

Ottawa, Monday, April 21, 1997

Review No.: RR-96-004

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on April 21, 1992, in Inquiry No. NQ-91-006, as amended on February 11, 1994, by the Tribunal's determination on remand (NQ-91-006 Remand [2]), in respect of review proceedings before the Binational Panel (Canadian Secretariat File No. CDA-92-1904-02), concerning:

**MACHINE TUFTED CARPETING WITH PILE PREDOMINANTLY OF NYLON,
OTHER POLYAMIDE, POLYESTER OR POLYPROPYLENE YARNS,
EXCLUDING AUTOMOTIVE CARPETING AND FLOOR COVERINGS OF AN
AREA LESS THAN FIVE SQUARE METRES, ORIGINATING IN OR EXPORTED
FROM THE UNITED STATES OF AMERICA**

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 made on April 21, 1992, in Inquiry No. NQ-91-006, as amended on February 11, 1994, by the Tribunal's determination on remand (NQ-91-006 Remand [2]), in respect of review proceedings before the Binational Panel (Canadian Secretariat File No. CDA-92-1904-02).

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the above-mentioned finding with the following exclusions:

- (a) custom-designed machine tufted carpeting which is made to order to the customers' specifications in respect of design, pattern and colour, manufactured using the patented Zimmer Chromojet jet dye technology and exported to Canada by Durkan Patterned Carpet, Inc. or Bentley Mills Inc., and area rugs exceeding five square metres which are manufactured using the patented Zimmer Chromojet jet dye technology and exported to Canada by Durkan Patterned Carpet, Inc. or Bentley Mills Inc.;
- (b) machine tufted carpeting of an area exceeding five square metres for use as tile accessory carpeting when part of the same order for individual pieces of carpet tile, each piece of which does not exceed one square metre, where the machine tufted carpeting exceeding five square metres for use as tile accessory carpeting does not exceed 10 percent of the aggregate area of the carpet tile on the same order and where all carpeting on the same order, whether or not exported to Canada together, is ultimately destined to the same end user;

- (c) machine tufted carpeting with a secondary backing of vinyl cushion; and
- (d) machine tufted carpeting with a secondary backing consisting principally of polyurethane foam cushion.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Michel P. Granger
Michel P. Granger
Secretary



Ottawa, Thursday, May 8, 1997

Review No.: RR-96-004

**MACHINE TUFTED CARPETING WITH PILE PREDOMINANTLY OF NYLON,
OTHER POLYAMIDE, POLYESTER OR POLYPROPYLENE YARNS,
EXCLUDING AUTOMOTIVE CARPETING AND FLOOR COVERINGS OF AN
AREA LESS THAN FIVE SQUARE METRES, ORIGINATING IN OR EXPORTED
FROM THE UNITED STATES OF AMERICA**

Special Import Measures Act - Whether to rescind or continue, with or without amendment, the finding made by the Canadian International Trade Tribunal on April 21, 1992, in Inquiry No. NQ-91-006, as amended on February 11, 1994, by the Tribunal's determination on remand (NQ-91-006 Remand [2]), in respect of review proceedings before the Binational Panel (Canadian Secretariat File No. CDA-92-1904-02).

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	February 10 to 14, 1997 February 17 and 18, 1997
Date of Order:	April 21, 1997
Date of Reasons:	May 8, 1997
Tribunal Members:	Lyle M. Russell, Presiding Member Arthur B. Trudeau, Member Robert C. Coates, Q.C., Member
Director of Research:	Sandy Greig
Lead Researcher:	John O'Neill
Researchers:	Paule Couët Audrey Chapman
Economist:	Dennis Featherstone
Statistical Officers:	Margaret Saumweber Lise Lacombe
Counsel for the Tribunal:	Hugh J. Cheetham Heather A. Grant
Registration and Distribution Officers:	Pierrette Hébert Joël Joyal

Participants:

for G.P. (Patt) MacPherson
Suzette C. Cousineau
Canadian Carpet Institute
Kraus Carpet Mills Limited
Crossley Carpet Mills Limited
Venture Carpets Ltd.
National FibreTech Inc.
Peerless Carpet Corporation

(Domestic Producers)

for Riyaz Dattu
John W. Boscarior
Interface Flooring Systems (Canada), Inc.

(Domestic Producer)

Robert J. Moran
Matting Technology Corporation

(Domestic Producer)

for Peter A. Magnus
Graeme S. Mew
Andrew Batten
David A. Larmour
The Carpet and Rug Institute
Queen Carpet Corporation
Shaw Industries, Inc.
Milliken and Company, Inc.

(Exporters)

for Peter A. Magnus
Graeme S. Mew
David A. Larmour
Mohawk Industries, Inc.
Gulistan Carpet Inc.

(Exporters)

for Randall J. Hofley
Glenn A. Cranker
Tamra A. Alexander
Jason L. Gudofsky
Collins & Aikman Floor Coverings Inc.

(Exporter)

Gregory O. Somers
for Durkan Patterned Carpet, Inc.

(Exporter)

Yvon Olivier
Jos. Olivier Ltd.

(Importer)

John Stevens
Associated Mill Distributors

(Importer)

Witnesses:

Brian M. Carpenter
Senior Vice-President
Sales and Marketing
Peerless Carpet Corporation

Michael Kronick
Executive Director
Canadian Carpet Institute

J.A. Yvon Hébert
President
Venture Carpets Ltd.

Michael Wagner
Vice-President - Sales
Kraus Carpet Mills Limited

Carl Hulme
Vice-President - Sales
Crossley Carpet Mills Limited

Carl Katz
Senior Vice-President and
General Manager
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National FibreTech Inc.

Steven Skoda Jr.
Million Tapis & Tuiles

Doug P. Holt
Vice-President
Sales and Marketing
Matting Technology Corporation

Frank D. Guthier
Executive Vice-President and
Chief Executive Officer
Kraus Carpet Mills Limited

W. Leslie Single
Chairman and Chief Executive Officer
Crossley Carpet Mills Limited

Ron Halton
President
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Gary H. Witt
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Kraus Carpet Mills Limited

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Vice-President
Finance and Administration
Crossley Carpet Mills Limited

Les Galko
General Manager
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Robert J. Moran
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Christian Mangin
Coordinator, Marketing and
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François Delorme
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Peerless Carpet Corporation

James Lesslie
Vice-President
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Queen Carpet Corporation

Robert W. Ringer
Vice-President
Research and Development/Quality
Shaw Industries, Inc.

