



Ottawa, Friday, August 25, 1995

Review No.: RR-94-006

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 Anti-dumping Tribunal on January 24, 1975, in Inquiry No. ADT-4-74, continued on August 24, 1984, in Review No. R-3-84; the finding of material injury made by the Canadian Import Tribunal on April 26, 1985, in Inquiry No. CIT-18-84; the finding of material injury made by the Canadian Import Tribunal on February 14, 1986, in Inquiry No. CIT-10-85; and the finding of material injury made by the Canadian Import Tribunal on November 3, 1987, in Inquiry No. CIT-5-87, which were continued by the Canadian International Trade Tribunal on September 4, 1990, in Review No. RR-89-012; and the finding of material injury made by the Canadian International Trade Tribunal on January 2, 1991, in Inquiry No. NQ-90-003, concerning:

**PHOTO ALBUMS WITH SELF-ADHESIVE LEAVES, IMPORTED
TOGETHER OR SEPARATELY, AND SELF-ADHESIVE LEAVES,
ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF KOREA,
HONG KONG, THE PEOPLE'S REPUBLIC OF CHINA, SINGAPORE,
MALAYSIA, TAIWAN, INDONESIA, THAILAND AND THE PHILIPPINES**

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 above-mentioned findings.

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

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Desmond Hallissey

Desmond Hallissey
Member

Lise Bergeron

Lise Bergeron
Member

Nicole Pelletier

Nicole Pelletier
Acting 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 Anti-dumping Tribunal on January 24, 1975, in Inquiry No. ADT-4-74, continued on August 24, 1984, in Review No. R-3-84; the finding of material injury made by the Canadian Import Tribunal on April 26, 1985, in Inquiry No. CIT-18-84; the finding of material injury made by the Canadian Import Tribunal on February 14, 1986, in Inquiry No. CIT-10-85; and the finding of material injury made by the Canadian Import Tribunal on November 3, 1987, in Inquiry No. CIT-5-87, which were continued by the Canadian International Trade Tribunal on September 4, 1990, in Review No. RR-89-012; and the finding of material injury made by the Canadian International Trade Tribunal on January 2, 1991, in Inquiry No. NQ-90-003.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	June 27 and 28, 1995
Date of Order and Reasons:	August 25, 1995
Tribunal Members:	Arthur B. Trudeau, Presiding Member Desmond Hallissey, Member Lise Bergeron, Member
Director of Research:	Peter Welsh
Research Officer:	Paule Couët
Economist:	Dennis Featherstone
Statistical Officer:	Nynon Pelland
Counsel for the Tribunal:	Robert Desjardins
Registration and Distribution Officer:	Joël Joyal

Participant:

Ronald C. Cheng
Gregory O. Somers
for Desmarais & Frère Ltd.

(Manufacturer)

Witnesses:

Claude Desmarais
President
Desmarais & Frère Ltd.

Michel Goulet
Vice-President, Sales and Marketing
Desmarais & Frère Ltd.

Jean-Marc Therrien
Director, Customer Service
Desmarais & Frère Ltd.

Alfred Gestetner
Belt Stationery MFG Ltd.
A division of Banner Educational Products Ltd.

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PHOTO ALBUMS WITH SELF-ADHESIVE LEAVES, IMPORTED TOGETHER OR SEPARATELY, AND SELF-ADHESIVE LEAVES, ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF KOREA, HONG KONG, THE PEOPLE'S REPUBLIC OF CHINA, SINGAPORE, MALAYSIA, TAIWAN, INDONESIA, THAILAND AND THE PHILIPPINES

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 of material injury made by the Anti-dumping Tribunal (the ADT) on January 24, 1975, in Inquiry No. ADT-4-74, continued on August 24, 1984, in Review No. R-3-84; the finding of material injury made by the Canadian Import Tribunal (the CIT) on April 26, 1985, in Inquiry No. CIT-18-84; the finding of material injury made by the CIT on February 14, 1986, in Inquiry No. CIT-10-85; and the finding of material injury made by the CIT on November 3, 1987, in Inquiry No. CIT-5-87, which were continued by the Canadian International Trade Tribunal (the Tribunal) on September 4, 1990, in Review No. RR-89-012; and the finding of material injury made by the Tribunal on January 2, 1991, in Inquiry No. NQ-90-003, concerning photo albums with self-adhesive leaves, imported together or separately, and self-adhesive leaves, originating in or exported from the Republic of Korea (Korea), Hong Kong, the People's Republic of China (China), Singapore, Malaysia, Taiwan, Indonesia, Thailand and the Philippines (the subject goods).

