Canada Gazette Part I, Vol. 129, No. 5, February 4, 1995, at 275.

Hilroy, A Mead Company (Hilroy), is the other major domestic manufacturer and is also one of two major importers of refill paper. Hilroy submitted a questionnaire response and attended the hearing, at the Tribunal's request, to answer questions pertaining to the market for refill paper and Hilroy's performance in that market. A representative of Zellers Inc. (Zellers), a retailer and the other major importer of refill paper, attended the hearing at the Tribunal's request and answered questions pertaining to Zellers' purchasing practices as they relate to back-to-school stationery products, in general, and refill paper, in particular. Neither Hilroy nor Zellers was represented by counsel.

PRODUCT

The product that is the subject of this review is refill paper, also known as filler or looseleaf paper, originating in or exported from Brazil. Refill paper comes in a wide variety of sizes, with different ruling and with various hole configurations. The size of the paper ranges from 3 in. x 5 in. to 8 1/2 in. x 14 in., and it may be ruled with vertical lines, graph ruled, ruled with columns or left blank. The most common type of refill paper found in the market is 8 3/8 in. x 10 7/8 in.³ in size, ruled with horizontal lines and a vertical margin, and punched with three holes for insertion in a ring binder. In the United States, the predominant size is 8 in. x 10 1/2 in. Refill paper can also be imported in a "knocked-down" condition, that is, either in bulk or without holes and lines. Refill paper is sold in a wide variety of package sizes, ranging from 20 to 1,000 sheets per package. The most common package size, both produced domestically and imported, is the 200-sheet size.

For the most part, refill paper is used in educational institutions. Consequently, the market for the goods is seasonal, with the majority of sales to end users being made from early August to mid-September. Producers commence soliciting orders in late fall for delivery the following summer. By early spring, most major purchasers have committed themselves for the next season. Based on orders booked, manufacturers begin producing refill paper in January or February and continue production until August. Deliveries begin in March or April and continue until August, with the majority of deliveries being made from late June to August.

The market for refill paper is dominated by large retailers that use refill paper as a loss leader in their back-to-school programs. In an effort to reduce the loss that they will incur on the sales of this product, these merchandisers demand the best price available in the marketplace.

Typically, refill paper producers possess a number of production lines capable of manufacturing refill paper and related stationery items. Each production line is likely to vary in terms of age, engineering, sophistication, flexibility, labour intensity and cost efficiency. Most modern machines are manufactured in Germany and run two rolls of tablet paper, 43 in. wide x 55 in. high, each roll weighing from 2,500 to 3,000 lbs. The paper is loaded onto roll stands and is fed through a series of rollers and ruling cylinders or dies which print the lines onto the paper. The ruled paper is then cut to size, punched and stacked in finished sheets. A pre-printed cover sheet is placed on top of the required number of sheets, and the product is wrapped in plastic film. The product is then moved through a heat tunnel which tightens the plastic film around the paper to form a secure polywrapped package. The packages are then boxed for delivery.

3. These dimensions are commonly referred to as 8 1/2 in. x 11 in.

DOMESTIC INDUSTRY

In 1989, there were four manufacturers of refill paper in Canada. The two largest, Hilroy and Fanco, accounted for the vast majority of domestic production of refill paper, while Esselte Pendaflex Canada Inc. (Esselte) and Spiral Paper Products, Division of Belt Manufacturing Limited (Spiral), accounted for the remainder of domestic production. Shortly after the 1990 finding, Esselte ceased producing refill paper.

Fanco was established by Mr. Samuel Eidinge in 1943 and remains controlled by the Eidinge family of Montréal, Quebec. The company began manufacturing paper products, including refill paper, around 1969. Most of the company's production is sold to mass merchandisers. Refill paper is Fanco's principal component in its back-to-school stationery package, outselling all other school stationery products, in terms of both volume and value. Other products that Fanco supplies include spiral and exercise notebooks, computer paper, ring binders, report covers, scrapbooks, construction paper and various pads. It also produces pads and binders for the commercial (office) trade. Fanco produces stationery items at its Montréal plant and vinyl ring binders at its Lachine, Quebec, location.