Randy C. Sanford
Director, Product Development
Mohawk Industries, Inc.

Richard F. Heitmiller
President
Richard F. Heitmiller, Inc.

Frank C. Wilson
President
International Management

James L. McCormick Jr.
Director of Sales, Administration and
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Shaw Industries, Inc.

Gerald Embry
Vice-President
Finance and Administration
Queen Carpet Corporation

Yvon Olivier
Vice-President
Jos. Olivier Ltd.

Jeffrey K. Casselman
Senior Vice-President and General Manager
Interface Flooring Systems (Canada), Inc.

Timothy F. Barnes
Controller
Interface Flooring Systems (Canada), Inc.

Jerry Lukawski
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Flortech Systems Ltd.

Mike Bowers
Regional Manager
Collins & Aikman Floor Coverings Inc.

Mark L. Grizzle
Director of Technical Services
Collins & Aikman Floor Coverings Inc.

Joseph J. Smrekar
Development Manager
Milliken and Company, Inc.

Stephen H. Laird
Chief Financial Officer
Durkan Patterned Carpet, Inc.

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Sales Agent
American Rug Craftsmen
Division of Mohawk Industries, Inc.

W. Lee Purgason Jr.
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Mohawk Industries, Inc.

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Ottawa, Thursday, May 8, 1997

Review No.: RR-96-004

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on April 21, 1992, in Inquiry No. NQ-91-006, as amended on February 11, 1994, by the Tribunal's determination on remand (NQ-91-006 Remand [2]), in respect of review proceedings before the Binational Panel (Canadian Secretariat File No. CDA-92-1904-02), concerning:

**MACHINE TUFTED CARPETING WITH PILE PREDOMINANTLY OF NYLON,
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EXCLUDING AUTOMOTIVE CARPETING AND FLOOR COVERINGS OF AN
AREA LESS THAN FIVE SQUARE METRES, ORIGINATING IN OR EXPORTED
FROM THE UNITED STATES OF AMERICA**

TRIBUNAL: LYLE M. RUSSELL, Presiding Member
ARTHUR B. TRUDEAU, Member
ROBERT C. COATES, Q.C., 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 International Trade Tribunal (the Tribunal) on April 21, 1992, in Inquiry No. NQ-91-006,² as amended on February 11, 1994, by the Tribunal's determination on remand (NQ-91-006 Remand [2]), in respect of review proceedings before the Binational Panel (Canadian Secretariat File No. CDA-92-1904-02³) concerning machine tufted carpeting with pile predominantly of nylon, other polyamide, polyester or polypropylene yarns, excluding automotive carpeting and floor coverings of an area less than five square metres, originating in or exported from the United States of America. As a result of these proceedings, the Tribunal found that the dumping of certain machine tufted carpeting originating in or exported from the United States had not caused, was not causing, but was likely to cause material injury to the production in Canada of like goods.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the finding and issued a notice of review⁴ on October 17, 1996. This notice was forwarded to all known interested parties.

1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.
2. *Machine Tufted Carpeting Originating in or Exported from the United States of America, Finding*, April 21, 1992, *Statement of Reasons*, May 6, 1992.
3. *Machine Tufted Carpeting Originating in or Exported from the United States of America (Injury)*, Article 1904 Binational Panel, *Opinion and Order of the Panel*, January 21, 1994.
4. *Canada Gazette* Part I, Vol. 130, No. 43, October 26, 1996, at 3065.

As part of this review, the Tribunal sent questionnaires to domestic manufacturers, importers, selected purchasers and foreign manufacturers of machine tufted carpeting. 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 contacted domestic manufacturers, importers, purchasers, foreign manufacturers/exporters and/or their counsel in order to answer any questions pertaining to the review questionnaires. Tribunal members visited the premises of Peerless Carpet Corporation (Peerless) to view the production process. A report describing the visit was prepared and distributed to counsel.

The record of this review consists of all Tribunal exhibits, including the finding in Inquiry No. NQ-91-006, the notice of review, public and confidential replies to the questionnaires for the 1996 review, the public and protected pre-hearing staff reports for the 1991 inquiry and those 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.

Pre-hearing teleconferences took place on January 31 and February 3 and 7, 1997. Public and *in camera* hearings were held in Ottawa, Ontario, from February 10 to 14 and on February 17 and 18, 1997.

The Canadian Carpet Institute (CCI), a trade association representing domestic carpet manufacturers, and some of its members, including Kraus Carpet Mills Limited (Kraus), Crossley Carpet Mills Limited (Crossley), Venture Carpets Ltd. (Venture), National FibreTech Inc. (National), Peerless and Interface Flooring Systems (Canada), Inc. (Interface), were represented by counsel at the hearing, submitted evidence and made arguments in support of continuing the finding. Matting Technology Corporation (Matting) also appeared at the hearing and submitted evidence in support of continuing the finding.

The Carpet and Rug Institute (CRI), an association of carpet manufacturers in the United States, and several US exporters, including Queen Carpet Corporation (Queen), Shaw Industries, Inc. (Shaw), Milliken and Company, Inc. (Milliken), Mohawk Industries, Inc. (Mohawk), Gulistan Carpet Inc. (Gulistan), Collins & Aikman Floor Coverings Inc. (Collins & Aikman) and Durkan Patterned Carpet, Inc. (Durkan), were represented by counsel at the hearing, submitted evidence and made arguments in support of rescinding the finding. As well, an importer, Jos. Olivier Ltd., appeared at the hearing.

At the request of the Tribunal, a representative from each of Carpet City Factory Outlet and Million Tapis & Tuiles appeared as witnesses at the hearing.

PRODUCT

The product which is the subject of this review is described as machine tufted carpeting with pile predominantly of nylon, other polyamide, polyester or polypropylene yarns, excluding automotive carpeting and floor coverings of an area less than five square metres, originating in or exported from the United States. The term "predominantly" is interpreted to mean the fibre which predominates by weight over any other single fibre.

Machine tufted carpeting, known as "artificial grass," is subject to the finding. Unfinished carpeting (unbacked) and carpeting which has been tufted, but which has not been dyed, has no secondary backing and is commonly referred to as "greige carpeting" are also subject to the finding.

The product definition excludes carpeting made for automotive floor covering and carpeting of an area less than five square metres such as mats, runners, tiles and samples. However, area rugs larger than five square metres are included in the finding.

The product definition also excludes oriental, machine- or hand-woven carpets and other carpets, including braided, knotted, hooked and needle-punched mats and rugs. It excludes carpets made of wool/wool blends or fine animal hair, cotton, acrylic and modacrylic, viscose and other man-made textile materials.