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

In Notice of Expiry No. LE-94-005² dated January 3, 1995, the Tribunal informed persons and governments that the findings of the ADT and the CIT were scheduled to expire on September 3, 1995, and that its finding was scheduled to expire on January 1, 1996. The Tribunal received only one submission. Desmarais & Frère Ltd. (Desmarais) requested, in its submission of February 24, 1995, that the Tribunal initiate a review of the findings.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a joint review of the findings and issued a notice of review³ on March 21, 1995. This notice was forwarded to all known interested parties.

As part of this review, the Tribunal sent review questionnaires to manufacturers, importers and purchasers of photo albums with self-adhesive leaves and self-adhesive leaves. 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 Canadian manufacturers in order to answer any questions pertaining to the questionnaires. In addition, the record of this review consists of all relevant documents, including the original findings, review finding and order, the public and protected pre-hearing staff reports from the Tribunal's previous review and 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 the interested party, 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 June 27 and 28, 1995.

Desmarais, a domestic manufacturer of photo albums with self-adhesive leaves and self-adhesive leaves, was represented by counsel at the hearing, submitted evidence and made argument in support of continuing the findings.

In addition, the Tribunal invited a witness from Belt Stationery MFG Ltd. (Belt), a division of Banner Educational Products Ltd. (Banner) which is another domestic producer of photo albums with self-adhesive leaves and self-adhesive leaves, to answer questions put by the Tribunal and counsel relating to the production of and market for those products.

PRODUCTS

The products that are the subject of this review are photo albums with self-adhesive leaves and self-adhesive leaves (hereinafter referred to as photo albums and leaves). The photo 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 sheet 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.

2. Canada Gazette Part I, Vol. 129, No. 1, January 7, 1995, at 14.

3. *Ibid.*, No. 13, April 1, 1995, at 960.

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

DOMESTIC INDUSTRY

Desmarais has been a major domestic manufacturer of photo albums and leaves since it commenced production at its plant in Longueuil, Quebec, in the early 1970s. In addition to photo albums and leaves, it manufactures pocket photo albums and refill sheets, wedding albums for professional photographers, transparency slide mounts, extruded polymer and heat-sealed plastic articles and assorted business stationery products.

In 1987, the Groupe Québecor Inc. (Québecor), a Canadian holding company with substantial printing and publishing interests, acquired a 60 percent share ownership in Desmarais. In December 1991, Mr. Claude Desmarais became sole owner of Desmarais, following his repurchase of Québecor's majority interest.

In January 1994, Desmarais initiated a restructuring of its production facilities. It closed a production plant in Lasalle, Quebec. In December 1994, the company closed its production facilities in Ottawa, which operated under the name "Desmarais Forever." The latter plant was dedicated to the production of custom-made articles for the stationery trade. In January 1995, the investment fund of the Fédération des travailleurs et travailleuses du Québec invested \$4.5 million in the company. The fund, together with the Société de développement industriel du Québec, which converted the balance of a loan into shares of the company, and Québecor, through a subsidiary, are currently the majority shareholders of the company.

Desmarais produces coil-bound, three-ring and post-bound photo albums, as well as individual leaves. In 1994, domestic sales of photo albums and leaves accounted for approximately 12 percent of Desmarais' total company sales.

During the review period, two other companies also produced photo albums. Belt has been producing three-ring photo albums, with both imported leaves and Canadian-made leaves, at its plant in Ville d'Anjou, Quebec, since 1987. Crown Photo Album Co. Inc. (Crown) commenced production of photo albums in 1988. It ceased production and closed in early 1993.

Counsel for Desmarais noted that, in the last inquiry, the Tribunal considered that Desmarais alone constituted the domestic industry. They argued that, in this review, both Desmarais and Belt should constitute the domestic industry. The Tribunal notes that both manufacturers produce photo albums and leaves, both sell to a number of the same purchasers, both are present in the market with somewhat comparable market shares⁴ and both experienced reductions in average prices during the review period.⁵ Moreover, throughout his testimony, the witness for Belt stated that the company competed with

4. Manufacturer's Exhibit A-3, Administrative Record, Vol. 7; and Protected Pre-Hearing Staff Report, May 30, 1995, Tribunal Exhibit RR-94-006-6 (protected), Administrative Record, Vol. 2 at 66.

5. *Ibid.*

Desmarais.⁶ It is also clear that Belt considers itself to be part of the domestic industry and requested the continuation of the findings. Desmarais also referred to Belt as “our major Canadian competitor.”⁷ Accordingly, the Tribunal finds that Desmarais and Belt together constitute the domestic industry for the purpose of this review.