Hilroy was founded in 1918 by Mr. Roy C. Hill to convert paper products for the school stationery market. Hilroy has been manufacturing refill paper for over 60 years and supplies a wide range of products to the wholesale trade for resale to the consumer market. Its other products include stitched exercise notebooks, coil notebooks, brief covers, index dividers, steno pads, ring binders, clipboards, memo books and pads. The firm produces these products at its plant in Toronto, Ontario.

At the time of the inquiry, Hilroy was operating as a division of Abitibi-Price Inc., which had purchased it in 1968 from the Hill family. In 1990 and in most previous years, Hilroy manufactured all of the refill paper that it sold in Canada. However, since 1991, Hilroy has complemented its production with imports of refill paper. In 1995, Hilroy was purchased by Mead School & Office Products, a division of Mead Corporation of Dayton, Ohio. This change in ownership did not affect Hilroy's practice of complementing production with imported goods, and its plans for the coming year appear to involve an even greater reliance on imported refill paper.

Spiral was established in 1981. Originally, it marketed its products primarily through contract sales to school boards. Refill paper was an important part of the firm's production and sales. In about 1992, the firm's marketing focus changed from making contract sales to selling through price lists to the retail market. In this market, refill paper has become a minor part of the firm's production and sales.

For the purposes of this review, the Tribunal considers that Fanco and Hilroy constitute a major proportion of Canadian production.

SUMMARY OF THE 1990 FINDING

On July 6, 1990, the Tribunal found that the dumping and subsidizing of Brazilian refill paper had caused, were causing and were likely to cause material injury to the production in Canada of like goods. The Tribunal specifically noted that two domestic producers, Hilroy and Fanco, accounted for virtually all domestic production, with Hilroy accounting for well over half of the volume. On these grounds, the Tribunal considered that each firm constituted a major proportion of Canadian production and that material injury

caused to either producer by the dumping or subsidizing of refill paper was sufficient for a finding of material injury to domestic production.

Fanco was the complainant in the inquiry, with support from Hilroy. Fanco alleged that, in 1989, it lost a long-standing account with Kmart Canada Limited (Kmart) for the supply of refill paper. Kmart awarded the business to Tilibra Paper Products (Tilibra) of Brazil. Although there was some indication of strained relations between Fanco and Kmart, the Tribunal was satisfied that Fanco lost the business when it refused to meet a low price demanded by Kmart, that was roughly equivalent to the landed price of Tilibra's refill paper. Fanco reacted to this loss by bidding aggressively for other business, ultimately winning two major accounts from its competitor, Hilroy.

The Tribunal agreed with Fanco's position that it had suffered material injury from both the lost sale and the price suppression caused by the dumping and subsidizing. It noted that Kmart accounted for 5 percent of the Canadian market and estimated that the price suppression suffered by Fanco was nearly equal to its average net annual income before taxes in the previous three years. On these grounds, and because Fanco constituted a major proportion of domestic production, the Tribunal found past and present material injury to Canadian refill paper production. On the other hand, because Hilroy's sales and profit margins had increased in 1989, the Tribunal did not find that the dumping and subsidizing had caused it past and present material injury.

However, the Tribunal found a likelihood of material injury to the domestic production of both Fanco and Hilroy. It noted that North America is the major market for this product and that Brazilian manufacturers would likely continue to attempt to penetrate this market to utilize excess capacity during their off-season, which coincided with the North American production season. In fact, the witness for Tilibra confirmed that the company sold refill paper at a loss as a way of inducing customers to buy other, more profitable stationery products. The Tribunal found that Tilibra and other Brazilian manufacturers would have made other large sales in 1989, if they had come to the market sooner, given the standardized, price-sensitive nature of the goods. The Tribunal expected that lost sales and price suppression would be even more severe, if anti-dumping and countervailing duties were not imposed.