The Tribunal excluded the following carpeting from its finding:

- (a) scrap machine tufted carpeting in all lengths, or
- (b) remnants of prime quality goods of nine feet or less in length, sold as “off-goods” and imported for use in the manufacture of goods such as mats, runners or area rugs of an area less than five square metres, and
- (c) custom-designed machine tufted carpeting which is made to order to the customers’ specifications in respect of design, pattern and colour, manufactured using the patented Millitron dye technology and exported to Canada by Milliken and Company, Inc., and area rugs exceeding five square metres manufactured using the patented Millitron dye technology and exported to Canada by Milliken and Company, Inc.

Machine tufted carpeting is produced in a variety of styles, colours, textures, patterns and weights. The weight is determined by the density of the pile fibres and is measured in ounces per square yard. It normally varies between 16 and 90 oz./sq. yd. The subject carpeting is produced on tufting machines. These machines are equipped with hundreds of needles and hooks which insert textile carpet yarn into a primary fabric backing to produce “greige carpeting.” The yarn may be left in loop form or the tip of the loop may be cut, resulting in loop pile greige carpeting or cut pile greige carpeting respectively.

Three significant fibres are used in the manufacture of machine tufted carpeting – nylon, polypropylene and polyester. The principal sources of these materials are fibre producers and carpet manufacturers with in-house extrusion facilities. Most nylon is manufactured by major suppliers such as Dupont, AlliedSignal, BASF and Monsanto. Almost all polypropylene fibre is extruded by carpet manufacturers. Polyester fibre is produced by both fibre suppliers, such as Wellman, Inc., Hoechst Celanese Corporation, and carpet manufacturers with in-house extrusion facilities, such as Image Industries, Inc. (Image) and Marglen Industries, Inc.

Nylon fibre is available in two forms: staple and bulk continuous filament. Nylon filament is a continuous strand of yarn, while nylon staple is yarn which has been crimped and cut to length. Both forms are used in the manufacture of tufted carpeting. Staple fibres, of course, have to be spun and plied into continuous yarn before being used in the manufacture of carpeting. Virtually all polypropylene fibre used in tufted carpeting is in filament form, while polyester fibre is in staple form.

Generally, nylon is the most durable and resilient fibre; it has the greatest styling versatility and is the most popular of all carpet fibres. Nylon fibre stains easily and is prone to fading; therefore, most nylon carpets today feature a stain resistance treatment. Polyester fibre has built-in stain resistance and excellent colour clarity, while polypropylene fibre has superior stain resistance and excellent colour fastness.

If the carpeting has been tufted with pre-coloured yarn, it is routed directly to the finishing line. However, if the carpeting has been tufted with natural yarn, it is dyed and dried before going to the finishing line. Dyeing techniques include processes such as space dyeing, solution dyeing and continuous dyeing. Patterned carpeting may also be created using printing technology such as screen printing and jet printing.

A latex adhesive is applied to the back of the carpeting to secure the yarns forming the pile. Generally, a high-quality latex adhesive is then applied to a secondary backing of jute or polypropylene woven fabric. This secondary backing, which provides dimensional stability, is pressed to the back of the carpeting. It then passes through an oven where the latex is dried to lock the tufts in place and to laminate the secondary backing to the tufted carpeting. Carpeting produced with a secondary backing of polypropylene fabric is generally referred to as "ActionBac⁵" carpeting. Most residential and commodity/commercial carpeting is constructed this way.⁶ The carpeting is then finished, inspected, graded, cut, rolled and wrapped.

While polypropylene woven fabric continues to be used as secondary backing on the majority of tufted carpeting, there are a number of other backing options available. Unitary backed carpeting is very similar to ActionBac carpeting except that it does not have the secondary backing of polypropylene woven fabric. The secondary backing is a heavy coat of latex compound.⁷ Polyurethane-backed products are available as hard-back or cushioned products. The hard-back products are similar to unitary backed carpeting except that the coating is made of polyurethane instead of latex.⁸ The polyurethane cushioned products include those products which have an open-cell polyurethane foam as secondary backing.⁹ Also available are vinyl hard-back carpeting and vinyl cushioned carpeting. The vinyl cushioned products have a closed-cell vinyl cushion attached to the carpeting¹⁰.

Rolls of carpeting range from 60 to 200 ft. in length and from 6 to 12 ft. in width. The standard roll size for most styles of carpeting is 12 ft. in width and 125 ft. in length.

DOMESTIC INDUSTRY

The members of the CCI (Peerless, National, Kraus, Venture, Crossley, Les Usines de Tapis St-Georges Inc. [Tapis St-Georges] and Interface) accounted for 81 to 87 percent of the reported production in Canada of machine tufted carpeting during the years from 1992 to 1995.

In addition to the manufacturers represented by counsel at the public hearing, the following companies also produce machine tufted carpeting in Canada: Matting and Coronet Carpets Inc. (Coronet).

The carpet industry in Canada is concentrated in Quebec and Ontario, with the exception of Crossley, which is located in Nova Scotia.

5. ActionBac is a trademark of Amoco.

6. *Transcript of Public Hearing*, Vol. 6, February 17, 1997, at 1122.

7. *Ibid.*

8. *Transcript of Public Hearing*, Vol. 6, February 17, 1997, at 1123.

9. *Ibid.*

10. *Transcript of Public Hearing*, Vol. 6, February 17, 1997, at 1124.

Profile of Domestic Producers

Peerless, a public company, is the largest Canadian producer and distributor of residential and commercial carpeting, as well as tufted bath and accent rugs. The company has carpet manufacturing facilities in Canada, and bath and accent rug manufacturing facilities in Canada, the United States and Ireland. Peerless has distribution facilities in Canada, the United States, Europe and Australia. The company's carpet manufacturing and yarn producing plants are located in Acton Vale and Wickham, Quebec.

National is a public Canadian company known at the time of the inquiry as National Carpet, a Division of NCM Carpet Mills Inc. Since 1992, the company has expanded through acquisition, most notably through the purchase of the manufacturing assets of Richmond Carpet Mills in 1994 and the purchase of Harding Carpets in 1995. It now produces nylon and polypropylene residential carpeting, commercial carpeting and artificial grass. It also owns yarn extrusion and spinning facilities. It has plants in Mississauga and Brantford, Ontario, and Saint-Jean, Quebec.