SUMMARY OF FINDINGS

This review concerns material injury findings on imports of the subject goods put in place as a result of five separate injury inquiries. Desmarais was the complainant in all five inquiries. The first findings were made in 1975. They were followed by others made in 1985, 1986, 1987 and 1991, as importers switched their sources of supply after findings were put in place. This is the third review of the various findings. The two others took place in 1984 and 1990. The findings concerning imports from Korea, Hong Kong, China, Singapore, Malaysia and Taiwan are scheduled to expire on September 3, 1995. The findings concerning imports from Indonesia, Thailand and the Philippines are scheduled to expire on January 1, 1996.

1975 Findings (Inquiry No. ADT-4-74)

On January 24, 1975, the ADT found that the dumping of photo albums from Korea had caused, was causing and was likely to cause material injury to the domestic production of like goods and that the dumping of photo albums from Japan was likely to cause material injury to domestic production. No material injury was found respecting the dumping of leaves.

The ADT was satisfied that the dumped Korean imports had increased their share of the Canadian market and had prevented Desmarais from increasing its prices commensurate with increasing costs, which the ADT considered to be a form of price degradation. The ADT was also convinced that Desmarais' low sales volume and poor profitability were directly related to the intense competition from the dumped imports.

With regard to Japan, the ADT found that exporters had offered, and were prepared to offer, large quantities of photo albums to Canadian buyers at dumped prices. The ADT concluded that this constituted a threat of material injury to Canadian production.

Review of 1975 Findings (Review No. R-3-84)

On August 24, 1984, the ADT reviewed its 1975 findings on imports of photo albums from Japan and Korea. It found no reason to rescind or amend the findings. Regarding the question of the possible resumption of dumping and whether such dumping was likely to cause material injury to the domestic production of like goods, the evidence indicated that the dumping had never ceased. In addition, the evidence indicated that the factors, nine years earlier, that had prompted the ADT to find material injury in January 1975, were still present, namely, the presence of dumped photo albums from Japan and Korea, depressed prices and unprofitable industry sales. The evidence also demonstrated the vulnerability of the industry by its inability to increase sales since 1981, to increase selling prices or to operate profitably.

6. Transcript of Public Hearing, June 27, 1995, at 85; and Transcript of In Camera Hearing, June 27, 1995, at 72-73.

7. Transcript of In Camera Hearing, June 27, 1995, at 16.

1985 Findings (Inquiry No. CIT-18-84)

On April 26, 1985, the CIT found that the dumping of photo albums from Hong Kong and the United States and of leaves 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 main reasons for the CIT's findings on imports of photo albums from Hong Kong and the United States were the inability of Desmarais, still the major Canadian producer, to increase sales of photo albums in an expanding market and the suppression and degradation of selling prices and their direct impact on the company's profits. The level of importation of dumped goods, at the time, led the CIT to conclude that Desmarais was likely to suffer injury, there being no apparent reason to believe that the volume of imports would shrink without the imposition of anti-dumping duties.

With respect to leaves, the CIT determined that dumped imports from the three countries had caused Desmarais to lose substantial sales of leaves to a potential account, identified as a large importer of leaves that incorporated these leaves into a three-ring cover of its manufacture. Since the leaves represented a significant portion of the finished photo albums, the purchase of low-priced leaves had also allowed this importer to underprice Desmarais on the sale of finished photo albums.

1986 Findings (Inquiry No. CIT-10-85)

On February 14, 1986, the CIT found that the dumping of photo albums and leaves from China had caused, was causing and was likely to cause material injury to the domestic production of like goods. It rejected a request for the retroactive imposition of anti-dumping duties because of massive dumping.

The CIT was persuaded that, faced with the threat of dumped imports from China, Desmarais had no choice but to maintain low prices or even reduce them to maintain sales volume. The company continued to suffer significant financial losses in 1985. Notwithstanding the low penetration of the Canadian market by the dumped imports of photo albums and leaves, the CIT found that the dumping of these 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. The CIT was convinced that the continued dumping of photo albums and leaves from China was also likely to cause material injury to Desmarais' production of like goods.

1987 Findings (Inquiry No. CIT-5-87)

On November 3, 1987, the CIT found that the dumping of photo albums and leaves from Singapore, Malaysia and Taiwan had caused, was causing and was likely to cause material injury to the domestic production of like goods. It rejected a request for the retroactive imposition of anti-dumping duties because of massive dumping.

There had been a history of dumping of photo albums and leaves 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, 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. A familiar scenario of defensive responses by Desmarais to the low import prices, with consequential price suppression and financial losses, was once again repeated. The CIT concluded that there was a strong likelihood that material injury would continue, simply because Desmarais would be compelled to respond to low dumped price levels to maintain volume.