POSITION OF PARTICIPANTS AT THE HEARING

Fanco

Counsel for Fanco submitted that, in the absence of anti-dumping and countervailing duties, it is likely that dumped and subsidized imports of refill paper from Brazil will return to the Canadian market in such volumes and at prices that will cause material injury to the refill paper industry.

In Fanco's view, since 1990, Brazil has significantly increased its capacity to produce refill paper, with the addition of several large, state-of-the-art machines for making refill paper. With the addition of these new machines, Brazilian capacity to produce refill paper now far exceeds Canadian demand for this product. This substantial growth in capacity intensifies the pressures on Brazilian manufacturers to penetrate established export markets and increases the likelihood of dumping.

In addition, counsel for Fanco noted that Brazil has maintained a strong and constant interest in the Canadian market for all other products in the back-to-school package. Counsel pointed out that, since 1989,

all major Canadian retailers have acquired school stationery products manufactured in Brazil, some of which were priced very competitively.

It is Fanco's position that refill paper is the core item in the back-to-school stationery package and that, in the absence of anti-dumping and countervailing duties, it is likely that Brazilian exporters will resume dumping refill paper. Counsel for Fanco submitted that the fact that there have been no sales of refill paper in Canada by Brazilian exporters since the finding demonstrates that they cannot sell in Canada without dumping.

In the event that dumped and subsidized imports of refill paper reenter the domestic market, counsel for Fanco submitted that high volumes would quickly be reestablished, causing material injury to domestic production of refill paper. Counsel argued that the demand for refill paper is characterized by two elements which clearly overwhelm all other variables that contribute to the dynamics of the marketplace. In today's market for refill paper, fierce competition at the wholesale level keeps constant downward pressure on unit prices. In turn, a growing concentration among the several major retail accounts that buy refill paper greatly enhances their respective buying powers, which, in turn, increases the downward pressure on prices.

Counsel for Fanco pointed out that mass merchandisers make only one or two large purchases of refill paper a year and that the loss of any one of this handful of accounts to a third party could have an immediate and drastic effect. Referring to the testimony of the witness for Zellers, counsel submitted that, if Zellers became aware that a quality supplier was prepared to commit to one of Zellers' competitors, early in the buying season, to sell goods at 15 percent less than the going rate in Canada, Zellers would use that information in negotiations with Fanco and Hilroy to have them either match that price or lose the Zellers account.

Counsel for Fanco submitted that, notwithstanding the good relationships that have existed between the suppliers and the retailers, the latter are forced to occasionally disregard long-term relationships in favour of the best price. Thus, it is even more important that the industry be protected against unfair competition because, once it is known that dumped or subsidized refill paper is being offered at the wholesale level, the other major retailers will quickly profit from this information, and an entire season will be lost for Fanco.

Hilroy

A representative of the firm testified at the hearing, at the Tribunal's request, but Hilroy was not represented by counsel. Hilroy believes that the Tribunal's finding prevented Brazilian refill paper from entering Canada and, in the absence of Brazilian imports, its market share has remained fairly consistent. However, its prices and margins have continued to decline, as both Hilroy and Fanco have reduced prices in an effort to maintain and improve market share.

According to the witness for Hilroy, domestic competitive factors have kept market prices and margins low, and market demand has remained virtually unchanged, as school enrolments have been flat. Although there is no acceptable substitute for refill paper, Hilroy anticipates that consumption will decrease in the future, as students utilize home computers and computer paper as a replacement.

Hilroy is indifferent as to whether the finding is continued or rescinded. The witness for Hilroy submitted that, although the continuation of the finding would negate any future competition from Brazil, he did not believe that the Brazilians would reenter the Canadian market with subsidized refill paper.