Kraus is owned by Strudex Fibres Limited, a Canadian nylon and polypropylene yarn producer. The company produces both residential and commercial carpeting, but the majority of its sales are concentrated in the commercial carpeting segment. It produces carpeting in its plant in Waterloo, Ontario. Kraus owns Tapis Kraus Quebec, a carpet distributor in Quebec (formerly known as Spectra) and W.G. McMahon Canada Limited (McMahon), a carpet distributor in Western Canada. The company also has interests in carpet manufacturing facilities in the United States, Australia and Saudi Arabia.

Venture is a private Canadian company that produces machine tufted carpeting in its plant in Drummondville, Quebec. It produces nylon and polypropylene commercial carpeting, as well as some specialty products such as nylon "berber" residential carpeting.

Crossley is a private Canadian company that produces both residential and commercial carpeting in its plant in Truro, Nova Scotia. The company also produces woven rugs and distributes its products from its facilities in Truro.

Tapis St-Georges is a privately owned Canadian producer of polypropylene residential carpeting. It also extrudes its own yarns. Its plant is located in Saint-Georges de Beauce, Quebec.

Interface is a subsidiary of Interface, Inc. of the United States. The majority of its production is 18-in. square carpet tiles for the commercial market, which are not part of this review. It also produces and sells some machine tufted carpeting. Its manufacturing facilities are located in Belleville, Ontario.

Matting is a privately owned Canadian producer of vinyl-backed entrance mats and matting, as well as artificial grass. The company also produces, imports and distributes industrial, safety, anti-fatigue and other specialty mats and mattings. It has three plants, all located in Granby, Quebec.

Coronet is associated with Beaulieu of America Inc. and its related companies in the United States and Canada. It produces both residential and commercial carpeting in its plant in Farnham, Quebec, but concentrates mainly on residential carpeting. It distributes its products through independent dealers and large chain stores such as Sears Canada Inc. and the T. Eaton Company Limited.

IMPORTERS/EXPORTERS

During the period from January 1 to September 27, 1996, the Department of National Revenue (Revenue Canada) identified 65 US carpet manufacturers that accounted for almost all of the exports of the subject carpeting to Canada. According to Revenue Canada, among these manufacturers, 12 companies collectively accounted for 86 percent of the subject carpeting exported to Canada.¹¹ These 12 largest exporters were Shaw, Queen, Beaulieu United (Beaulieu), Mohawk, Mannington Carpets (Mannington), Diamond Rug & Carpet Mills, Inc. (Diamond), World Carpets (World), Burlington Industries (Burlington), Beaulieu Commercial Carpets, Durkan, Image and Gulistan. Several of these companies exported to Canada through numerous divisions and affiliated companies. These 12 companies were also among the top 20 carpet and rug manufacturers, in value terms, in North America in 1995.¹²

There are more than 1,000 importers of tufted carpeting from the United States. Included among them are non-resident importers; in fact, some of the largest importers of the subject carpeting are US manufacturers which act as non-resident importers for customs purposes. These companies sell directly to wholesale and retail customers in Canada, bypassing import brokers and other trade intermediaries and offering the convenience of direct, duty-paid delivery to the customer. Major non-resident importers such as Shaw, Queen and Diamond, which were active during the period of inquiry, have been joined by several other US manufacturers, including Beaulieu (through a number of divisions such as Conquest Carpet Mills), Burlington (including its Lees Carpet division), World and Mannington.

In addition, a number of large Canadian importers, which were active at the time of the Tribunal's 1991 inquiry, have remained active in the machine tufted carpeting market in Canada.

SUMMARY OF THE FINDING

On April 21, 1992, the Tribunal found that the dumping of machine tufted carpeting, with certain exclusions, originating in or exported from the United States had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

The Tribunal's decision in this matter was reviewed by a Binational Panel at the request of the CRI. The review process involved two remands to the Tribunal and two determinations on remand by the Tribunal. As a result of these remands, the finding that remained was that the dumping of certain machine tufted carpeting originating in or exported from the United States had not caused and was not causing material injury to the production in Canada of like goods, but, with certain exclusions, was likely to cause material injury to the production in Canada of like goods.

In addition to the reasons provided in its statement of reasons to the finding with regard to the likelihood of material injury, the Tribunal added in its first determination on remand¹³ that the surge of US imports into Canada at dumped prices reflected, among other things, the soft demand conditions in the US market, the large US carpet manufacturing over-capacity and the production imperative dictated by the need to keep huge plant facilities functioning at a level to achieve maximal operating efficiencies. It was the

11. Tribunal Exhibit RR-96-004-4, Administrative Record, Vol. 1 at 250.

12. Tribunal Exhibit RR-96-004-44, Administrative Record, Vol. 1B at 40.

13. *Machine Tufted Carpeting Originating in or Exported from the United States of America*, Inquiry No. NQ-91-006 Remand, *Determination on Remand*, May 25, 1993.

Tribunal's view that these conditions were likely to continue for some time and were likely to create the basic conditions that would lead to continued dumping in the future.

POSITION OF PARTIES

Domestic Producers

Counsel for the CCI submitted that this finding was one of the most effective anti-dumping findings ever made by the Tribunal or its predecessors. In few other cases have the remedial effects of an anti-dumping finding been more obvious than the one concerning machine tufted carpeting. When the preliminary determination of dumping was made in December 1991, the market share held by the domestic industry, which had been declining, turned around almost immediately. Counsel submitted that the turnaround achieved by the domestic producers was attributable directly to the finding.

Counsel for the CCI explained that, generally, prior to the early 1990s, the economic activity pertaining to the carpet industry in the United States and that in Canada ran parallel. Almost always, when construction was up in one country, it was up in the other; when employment rose in one country, it rose in the other; when consumer attitudes were buoyant in one country, they were buoyant in the other. However, during the period from 1992 to 1995, the two markets diverged considerably, and this dramatic divergence was not foreseen. Counsel stated that, during this period, the Canadian market stagnated, while the US market grew.

Counsel for the CCI stated that, in 1996, for the first time since the finding, market share in Canada went to US mills. In addition, some of the US market share gains in 1996 were accompanied by a significant decrease in average price.

Counsel for the CCI argued that, at that time, the domestic mills were in a weak financial condition because of the aftermath of 1991 and the subsequent weakness of the Canadian market. In 1996, Canadian companies were operating under working capital constraints and were forced to concede market share, abandoning low margin business in order to live within their financial means.