Review of 1975, 1985, 1986 and 1987 Findings (Review No. RR-89-012)

On September 4, 1990, the Tribunal reviewed all the findings on imports of photo albums and leaves. It concluded that the findings on both photo albums and leaves, except for those against Japan and the United States, should be continued without amendment. The Tribunal concluded that exporters in Japan and the United States were not likely to resume injurious dumping of the subject goods. However, the Tribunal found that there was a strong likelihood of resumed dumping of photo albums and leaves by Korea, Hong Kong, China, Singapore, Malaysia and Taiwan. The Tribunal's decision was based on the history of country switching of dumped imports and the dumping activity in international markets by exporters in many of these countries and the inability of the low-priced imports to compete in the Canadian market at, or above, normal values.

The Tribunal found that there was a likelihood of material injury to the domestic industry from such resumed dumping. Prices were only marginally higher than in the early 1980s, and Desmarais showed only a slight profit on sales of photo albums and leaves. 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.

1991 Findings (Inquiry No. NQ-90-003)

On January 2, 1991, the Tribunal found that the dumping of photo albums and leaves from Indonesia, Thailand and the Philippines had caused, was causing and was likely to cause material injury to the production in Canada of like goods. The complainant, Desmarais, accounted for 80 percent of domestic production. The Tribunal was of the view that the evidence established the vulnerability of the industry to low-priced imports. Desmarais had been unable to increase its sales in a growing market because of dumped imports. To compete with these imports, Desmarais had to maintain and sometimes reduce its average selling prices, despite increased production costs. This resulted in lost sales and declining profitability. Considering the substantial margins of dumping, the proven ability and propensity to switch production from one country to another and the relative ease with which new exports could replace existing exports, the Tribunal found past, present and future injury.

The Tribunal also found that there was massive dumping. Dumped imports had increased fivefold, had captured 24 percent of the market and had caused material injury.

OTHER FINDINGS

Both domestic manufacturers also produce pocket photo albums. Although imports of pocket photo albums are not part of the subject goods, these albums have similar characteristics to the subject photo albums. The same foreign manufacturers produce pocket photo albums, and these albums are purchased by the same retailers that purchase the subject photo albums.

On February 26, 1988, the CIT found that the dumping of pocket photo albums and refill sheets from Japan, Korea, China, Hong Kong, Taiwan, Singapore, Malaysia and the Federal Republic of Germany had caused, was causing and was likely to cause material injury to the domestic production of like goods. Those findings were continued, without amendment, by the Tribunal on February 25, 1993, in Review No. RR-92-003.

POSITION OF PARTICIPANT AT THE HEARING

Desmarais

Counsel for Desmarais submitted that the domestic industry is vulnerable to resumed dumping and that there is a likelihood that dumping will resume if the findings are rescinded.

Counsel for Desmarais claimed that Desmarais is vulnerable to resumed dumping because of factors such as: (1) the long history of dumping and consequent injury experienced by Desmarais; (2) the propensity to dump pocket photo albums, a related product, by the subject countries; (3) the pressures from the low-priced U.S. product forcing Desmarais to reduce prices; (4) the price sensitivity of photo albums as a commodity product; (5) the economics of production which requires high production volumes; (6) the investments made in facilities and R & D and the time required to recoup these expenses; (7) the underutilization of production capacity by both domestic producers; and (8) the concentration of sales among a small number of customers.

Turning to the likelihood of resumed dumping, counsel for Desmarais argued that the lack of co-operation demonstrated by the importers and exporters alike in this case indicates a propensity to dump. In addition, they pointed to the efforts allegedly made by some exporters to circumvent the findings in place by manipulating the manufacturing and shipping locations of the subject goods. A large number of the manufacturers in the subject countries have plant facilities in various countries. Counsel also referred to the decisions of the Commission of the European Communities against three of the subject countries since the last review. Also, based on enforcement data of the Department of National Revenue (Revenue Canada), counsel showed that all the subject countries, with the exception of Thailand, have been active in exporting the subject goods during the review period.

Counsel for Desmarais argued that the subject countries had sufficient capacity to serve the Canadian market and that no new evidence had been presented showing that capacity had been reduced. In addition, counsel submitted that the low price level for photo albums in the United States was due, in significant part, to the lack of protection against the same subject countries, except Korea. The impact of low-priced imports had a depressing effect on the general pricing for photo albums in the United States. It was counsel's submission that the rescission of the findings would have the same effect in Canada.

Desmarais requested that the Tribunal continue all the findings without amendment. Belt also requested the continuation of the findings, submitting that a rescission would cause serious damage to the Canadian industry.