The witness for Hilroy submitted that the Canadian refill paper market is likely the most competitive market for refill paper in the world, which makes it a very unattractive market for new entrants. The witness testified that, with free trade, the market in North America has become one that is supplied predominantly by domestic paper converters. Competition from paper converters located outside of North America remains limited, despite the fact that there are no anti-dumping or countervailing duties in place in the United States. On these grounds, Hilroy feels that a rescission of the finding will have no significant impact in the future.⁴

Zellers

A senior buyer of school stationery products for Zellers testified at the hearing, at the Tribunal's request. The witness for Zellers indicated that the finding has had no influence on the firm's performance. According to the witness, Zellers has never purchased refill paper from Brazil, although it had been approached by representatives of the Brazilian refill paper industry just prior to the inquiry. Zellers has not purchased any refill paper from Brazil since the finding because of the anti-dumping and countervailing duties that were imposed. However, should the finding be rescinded, the witness testified that Zellers would look at the Brazilian product in terms of its costs and its quality. The witness added, however, that he had heard that the quality of Brazilian paper was not as good as the quality of domestic paper.

Zellers is one of the largest domestic retailers of refill paper. Generally, it uses this product as a loss leader in its back-to-school package of products. In its questionnaire responses, Zellers suggested that the amount of refill paper that it sells at retail is directly related to the amount available to the stores. According to the witness for Zellers and the firm's questionnaire responses, Zellers ranks price as the most important factor in deciding which products to purchase and, therefore, it is particularly aggressive with respect to the wholesale price that it pays. For example, the witness testified that a 10 percent differential in the price of two competing brands of refill paper would be enough to provide the incentive necessary to switch sources.

Until 1995, Zellers purchased all of its refill paper requirements from the domestic industry. In 1995, however, Zellers began to source product offshore, purchasing some of its refill paper requirements directly from Indonesia, mainly because it was able to source Indonesian refill paper of comparable quality to domestic refill paper at a very good price.

ECONOMIC INDICATORS

The economic indicators that the Tribunal examined in assessing the market for refill paper include: data related to the industry's production of refill paper, the volume and value of imports, the volume and value of sales in the domestic market, the volume and value of exports, pricing data, cost data, financial data and other market-related statistics. Because there are only two major refill paper manufacturers in Canada and a very limited number of importers, the data associated with the economic indicators are confidential and can best be described in terms of the trends found in the data.

Domestic production of, and the market for, refill paper peaked in 1991. During that year, the volume of refill paper produced in Canada grew by slightly less than 40 percent, and the market grew by marginally more than 40 percent, bolstered by imports of more than 1.5 million 200-sheet packages of refill paper from the United States. In the following years, domestic production volumes fell, then returned to a point some 10 percentage points below peak levels in 1994. The volume of imports grew in 1992 and 1993

4. Transcript of Public Hearing, May 15, 1995, at 77-78.

and then fell in 1994. Initially, refill paper from the United States constituted the only imports in the market, but they were subsequently joined, and then surpassed, by growing volumes of refill paper from Indonesia. The domestic market declined in both 1992 and 1993 and was flat in 1994.

Between 1990 and 1994, the wholesale price of refill paper fell. Prices dropped by more than 25 percent in 1991, strengthened in 1992 and then declined in 1993 and 1994. During the five-year period, prices dropped by about 30 percent in total.

The major cost of producing refill paper is the cost of tablet paper, the raw material used. Some of the tablet paper used by the industry is produced by Canadian paper mills, but most of the domestic demand is supplied by mills in the United States. The Tribunal heard evidence that Brazil has supplied tablet paper to Canada, but it is currently selling most of its tablet paper in Europe. Tablet paper, like all bulk paper, is sold by weight, and the price is set by world market conditions. Recent shortages of raw materials in North America are making it necessary for some, if not all, mills to limit the quantities of tablet paper that they manufacture and are forcing tablet paper prices up.

The industry's financial performance was variable during the five years examined. Gross profits as a percentage of sales remained relatively flat in 1990 and 1991, but grew sharply in 1992, in conjunction with a one-year rise in the wholesale price of refill paper and a drop in the cost of tablet paper. In the ensuing two years, the industry's gross profits dropped steadily, under the combined pressures of falling unit prices and rising costs. By 1994, the industry's gross profits was less than half the 1992 level. The evidence before the Tribunal indicates that, in 1995, unit prices will begin to rise as tablet paper costs escalate. However, fierce competition will continue to restrain price increases, despite the pressure generated by rising costs, thereby putting increased downward pressure on the industry's gross profits.