In addressing the likelihood of a resumption of dumping, in the absence of an anti-dumping finding, counsel for the CCI advanced three general arguments. The first dealt with the enforcement data provided by Revenue Canada; the second dealt with the allegations of a nylon shortage and the resulting limitations to the capacity of the US industry to produce tufted carpeting; and the third dealt with evidence presented by the domestic industry regarding low-priced sales of nylon tufted carpeting by US mills to third country export markets.

Counsel for the CCI argued that the enforcement data, which is the most obvious and the least challengeable evidence on the record, showed that there is a propensity to dump. The data indicated that a number of US mills have continued to dump, even with the finding in place. Therefore, some goods have been finding their way into the Canadian marketplace at dumped prices to be offset, perhaps later, by the collection of anti-dumping duties.

Counsel for the CCI did not accept the proposition put forward by US producers that there are capacity constraints in the US carpet industry. Counsel submitted that there is no supply problem in nylon, or face yarns generally, which would stop US producers from meeting all the anticipated growth of US carpet demand and, on top of that, doubling their exports. Counsel submitted that the anticipated growth of the

US carpet industry is in the order of 2 percent per year and that the total US exports to the world, including those to Canada, which represent almost half of US exports, are approximately 6 percent of total US shipments. It was argued, therefore, that it would take less than 5 percent more carpet fibre in 1997 to satisfy US carpet growth and, additionally, to increase exports by 50 percent from their 1996 base. Counsel noted that Dr. Richard F. Heitmiller, an expert witness appearing on behalf of the CRI, acknowledged that the situation of tight cyclohexane supply, a key raw material for nylon production, should ease before the end of 1997. In fact, he stated that Phillips is committed to get its Puerto Rico plant up and running within a few months. Therefore, it was argued that the key factor impacting on the supply of cyclohexane will be relieved shortly. Further, counsel made reference to the large production capacity for nylon in various parts of the world and noted that this nylon can be imported into the United States.

In addition, counsel for the CCI argued that the possibility of substituting other fibres for nylon would lessen the impact of any real nylon shortage. For example, polyester, as well as nylon, is used in the construction of cut pile carpeting, and polypropylene filament fibre competes with nylon in many loop pile constructions. Counsel pointed to the testimony of a witness for Kraus, who stated that, if nylon supply gets tight, the price of nylon goes up and demand goes down. Polypropylene will then be in more demand because there is a substitution effect between polypropylene and nylon.

Further, counsel for the CCI argued that testimony given by US producers demonstrates that the US mill capacity for tufting carpets is “effectively unlimited.”

Counsel for the CCI noted that the Tribunal heard from very few US manufacturers and that those manufacturers are not representative of the whole US industry. Roughly half of US production was not represented at the hearing. This portion of the US carpet industry is comprised of smaller mills with smaller economies of scale, less market power and underutilized tufting capacity. It was argued that certain US mills are losing market share in a slow growth market led by the fast-growing leaders. The resulting over-capacity and the thirst for volume by the smaller mills create pressures conducive to incremental export pricing.

Counsel for the CCI stated that export sales by US manufacturers to countries other than Canada also show a propensity to dump. Counsel pointed to the evidence of two Canadian producers on US “dumped pricing” in export markets other than Canada. Counsel argued that the average value of exports of nylon tufted carpeting in 1995, taken from the U.S. Department of Commerce statistics, demonstrates a propensity to dump by US carpet mills. The statistics revealed that the average value of exports to dozens of countries was lower than the average value of exports to Canada, with the average value of exports to only four countries being higher than the average value of exports to Canada, where an anti-dumping finding is in place.

In addressing the likelihood of material injury to domestic producers, counsel for the CCI referred to their disappointing financial performance in recent years and submitted that this poor financial performance increases the vulnerability of the industry to any resumption of dumping by US mills.¹⁴ Counsel argued that the domestic industry is susceptible to increased dumping because the financial status of the Canadian mills is delicate. The susceptibility is especially acute because the industry has been “starved” for volume, even though it was doing well in market share.

14. Manufacturer’s Exhibit A-1 at 15, Administrative Record, Vol. 9.

Counsel for the CCI submitted that, if the Tribunal rescinded the finding, domestic producers would immediately experience erosion of domestic sales and margins and would be forced out of business.¹⁵

Counsel for Interface stated that the company supports the position of the Canadian industry in this matter and that the finding should be continued. His arguments related primarily to Interface's opposition with respect to the requests for exclusion presented during this review. The witness for Interface noted that the company is opposed to all the requests for exclusion because all of these products ultimately compete in the same marketplace for the same floor space, with the same customers.¹⁶ Further details regarding Interface's position with respect to the requests for exclusion are dealt with under "Exclusions."

Matting's representative requested that the finding be continued. He indicated that artificial grass has become an essential part of Matting's business and that Matting is very apprehensive about the removal of anti-dumping duties. In particular, Matting is concerned about its ability to compete with Beaulieu's integrated operations.

The CRI

At the outset of their argument, counsel for the CRI submitted that there are two legal principles that the Tribunal must take into account in reaching its decision in respect of the main case before the Tribunal. First, if the Tribunal does not find that a likelihood of resumed dumping exists, then it should not go on to consider whether there is a likelihood of injury resulting from the dumping. Second, if the Tribunal were to determine that a likelihood of resumed dumping and, if appropriate, a likelihood of injury resulting from the dumping exist, then the standard that the Tribunal must apply in arriving at such determinations is whether the basis for such findings is reasonable and foreseeable.

In addressing the issue of likelihood of resumed dumping, counsel for the CRI divided their argument into three broad headings: (1) the capacity of the US carpet industry; (2) pricing dynamics in the Canadian market; and (3) allegations regarding third country pricing by US carpet mills.

On the issue of capacity, counsel for the CRI submitted that the likelihood of resumed dumping is tied to the capacity of the US industry to manufacture the subject carpeting. Specifically, counsel submitted that the evidence shows that the US carpet industry will not be able to increase its output of machine tufted carpeting beyond historical incremental amounts over the next two to three years, in particular, carpet tufted from nylon, because of a shortage in certain raw materials required for the extrusion of nylon fibre. As such, on the issue of capacity alone, the US carpet industry is not in a position to resume dumping either this year or in the foreseeable future.