ECONOMIC INDICATORS

The apparent market for photo albums declined from \$12.2 million in 1990 to less than \$10.0 million in 1994, a 20 percent decrease.⁸ The market figure for 1990 does not include sales from production by Crown, which ceased production in early 1993. On the other hand, estimates of imports included in the market figures for 1990 to 1994 may be overstated due to the fact that all types of photo albums enter Canada under one tariff item.⁹ Taking into account these two considerations, the Tribunal believes that the overall decline in the apparent market was likely greater than indicated by the statistics. Witnesses also testified that the actual volume of photo albums sold in the domestic market during the review period had remained flat.

The annual value of sales of photo albums by domestic producers in 1990 was the third highest since 1981. However, sales declined steadily thereafter until 1993, before increasing by 3 percent in 1994.¹⁰ The domestic manufacturers maintained a large share of the market during the review period. That share fluctuated slightly every year of the review period. In 1994, Desmarais and Belt had comparable shares of the market.¹¹

Total apparent imports of photo albums declined during the review period. Imports from the subject countries declined every year during the review period, except in 1994, and accounted for 23 percent of total imports in 1994. Imports from non-subject countries fluctuated during the review period, but increased their share of total imports from 56 percent in 1990 to 77 percent in 1994. Imports from the United States accounted for more than half of total imports during the review period¹² and for more than 60 percent in 1994.

The share of the domestic market held by the subject countries remained minimal during the review period, decreasing slightly from 1990 to 1994. The share of the market held by non-subject countries fluctuated during the review period in the same manner as did the imports. The share of the market held by non-subject countries was more than double the share held by the subject countries in every year of the review period.¹³

Prices declined for both domestic manufacturers during the review period. Desmarais' average prices for all photo albums, with the exception of post-bound photo albums, declined steadily. Belt's prices for selected products showed a similar trend.¹⁴ Apart from the corrugated board used for covers, the cost of

8. Public Pre-Hearing Staff Report, May 30, 1995, Tribunal Exhibit RR-94-006-5, Administrative Record, Vol. 1A at 0.23.

9. *Ibid.* at 0.12-0.13 and 0.20.

10. *Ibid.* at 0.23.

11. Manufacturer's Exhibit A-3, Administrative Record, Vol. 7; and Protected Pre-Hearing Staff Report, May 30, 1995, Tribunal Exhibit RR-94-006-6 (protected), Administrative Record, Vol. 2 at 66.

12. Public Pre-Hearing Staff Report, May 30, 1995, Tribunal Exhibit RR-94-006-5, Administrative Record, Vol. 1A at 0.21.

13. Protected Pre-Hearing Staff Report, May 30, 1995, Tribunal Exhibit RR-94-006-6 (protected), Administrative Record, Vol. 2 at 41.

14. Public Pre-Hearing Staff Report, May 30, 1995, Tribunal Exhibit RR-94-006-5, Administrative Record, Vol. 1A at 0.37-0.38.

the major components for photo albums, manufactured by Desmarais, declined between 1990 and 1994.¹⁵ However, both manufacturers testified that they were experiencing marked increases in the cost of raw materials in 1995.¹⁶ Both stated that they were attempting to increase their photo album prices, but that they were encountering resistance in the market.

Total industry profitability could not be assessed due to the lack of financial information from Belt. Desmarais, however, showed declining profits on its domestic sales of photo albums every year due to declining sales volumes and reduced prices. The witness for Belt stated that the company had been profitable on its sales of photo albums since 1990.¹⁷ He also confirmed the reply to the Tribunal's questionnaire showing that Belt had increased its sales volume during the review period.

Desmarais' net sales of photo albums decreased every year during the review period. Its net income before taxes on domestic sales of photo albums remained positive from 1990 to 1993, although declining every year. In 1994, however, the company reported a net loss on these sales. Desmarais completed a general reorganization in 1994, closing plant facilities in two cities. This was followed by a financial restructuring which was completed in early 1995.

LIKELIHOOD OF RESUMED DUMPING

In deciding whether to continue, with or without amendment, the findings in this review, the Tribunal needs to consider two questions. It must, first, be satisfied that, in the absence of the findings, dumping by the subject countries is likely to resume and, second, that such resumed dumping is likely to cause injury¹⁸ to the domestic industry.

The Tribunal recognizes that it is difficult to establish the likelihood of resumed dumping in a review. It also recognizes the challenge faced by domestic producers in developing evidence of the likelihood of resumed dumping by the subject countries, especially when importers and exporters alike do not, as in this case, participate in the Tribunal's review.

In this review, the Tribunal considered several factors in determining whether there was a likelihood of resumed dumping by all the subject countries. These included the exporters' past and current behaviour in respect of both photo albums and related products, their activities in other markets and existing production capacity in exporting countries.