On completion of a review, the Tribunal shall rescind or continue, with or without amendment, a finding. In making its decision in this matter, the Tribunal must deal with two fundamental issues. It must first determine whether there is a likelihood of resumed dumping and/or subsidizing of refill paper from Brazil, if the finding is rescinded. If the Tribunal finds that there is a likelihood of resumed dumping and/or subsidizing of refill paper from Brazil, it must then determine whether there is a likelihood of material injury to the production in Canada of refill paper caused by the resumed dumping and/or subsidizing of refill paper from Brazil.

LIKELIHOOD OF A RECURRENCE OF SUBSIDIZED IMPORTS

In the inquiry, the Government of Brazil submitted a response to a request for information by the Department of National Revenue (Revenue Canada) concerning subsidies granted to refill paper manufacturers, but the response was too late to be verified before Revenue Canada made its final determination of dumping and subsidizing. Consequently, the amount of the subsidy reported in the final determination was based on information provided by Fanco and Hilroy. Revenue Canada has not reviewed the amount of the subsidy since it issued its final determination of dumping and subsidizing on June 6, 1990.

The Tribunal is of the opinion that the best evidence available to it on the current status of the subsidy programs cited by Fanco in the inquiry is the information provided by Revenue Canada with respect to the 1992 update, for Brazil, of the Trade Policy Review report produced by the GATT Secretariat. According to Revenue Canada, the report indicates that export subsidies in Brazil have been gradually

eliminated and that no subsidies are currently granted or maintained in the sense of paragraph 1 of Article XVI of GATT. Revenue Canada did state, however, that it was of the understanding that Brazil had certain grandfather clauses for some companies that were using the subsidy programs. The Tribunal has not obtained information as to whether any company found to be exporting subsidized refill paper to Canada benefits from the grandfather clauses, nor does it know the duration of these grandfather clauses.

While the Tribunal does not find this particular evidence to be conclusive proof of the abolition of all programs that might subsidize exports of refill paper from Brazil, it is cognizant of the general program of economic reforms being undertaken by the Brazilian government and, in the absence of any evidence to the contrary, it is confident that the Brazilian government remains intent upon dismantling its subsidy programs. To that end, the Tribunal is satisfied that it is not likely that there will be a recurrence of imports of refill paper from Brazil that benefit from an export subsidy.

LIKELIHOOD OF A RESUMPTION OF DUMPING

In addressing the question of whether Brazilian exporters are likely to resume dumping refill paper in Canada should the finding be rescinded, the Tribunal examined changes in the capacity of Brazilian manufacturers to produce refill paper, the seasonality of the markets for refill paper in Canada and Brazil, the conduct of Brazilian exporters of stationery products in Canada and the United States, the relationship between refill paper and other stationery products in terms of the back-to-school product line, the concentration of buying power in the domestic marketplace, the downward price pressure in the domestic marketplace and the competitiveness of Brazilian refill paper in terms of quality and delivery times.

The evidence indicates that the Brazilian capacity to produce refill paper has increased substantially in the last few years. The Tribunal heard evidence that six new Bielomatik refill paper machines were recently installed in Brazil.⁵ Although it is not clear whether these machines added to capacity already in place or replaced older machinery, it is clear that the net effect of the addition of the machines was to increase Brazil's capacity to manufacture refill paper by about 130 million 200-sheet packages, a volume that would, if it were all directed toward Canada, overwhelm the domestic market for this product.^{6,7}

The North American school year starts in September, whereas the Brazilian school year starts in March. Consequently, when Canadian demand for refill paper peaks, the Brazilian manufacturing facilities are underutilized. The Tribunal believes that the counter-cyclical markets, combined with a very substantial increase in the installed capacity to produce refill paper in Brazil, indicate that Brazil's refill paper manufacturers are likely to have as much, if not more, underutilized capacity available to serve the Canadian market as was the case at the time of the inquiry.