In support of this view, counsel for the CRI referred to the oral testimony of Mr. Frank Wilson, an industry consultant appearing on behalf of the CRI, regarding his study of bottleneck constraints in the supply of fibres. Mr. Wilson testified that there is virtually a complete utilization of practical capacity in the case of nylon staple fibre and 97.2 percent capacity utilization for nylon filament fibre. Counsel also referred to the testimony of Dr. Heitmiller and his study of fibre shortages in the United States, which suggest that nylon shipments may grow by 3.0 to 4.0 percent per year over the next five years, that is, at the rate of historical incremental growth. However, counsel argued, other uses for nylon are more attractive than carpeting when nylon is in short supply, as these other uses generate higher margins for the nylon producers.

15. Manufacturer's Exhibit A-1 at 16, Administrative Record, Vol. 9.

16. *Transcript of Public Hearing*, Vol. 5, February 14, 1997, at 1053.

Turning to the issue of shortage in supply of raw materials, counsel for the CRI referred to the evidence of Dr. Heitmiller regarding the shutdown of the Phillips plant in Puerto Rico, which produces cyclohexane, an intermediate in the production of adipic acid, which is a primary intermediate in the production of nylon 6,6. Dr. Heitmiller testified that, regardless of the pending return to production of cyclohexane by the Phillips plant, the supply of adipic acid will likely remain constrained for approximately three years. As for caprolactam, a primary intermediate in the production of nylon 6, Dr. Heitmiller testified that it was also expected to be in tight supply for the next three years.

Counsel for the CRI pointed out that, despite higher prices for nylon, polymerization capacity has been diverted from staple fibre production to other applications, such as the production of resins, as these applications yield higher margins. Counsel submitted that, even though approximately 80 percent of total nylon production goes into carpeting, carpeting is the application which generates the lowest margin of return.

In support of their view that shortages in supply have been experienced by carpet mills, counsel for the CRI submitted that, notwithstanding two price increases in the past eight months by merchant suppliers of nylon, the difficulty in obtaining nylon fibre generally, and specific types of fibre in particular, has continued. They submitted that the testimony of Dr. Heitmiller and Mr. Wilson regarding the shortage in supply of nylon fibre is corroborated by witnesses for each US carpet mill appearing before the Tribunal who testified as to disruptions in their production of machine tufted carpeting in 1996 as a result of being shorted on deliveries of nylon. Counsel also observed that Peerless experienced some shortages last year.

Counsel for the CRI submitted that the shortage in supply of nylon fibre will not be offset by the production of polyester or polypropylene fibres. The basis for this view is that polyester staple extrusion and polypropylene filament extrusion are at 97.9 and 98.4 percent practical capacity respectively. Although additional polyester and polypropylene fibres could become available for carpet manufacture, there is an issue of consumer acceptance of carpets made from these fibres. Counsel further submitted that, similarly to nylon, applications other than carpets yield a higher return in respect of polyester and polypropylene production.

While counsel for the CRI acknowledged that polypropylene production can be shifted to nylon production, this results in lower levels of return, and some technical difficulties exist relating to the dyeing process.

Notwithstanding the possibility of carpet mills switching to the production of machine tufted carpeting from fibre other than nylon, counsel for the CRI emphasized that nylon remains the fibre of choice for consumers and that it has grown in terms of filament extrusion in the United States from 1,100 million lbs. in 1992 to 1,337 million lbs. in 1996.

Counsel for the CRI further submitted that buying fibre, particularly nylon, from overseas has not been a viable option for US mills. Tariff barriers are at 9 percent for nylon filament, overseas fibre suppliers tend not to guarantee continuity of supply or sufficient quantities of fibre to make its importation viable, and the quality of such nylon is a concern.

Counsel for the CRI also referred to the evidence of Mr. Wilson on yarn processing and filament twisting. In respect of staple spinning capacity, he indicated that capacity utilization rose to 91.8 percent in 1996, which led him to conclude that, if there was greater demand for output, a bottleneck in supply could occur. In respect of filament twisting, Mr. Wilson indicated that it was at 90.4 percent capacity utilization and

that, while it was not a bottleneck per se, customers have experienced some delays and inconveniences in customer service at this stage in the production process.

Counsel for the CRI further submitted that most mills have tufting capacity that is not fully engaged and that tufting, in and of itself, would not cause a bottleneck. However, they further submitted that practical capacity is a function of the most constrained stage in the carpet production process and that the US output of the subject carpeting is effectively controlled by the quantity of synthetic fibre available for tufting.

On the issue of pricing dynamics in the Canadian market if the finding were rescinded, counsel for the CRI focussed their arguments primarily on Revenue Canada enforcement data set out in the protected pre-hearing staff report. They submitted that the US importers/exporters are not likely to resume dumping, given their historical “report card,” i.e. that they were not dumping. Furthermore, exporters would unlikely resume dumping in light of the margins that some US exporters received compared to US domestic gross margins.

Counsel for the CRI also made a number of other submissions with respect to Canadian pricing dynamics. On the issue of the significance of the nylon shortage, counsel submitted that US mills, as profit maximizers, would unlikely dump carpeting and obtain lower margins than they would on US sales, given the shortage in supply of nylon. Counsel further submitted that it would not make economic sense for US mills to move “downmarket” and cause sales to be lost by Canadian mills by using scarce fibre in their sales to Canada. Counsel also made submissions in respect of an apparent fibre cost advantage of US mills.

With respect to the domestic industry’s allegations of low pricing on exports to third countries, counsel for the CRI submitted that the evidence was anecdotal and that the level of trade at which US domestic prices and third country prices were compared by counsel for the domestic producers was not the same. Counsel submitted that the evidence shows that export margins earned by US producers’ exports to countries other than Canada are higher than US domestic margins.¹⁷

On the issue of likelihood of injury to the domestic industry in the event of a resumption of dumping, counsel for the CRI submitted that there is an absence of evidence to support such a conclusion, based on the rationalization that has occurred in the Canadian industry, in particular since the finding, and the increased level of exports to the United States both now and anticipated.

REASONS FOR DECISION

Section 76 of SIMA provides that, on completion of a review, the Tribunal shall rescind or continue, with or without amendment, the order or finding. In making its decision in this matter, the Tribunal must deal with two fundamental questions. It must first determine whether there is a likelihood of resumed dumping, if the finding is rescinded. If the Tribunal finds that there is a likelihood of resumed dumping, it must then determine whether such dumping is likely to cause material injury to the domestic industry.

17. In support of this argument, counsel for the CRI referred to various pieces of evidence on the record, including Exporter’s Exhibits F-9, F-10.2, F-11.1 and F-11.2 (protected), Administrative Record, Vol. 12D; and Manufacturer’s Exhibit AA-2 (protected), Administrative Record, Vol. 10A.