The Tribunal notes that the history of this case and all the previous findings demonstrates how importers, when faced with findings of material injury, will find suppliers in other countries that are prepared to sell at dumped prices or at prices which will be found to be dumped. Over the years, the sourcing of dumped imports of the subject goods shifted from country to country as new findings were issued. There have been five inquiries over the years, the last one in 1991. Throughout the years, there has been a clear

15. Public Pre-Hearing Staff Report, revised June 5, 1995, Tribunal Exhibit RR-94-006-5A, Administrative Record, Vol. 1A at 0.73.

16. Transcript of Public Hearing, June 27, 1995, at 12, 72 and 85.

17. Transcript of In Camera Hearing, June 27, 1995, at 71-72.

18. Subsection 2(1) of SIMA (since January 1, 1995) provides that "injury" means material injury to a domestic industry.

record of country switching intended to avoid the effects of the injury findings. The Tribunal believes that, in the absence of the findings, importers could once again source the subject goods in the subject countries at dumped prices.

In addition, the Tribunal takes note of the findings of material injury made by the CIT on February 26, 1988, in Inquiry No. CIT-11-87, with respect to pocket photo albums, which were continued by the Tribunal on February 25, 1993, in Review No. RR-92-003. Pocket photo albums can be considered an alternative to photo albums for consumers. They are manufactured by the same companies that produce photo albums, they are sold on the domestic market by the same exporters, they serve the same principal function of storing photographs and they are, to a large extent, substitutable for photo albums on the basis of price and quality. The Tribunal notes that it was determined, in the 1993 review of the findings on pocket photo albums, that there was a likelihood that the same countries would dump pocket photo albums. The Tribunal believes that, because both types of photo albums are somewhat interchangeable and are sold to the same retailers, often as part of a purchasing program, by many of the same exporters/manufacturers, it is likely that dumping of photo albums will also resume if the findings are rescinded.

The Tribunal notes that exporters in the subject countries are no longer able to compete in the Canadian market because of the normal values established by Revenue Canada on imports of the subject goods. Total imports from the subject countries during the review period, especially in 1992 and 1993, have been at their lowest level since 1981.¹⁹ However, a number of the subject countries have been able to maintain their presence in the Canadian market, along with contacts with importers and distribution channels. The Tribunal believes that they could easily increase their sales if the findings were rescinded. It also observes that three of the subject countries, that is, Indonesia, Thailand and the Philippines, were the sources of 73 percent of all imports from the subject countries and that these are the countries where the normal values were the closest to the selling prices in the Canadian market.²⁰ However, to return to the market, exporters in all these countries would have to sell at prices well below normal values, i.e. at prices that would likely be dumped.

The Tribunal notes that the threat of resumed dumping originates with exporters located in one geographical area. The countries in that region have close trade and economic links. The Tribunal heard testimony that several manufacturers in the subject countries own and operate production facilities in more than one of the subject countries.²¹ The Tribunal believes that rescinding the findings for some countries and not for others will allow the foreign manufacturers to supply the Canadian market from their plants in countries not covered by the findings by shifting or increasing production at those plants, thereby circumventing the findings remaining in place. It also heard from witnesses about offers made where a manufacturer would ship the subject goods from a location other than where they were manufactured. In his protected submission, a witness for Desmarais recalled an offer received from a company established in

19. Protected Pre-Hearing Staff Report, May 30, 1995, Tribunal Exhibit RR-94-006-6 (protected), Administrative Record, Vol. 2 at 75.

20. Public Pre-Hearing Staff Report, May 30, 1995, Tribunal Exhibit RR-94-006-5, Administrative Record, Vol. 1A at 0.14.

21. Manufacturer's Exhibit A-4 (protected), Administrative Record, Vol. 8; Transcript of Public Hearing, June 27, 1995, at 69; and Transcript of In Camera Hearing, June 27, 1995, at 59, 66 and 89-91.

Korea, with plants in Korea, the Philippines and China, for the subject goods which were to be shipped from Hong Kong.²² These offers had prices below normal values.

The Tribunal also heard evidence on the production capacity of the subject countries.²³ A witness for Desmarais testified that, based on his knowledge and the fact that the number of manufacturers had increased, capacity has increased in Korea, China and Indonesia.²⁴ The Tribunal has no reason to believe that production capacity in the subject countries has disappeared or been reduced. The witness for Belt, in reply to the Tribunal's question regarding the production capacity of the subject countries, stated that, without knowing precisely what their capacity was, he has never been told that an order could not be filled. He stated that "we ask our friends out in the subject countries: Would you have 100,000? They are never short of the product. They can always deliver and they have lots of capacity."²⁵ The Tribunal considers that production capacity in the subject countries exceeds by far the combined production capacity of the two domestic producers. In the absence of the findings, the Canadian market would likely face offers of dumped imports on a broad front.