The Tribunal heard evidence about major marketing activities in the United States and Canada on the part of the Brazilian back-to-school stationery industry. The major trade show in North America for school stationery products is held by the School and Home and Office Product Association (SHOPA), which has held annual trade shows in New Orleans, Louisiana, since 1991. The witnesses for Fanco pointed out that, in 1991, when Brazil began participating in the North American school stationery market, three or

5. Transcript of Public Hearing, May 15, 1995, at 28.

6. *Ibid.*

7. Protected Pre-Hearing Staff Report, April 20, 1995, Tribunal Exhibit RR-94-005-6 (protected), Administrative Record, Vol. 2 at 26.

four Brazilian manufacturers had exhibits at the trade show, but, by 1994, that number had virtually doubled, growing to seven. These seven firms are alleged to represent virtually all Brazilian manufacturers of school stationery products.

The Tribunal heard evidence that, in the United States, Brazil is marketing the complete range of back-to-school stationery products, including refill paper. However, since 1989, Brazilian exporters have chosen not to sell refill paper in the Canadian market, although they continue to provide vigorous competition with respect to all other aspects of the back-to-school package. Referring to Statistics Canada data on imports of back-to-school stationery products, Fanco noted that nearly \$5 million worth of spiral and stapled exercise notebooks entered Canada from Brazil between January 1991 and August 1994. The value of imports of notebooks from Brazil increased from about \$670,000 in 1992 to nearly \$1.2 million in the first eight months of 1994.⁸

The Tribunal heard conflicting evidence concerning the importance of refill paper in terms of the whole back-to-school package. On the one hand, Fanco argued that refill paper is the key element in a manufacturer's back-to-school package, without which sales of the other parts of the package, such as spiral and exercise notebooks, would suffer. On the other hand, the evidence of Zellers, the largest single domestic account for refill paper, suggests that each product in the back-to-school package is purchased on its own merits, and each product must be considered as a stand-alone product. In any case, regardless of whether refill paper is sold as a stand-alone product or as the key element in a product line, the evidence is clear that buyers search aggressively for the lowest possible price.

The witness for Zellers indicated that, in today's marketplace, it is common for large retailers, such as Zellers, to shop the world for the lowest price/best quality combination available for each product that it sells, whether that product is destined to be a loss leader, such as refill paper, or a product on which the firm hopes to make a profit. The Tribunal also heard evidence that there has been a consolidation of buying power among the large retailers, as a number of smaller retailers have effectively stopped selling major volumes of refill paper.

Domestic competition has made Canada one of the most competitive marketplaces for refill paper in the world, and mass merchandisers continue to exert pressure on manufacturers for ever-lower prices. In recent years, the degree of competition has become increasingly fierce as a concentration of buying power has meant that ever-smaller numbers of buyers are vying for ever-larger shares of the domestic market. Contributing to the competitiveness of the marketplace has been Indonesia's emergence as a significant supplier of low-cost refill paper. As explained by the witness for Zellers, the firm is aggressive in its negotiations of the price of refill paper, and it shops the world for the best price. Zellers would use knowledge that a better price is being offered to any Canadian account as leverage to obtain an even better price. In fact, the witness informed the Tribunal that Zellers plans on sourcing some product from Indonesia in 1995, primarily because it can obtain good quality Indonesian refill paper at a good price. In such a fiercely competitive atmosphere, low-priced imports such as these have become the leverage upon which large retailers are relying to bargain with domestic manufacturers for an even better price.⁹

8. Manufacturer's Exhibit A-2 (protected), Administrative Record, Vol. 8.

9. Transcript of Public Hearing, May 15, 1995, at 95-96.

Finally, the Tribunal heard evidence about the quality of Brazilian refill paper compared to Canadian refill paper, as well as the reputation of Brazilian exporters for delivering their product on time. While Fanco testified that Brazilian refill paper was of comparable quality to Canadian refill paper, Hilroy was of the view that it was of lesser quality. Hilroy also made the point that Brazilian exporters had a reputation for missing their delivery dates. Based on this information, the Tribunal is of the view that Brazilian exports would not have a comparative advantage over Canadian refill paper in terms of quality and delivery times.