Like Goods

The products which are the subject of this review are described, in part, as machine tufted carpeting with pile predominantly of nylon, other polyamide, polyester or polypropylene yarns, excluding automotive carpeting and floor coverings of an area less than five square metres, originating in or exported from the United States. In its 1992 decision, the Tribunal found that there were three classes of like goods: residential carpeting, commercial carpeting and artificial grass. At the outset of the hearing for this review, the Tribunal indicated that it intended to continue to receive information in respect of these three classes of like goods, but that it reserved the right to regroup some or all of the classes of like goods based on the evidence presented, as is usual in these cases. Having considered the evidence presented in this review, the Tribunal finds that there is one class of like goods, that is, machine tufted carpeting with pile predominantly of nylon, other polyamide, polyester or polypropylene yarns.

In coming to this determination, the Tribunal considered the characteristics of machine tufted carpeting, including its physical characteristics, production process and market considerations such as end use, substitutability and distribution channels.

In this respect, the Tribunal finds that machine tufted carpeting is all sold as tufted carpeting with a variety of backings, with a pile of either nylon, polyester or polypropylene fibre. It is all produced on the same type of equipment, using essentially the same process. Generally speaking, all machine tufted carpeting has the same basic end use, notwithstanding that it may be destined either for residential or commercial uses or for indoor or outdoor uses. In this regard, the Tribunal believes that there is a great degree of overlap between the markets served by the different styles and constructions of machine tufted carpeting. In fact, the Tribunal notes that a significant amount of information submitted during the review, and almost all of the testimony heard during the public hearing, related to machine tufted carpeting as a whole.

The distribution of machine tufted carpeting is more dependent on the type of customer than on the type of carpeting. The Tribunal notes that the distribution channels for machine tufted carpeting are evolving to exclude the distributor trade level, regardless of whether the carpeting is destined for residential or commercial end uses.

In addition to the above-noted reasons for determining that there is one class of like goods, the evidence in this review indicates that there have been changes in the market since 1992 which have affected some of the factors that led the Tribunal to find three classes of like goods at that time. For instance, over the period of review, polypropylene fibre, which was more or less limited to the production of commercial carpeting and artificial grass in 1992, has become more widely used in the production of residential carpeting.

Having found that there is only one class of like goods in this review, the Tribunal now turns to the two fundamental questions that it must consider in determining whether the finding should be rescinded or continued, with or without amendment.

Likelihood of Resumed Dumping

In considering whether there would be a likelihood of resumed dumping if the finding were rescinded, the Tribunal carefully reviewed the enforcement data provided by Revenue Canada. These data

provided export information for the 12 largest exporters to Canada of machine tufted carpeting.¹⁸ The data indicated that, during 1995 and 1996,¹⁹ the 12 largest exporters to Canada, taken as a whole, dumped 2.6 and 10.6 percent of their shipments to Canada by average margins of dumping of 13.8 and 9.8 percent respectively. Thus, after almost five years of enforcement of anti-dumping measures, many of the largest exporters to Canada were continuing to dump machine tufted carpeting in Canada rather than raising their prices to avoid anti-dumping duties. However, in aggregate, the export prices reported were more than 12.0 percent higher than normal values during 1995 and 1996.

The Tribunal notes that the witnesses for Shaw and for Queen, two large exporters to Canada, testified that their companies either did not dump any machine tufted carpeting in Canada or dumped only a small percentage of their exports in 1996, and only dumped a small percentage of their exports of machine tufted carpeting to Canada during 1995. Further, a witness for Mohawk testified that the company's goal was to eliminate all dumping and that it had made progress toward this goal.

The enforcement data support the testimony of the witnesses for Shaw and for Queen that the companies dumped very little machine tufted carpeting in Canada during the last two years. The Tribunal does not find this unusual during the enforcement of a finding, especially in light of the testimony of the witnesses for these US producers that they are profit maximizers.²⁰ However, as noted above, other exporters are dumping machine tufted carpeting in Canada. Furthermore, the Tribunal is surprised by the significant margins at which some of that carpeting is being dumped, especially after almost five years of enforcement of anti-dumping measures.

The Tribunal observes that, while some of the larger exporters such as Shaw, Queen and Mohawk may not be dumping significant amounts of machine tufted carpeting in Canada, these exporters do not constitute the entire US carpet industry or the entire population of US producers that export to Canada. The remaining exporters included in the enforcement sample reported by Revenue Canada account for a large proportion of exports of machine tufted carpeting to Canada. The data indicate that the other nine companies included in Revenue Canada's sample represented 22.0 and 23.0 percent of the volume of shipments during 1995 and 1996 respectively. Of these shipments, 8.0 and 45.3 percent were dumped in 1995 and 1996, by average margins of dumping of 15.5 and 10.1 percent respectively. The Tribunal can only conclude that, if these exporters are not pricing up to normal values while the finding is being enforced, there is every likelihood that they will continue to dump machine tufted carpeting in the absence of the finding.

Witnesses for the US industry testified that they would not likely dump machine tufted carpeting in Canada because of raw material shortages that limit the amount of carpeting that they can produce. These witnesses stated that their companies experienced a nylon shortage during the middle to latter part of 1996 and that they expected the shortage to continue for the foreseeable future. Two expert witnesses submitted reports for the Tribunal's consideration indicating that nylon fibre would be in short supply due to constraints in the production of raw materials used to produce nylon.

18. The only enforcement data available was the sample of the 12 largest exporters to Canada.

19. The extent of the data available for 1996 varied between January to August and January to December, depending on the exporter.

20. *Transcript of Public Hearing*, Vol. 5, February 14, 1997, at 953-54; and *Transcript of In Camera Hearing*, Vol. 3, February 13, 1997, at 263-64.

Witnesses for the Canadian industry testified that they did not experience any significant raw material shortages in 1996.²¹ They testified that, while the level of raw material supplies has fluctuated over the years, market forces have always taken care of any situations of oversupply or undersupply in the market. Further, these witnesses expected that market forces would continue to do so. Moreover, the witnesses for the domestic industry stated that nylon is a commodity that is available from many producers throughout the world and which can be imported into both Canada and the United States.²²

Witnesses for Shaw and for Queen testified that the firms would not use a scarce commodity such as nylon to produce a product that would be sold in Canada at a lower gross margin than the firms could earn in the US market on a similar product.²³ The witness for Queen further testified that, in 1996, the company increased carpet prices in Canada and the United States to reflect increases in nylon costs.²⁴ Furthermore, witnesses for the US producers testified that they would not move “downmarket” to lower grades of carpeting because of the nylon shortage.²⁵

The US producers also presented evidence about the limited substitutability between polyester, polypropylene and nylon fibre in the production of machine tufted carpeting and stated that nylon is the predominant fibre for the production of machine tufted carpeting. The producers suggested that a shortage in supply of nylon fibre could not be alleviated by switching to alternative fibres.