The Tribunal is aware of the May 22, 1990, decision made by the Commission of the European Communities regarding a specific format of photo album originating in Korea and Hong Kong. It also notes the Council of the European Union regulation of December 22, 1993, imposing a provisional anti-dumping duty on imports of photo albums in book-bound format originating in China. The Council of the European Union found that one exporter, originally based in Hong Kong, had moved its production facilities to China, thereby allowing it to circumvent the anti-dumping measures taken two years earlier. The Tribunal believes that other exporters are involved in both the European and Canadian markets,²⁶ this conclusion reinforcing its belief that there would likely be resumed dumping if the findings were rescinded.

In light of the foregoing, the Tribunal concludes that there is a strong likelihood that dumping of photo albums with self-adhesive leaves and self-adhesive leaves from Korea, Hong Kong, China, Singapore, Malaysia, Taiwan, Indonesia, Thailand and the Philippines will resume if any of the findings are rescinded.

LIKELIHOOD OF INJURY

In arriving at a decision on the likelihood of injury resulting from resumed dumping, the Tribunal examined the trend in volumes and prices of photo albums in the domestic market and assessed the impact of low volumes and low prices on the domestic industry. It then assessed the degree to which resumed dumping might cause injury.

Because of the cost structure and capital-intensive nature of photo album production, both domestic producers must maintain relatively high volumes of production to be profitable. The industry faces a domestic market which has been declining for some time and which is now stagnating. Even with the

22. Manufacturer's Exhibit A-4 (protected), *ibid.*

23. Transcript of Public Hearing, June 27, 1995, at 35 and 56; and Transcript of In Camera Hearing, June 27, 1995, at 47 and 58-59.

24. Transcript of Public Hearing, *ibid.* at 36.

25. *Ibid.* at 83.

26. Manufacturer's Exhibit A-3, Attachments C and D, Administrative Record, Vol. 7.

findings in place, it will be a challenge to the industry to maintain sufficient volumes and to offset increasing input costs with higher prices.

Both companies are also vulnerable to price competition. Over the last few years, the industry has faced strong price competition which has forced it to lower its prices. There was testimony concerning the actual presence of lower-priced U.S. imports which no doubt had an impact on prices in the Canadian market. The domestic producers testified that they had no choice but to match the prices of the U.S. exporters.²⁷ Witnesses for Desmarais and Belt both stated that prices are lower in the United States due to the presence of low-priced imports from many countries, among which figure the subject countries. U.S. manufacturers have had to reduce their prices in order to compete with imports in their own market.²⁸ The Tribunal heard that many U.S. firms were allegedly in financial trouble. They have concurrently attempted to sell on the Canadian market at low prices. The Tribunal believes that the current situation in the United States is a strong indication of what could happen in Canada if the findings were rescinded.

The Tribunal believes that, even though prices are already low due to the factors mentioned above, dumped imports would lower these prices even more if allowed to enter directly into the Canadian market as a result of a rescission of the findings. The prices would be well below current normal values. The Tribunal fully expects that, without the imposition of anti-dumping duties, exporters in the subject countries will return to the Canadian market with dumped imports. Large purchasers, some of them importers in previous years,²⁹ are already aware of the range of products available from producers in the subject countries. Photo albums are just one of many different stationery products that they purchase, many of which they can import directly. Large purchasers would not hesitate to search for lower prices, thereby increasing the price pressure on domestic manufacturers. The Tribunal is of the opinion that these lower prices will cause injury to the manufacturers.

In that light, the statement made by the witness for Belt was instructive. Belt, itself, imports, at certain times, leaves from the United States to produce photo albums. Belt purchases leaves from the United States because it can sometimes be cheaper to import the leaves than to produce them in its own plant. At other times, Belt produces its own leaves.³⁰ In addition, the price in Canadian dollars for leaves made in the United States, delivered to Belt's plant, was much lower than the price offered by Desmarais.³¹ In his testimony, the witness for Belt stated that the company imports leaves because it cannot produce them at the same price as that of U.S. manufacturers, and that its finished photo albums have to compete in Canada with the finished products from the United States and of other competitors.³² There was evidence that the cost of leaves makes up a significant proportion of the cost of a finished photo album, depending on the number of leaves in the album. The witness for Belt acknowledged that the company would import leaves from any source if its finished product could not compete with photo albums with domestically

27. Transcript of In Camera Hearing, June 27, 1995, at 37.

28. Transcript of Public Hearing, June 27, 1995, at 78; and Transcript of In Camera Hearing, June 27, 1995, at 36-37.

29. Transcript of In Camera Hearing, *ibid.* at 74.

30. Transcript of Public Hearing, June 27, 1995, at 71.

31. Transcript of In Camera Hearing, June 27, 1995, at 70.

32. Transcript of Public Hearing, June 27, 1995, at 71.

produced leaves.³³ He added that the company could not survive if anti-dumping duties were not imposed, due to the low prices of imports, because most of its customers would also import.³⁴ The Tribunal has no reason to doubt the testimony of the witness for Belt that, in the face of resumed dumping of leaves, it would cease the production of leaves in Canada.