Given the circumstances described above, the Tribunal is of the view that a variety of factors lead it to conclude that Brazilian exporters are likely to resume dumping refill paper in Canada if the Tribunal's finding is rescinded.

First, during the period that the finding has been in place, Brazilian manufacturers of refill paper have demonstrated their intention to maintain a presence in the Canadian school stationery market through their continued sales of such goods as spiral and exercise notebooks. Second, the counter-cyclical markets, combined with a very substantial increase in the installed capacity to produce refill paper in Brazil, provide Brazilian manufacturers with a very real economic incentive to employ otherwise underutilized machinery to service the Canadian market. In the Tribunal's view, if the finding is rescinded, these same manufacturers will likely want to round out their product lines, as well as increase their share in the school stationery market by resuming their exporting of refill paper to Canada.

Finally, the fact that Brazilian refill paper has been absent from the market for five years, that it has no competitive advantage in terms of product quality or delivery times and that it will be reentering an extremely competitive market in which price is by far the most important factor in the buying decision leads the Tribunal to conclude that, when Brazil does reenter the market, it is likely to dump product in order to recapture market share.

LIKELIHOOD OF MATERIAL INJURY

In arriving at a decision on whether the production in Canada of refill paper will likely be materially injured following a resumption of dumping by Brazilian refill paper exporters, the Tribunal assessed the domestic industry's trends in production, imports, prices and financial performance since the finding. A review of these indicators suggests that the industry is particularly vulnerable to resumed dumping.

Despite the fact that there have been no imports of Brazilian refill paper sold in the domestic market since the Tribunal's finding in 1990, the health of the domestic industry has, in recent years, progressively worsened. After peaking in 1992, the industry's gross margins dropped significantly in 1993 and 1994 to a level last seen in 1989, prior to the finding. The Tribunal attributes the industry's declining financial performance to the cost/price squeeze that has developed in recent years. In the early part of the period under consideration, falling unit prices were accompanied by similarly declining costs which, to some extent, mitigated the effect of the falling sales prices. In the last few years, however, unit prices have continued to drop, whereas costs have begun to rise commensurate with growing pulp and paper costs, which continue to escalate in 1995.

Intensifying the cost/price squeeze has been a growing concentration among the large domestic mass merchandisers which, in turn, has led to a growth in buying power that the industry has never before experienced. In addition, very large buyers are able to shop in the international market, without the aid and cost of an intermediary. The lowest price in the world for supplies of quality refill paper is the price to beat, in

a market where the loss of a single large account could have a large negative effect on the industry's performance.

The Tribunal fully expects that, in the absence of anti-dumping duties, Brazilian exporters will return to the Canadian market with dumped imports. In so doing, the Tribunal is confident that, because of the very limited number of major retailers of back-to-school stationery products in Canada today, Brazilian refill paper will, inevitably, enter into head-to-head competition with low-priced imports from Indonesia, and the manufacturers' margins will be strained even more.

The Tribunal believes that the inevitable impact of such intense competition will be largely at the expense of domestic production. Profit margins will decline, as major retailers use dumped prices as leverage to force domestic manufacturers' prices down. Similarly, production volumes will be reduced either when domestic manufacturers ultimately withdraw from negotiations as prices approach a level that no longer permits a recovery of their costs or, alternatively, when manufacturers source low-cost refill paper offshore in order to continue to be price-competitive in the marketplace. The Tribunal is convinced that, given the very limited number of major customers for refill paper in Canada, the loss of one or two customers to dumped imports will result in a significant negative impact on the industry's financial performance and the volume of production. The Tribunal is persuaded that a resumption of dumping of refill paper by Brazilian exporters will materially injure domestic production.

CONCLUSION

For the foregoing reasons, the Tribunal continues the finding in respect of the dumping in Canada of refill paper originating in or exported from Brazil. In addition, the Tribunal rescinds the finding in respect of the subsidizing of refill paper originating in or exported from Brazil.

Raynald Guay
Raynald Guay
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Lise Bergeron
Lise Bergeron
Member