The vulnerability of the industry to low-priced imports results from the price sensitivity of photo albums and leaves. This is derived from the nature of the goods themselves and the structure of the market. Certain low-priced photo albums are used more frequently as promotional items and are sold at specific retail price points. In these circumstances, price is the major determinant of the purchasing decision. The Tribunal heard testimony that the quality of the product is not a major consideration for the mass merchandisers, as they compete principally on price.³⁵ The Tribunal also heard testimony that major retailers are continuously pressuring the domestic industry for ever lower prices, using low-priced imports as leverage to force domestic manufacturers' prices down.³⁶

Moreover, the structure of the market is such that relatively few large buyers account for the majority of sales of photo albums. Evidence was presented that the 12 largest customers of the domestic industry account for more than 60 percent of its total sales of photo albums and leaves.³⁷ In such circumstances where there is a large concentration of purchasers, offerings of low-priced products to one purchaser are inevitably and quickly translated into price reductions to all purchasers. As a result, the industry is highly vulnerable to incursions of low-priced imports. The Tribunal believes that, if the domestic industry cannot meet this low price competition, it will lose sales volumes as retailers reduce or stop entirely their purchases of domestically manufactured photo albums and move to low-priced imports. Given the limited number of major purchasers, the loss of one or two customers to dumped imports would lead to a significant loss of large volumes to the domestic industry.

In addition, the Tribunal heard testimony to the effect that foreign producers were willing and ready to offer the subject photo albums at prices lower than Desmarais' cost of production for similar photo albums. Desmarais presented price offers for the subject goods from several manufacturers in Korea and Indonesia. The delivered prices³⁸ were, in all cases, lower than the prices offered by Desmarais in its lowest price list. The witness for Belt agreed that prices of the subject goods are lower than those of photo albums and leaves in Canada and the United States.³⁹ The Tribunal is of the opinion that, even with the investments made over the review period by Desmarais to improve its efficiency and to reduce its cost of production, these low import prices could not be matched in a sustainable way.

33. *Ibid.* at 87.

34. *Ibid.* at 91-92.

35. Transcript of Public Hearing, *ibid.* at 84; and Transcript of In Camera Hearing, June 27, 1995, at 31, 38 and 74-75.

36. Transcript of Public Hearing, *ibid.* at 82; and Transcript of In Camera Hearing, *ibid.* at 6 and 73-74.

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

38. Manufacturer's Exhibit A-4 (protected), *ibid.*

39. Transcript of Public Hearing, June 27, 1995, at 91; and Transcript of In Camera Hearing, June 27, 1995, at 91.

The Tribunal believes that Desmarais has passed the critical point in its restructuring and that the difficulties that it encountered from the beginning of 1994 are now behind it and that it could derive profits from its sales of photo albums as soon as price increases materialize. The Tribunal recognizes the efforts made by Desmarais to invest in facilities and equipment, to concentrate its future activities on photo albums and to increase its selling prices.

The Tribunal notes that Desmarais and Belt are already facing price competition and that they face a challenge of making profits on low volumes at low prices. In the future, both domestic producers need sustained volumes to cover their cost of production simultaneously with higher prices to offset increased material costs. The Tribunal also believes that price will remain the main consideration for large buyers when purchasing photo albums. In the absence of the findings, they and other importers will rapidly turn to low-priced imports in order to meet the intense competition which exists in the marketplace. In addition, the Tribunal has no reason to believe that foreign producers will not try to sell photo albums at dumped prices that are well below the domestic producers' cost of production.

With resumed dumping, the Tribunal does not believe that Desmarais will be able to face the additional low price competition brought about by dumped imports. If it chooses to maintain production volumes, it will have to reduce prices to levels that will result in financial loss that will be injurious. If it fails to lower prices and loses sales volume, the financial consequences will also be injurious. Belt faces the same prospects with resumed dumping. Moreover, the Tribunal believes that there is a likelihood that Belt will cease the production of leaves in Canada. The Tribunal is sensitive to the fact that this may result in the cessation of the manufacture of photo albums for at least one domestic producer.

In sum, the Tribunal is persuaded that resumed dumping of photo albums with self-adhesive leaves and self-adhesive leaves from the subject countries will injure the domestic industry.

CONCLUSION

In light of the foregoing, the Tribunal continues the findings without amendment.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

Lise Bergeron
Lise Bergeron
Member