The Tribunal recognizes that there are limitations to the substitutability between these three fibres. Further, it acknowledges the testimony of a witness for a major US producer that one fibre or even one size of fibre cannot be substituted for another fibre or size of fibre in a particular style of carpeting.²⁶ In the short term, this situation limits the ability of all carpet producers to switch between fibre suppliers and between fibres in their production processes for particular styles of carpeting.

However, evidence was adduced about the increase in the popularity of polypropylene in the manufacture of carpeting.²⁷ The Tribunal heard testimony about the increase in Canadian demand for carpets produced from polypropylene fibre, particularly berber style carpets, during the last few years.²⁸ This style of carpeting is predominantly produced using polypropylene fibre.²⁹

21. The Tribunal notes that a witness for Peerless testified that the company experienced a temporary shortage in supply of nylon fibre during June 1996. *Transcript of Public Hearing*, Vol. 1, February 10, 1997, at 144 and 168.

22. *Transcript of Public Hearing*, Vol. 1, February 10, 1997, at 54-56 and 142-44.

23. *Transcript of Public Hearing*, Vol. 5, February 14, 1997, at 952-53; and *Transcript of In Camera Hearing*, Vol. 3, February 13, 1997, at 264-65.

24. *Transcript of Public Hearing*, Vol. 4, February 13, 1997, at 755 and 768, and Vol. 5, February 14, 1997, at 972.

25. *Transcript of In Camera Hearing*, Vol. 3, February 13, 1997, at 264-65; and *Transcript of Public Hearing*, Vol. 5, February 14, 1997, at 954.

26. *Transcript of In Camera Hearing*, Vol. 3, February 13, 1997, at 256.

27. Exporter's Exhibit B-3 at 2, Administrative Record, Vol. 11.

28. *Transcript of Public Hearing*, Vol. 2, February 11, 1997, at 335 and 340, Vol. 3, February 12, 1997, at 512, 521 and 679, and Vol. 4, February 13, 1997, at 879; and *Transcript of In Camera Hearing*, Vol. 3, February 13, 1997, at 321.

29. *Transcript of Public Hearing*, Vol. 2, February 11, 1997, at 335 and 340, and Vol. 3, February 12, 1997, at 521 and 680; and *Transcript of In Camera Hearing*, Vol. 2, February 12, 1997, at 155 and 223, and Vol. 3, February 13, 1997, at 321.

Moreover, the enforcement data provided by Revenue Canada indicated that, during the last six months of 1996 (the period of reported nylon shortages), compared to the last six months of 1995, the volume of US exports to Canada increased, that the average price of those US exports to Canada decreased and that the volume of dumped goods increased. The Tribunal finds it interesting that, during the time of the nylon shortages in the United States, exports of machine tufted carpeting from that country to Canada increased in volume and, on average, decreased in price.³⁰ These are not the reactions that one would anticipate during a raw material shortage, unless the increased volume of carpeting was of non-nylon fibre, which was not in short supply, indicating a degree of substitutability between different carpet fibres. In this regard, the Tribunal notes that carpets produced from polyester and polypropylene generally sell at lower price points than does nylon carpeting of comparable weights and construction.³¹

Thus, the Tribunal finds the testimony of the three US producers not fully consistent with other evidence on the record. On the one hand, some of the US producers stated that they would not lower prices or move “downmarket” in the face of a nylon shortage. On the other hand, the enforcement data indicate that one or the other actually took place. It is clear to the Tribunal that the nylon shortage experienced by the US producers did not prevent them from both increasing their volume of machine tufted carpeting exports to Canada and decreasing the average selling price during the last six months of 1996, compared to the last six months of 1995.³²

The Tribunal recognizes that there was a “tightness” in the supply of nylon during the middle to latter part of 1996, especially for the faster-growing US companies which could not obtain all of the fibre necessary to sustain their growth. Testimony indicated that the raw material constraints causing the nylon shortage are being addressed,³³ but that the growth of nylon production will be limited to its historical rate of 3 to 4 percent per year over the next five years.³⁴ The Tribunal heard testimony from US industry participants about their efforts to alleviate any future raw material shortages through various means, including backward integration into fibre extrusion and building inventories. The Tribunal also heard that the ability to build fibre inventories is generally limited by warehouse space and just-in-time inventory practices.

In the Tribunal’s opinion, the nylon shortages described by the witnesses for the US carpet industry are temporary in nature. While these shortages may re-occur in the near term, efforts are under way to alleviate the raw material problems that caused the nylon shortages. Furthermore, the Tribunal believes that the shortages have had the greatest impact on those US producers that are growing at a faster rate than the industry overall, with less of an impact on those other producers that will be seeking to replace lost market share in the US market,³⁵ possibly through increased exports to Canada. The Tribunal agrees with the witness for one US carpet producer that these shortages must be viewed from the perspective of the entire

30. The enforcement data are aggregate data that do not identify the fibre used to produce the carpeting exported to Canada or the styles of carpeting. Consequently, it is impossible to determine if the product mix of exports to Canada shifted toward more polypropylene carpeting from nylon carpeting during these time periods or if product pricing changes caused the average prices to decline.

31. *Transcript of Public Hearing*, Vol. 4, February 13, 1997 at 747-50 and 876.

32. Tribunal Exhibits RR-96-004-4A, 4B, 4C, 4E and 4F (protected), Administrative Record, Vol. 2; and Tribunal Exhibit RR-96-004-68C (protected), Administrative Record, Vol. 2A.

33. *Transcript of Public Hearing*, Vol. 4, February 13, 1997, at 817.

34. Exporter’s Exhibit B-2 at 2, Administrative Record, Vol. 11.

35. *Transcript of In Camera Hearing*, Vol. 4, February 14, 1997, at 414 and 421.

industry, not the individual producers.³⁶ With the overall US carpet industry growing at a rate of between 1.5 and 3.0 percent³⁷ per year and nylon shipments growing at 3.0 to 4.0 percent³⁸ per year, the Tribunal is not persuaded that the availability of nylon will be a constraint on the US carpet producers' ability to manufacture carpeting for the Canadian market. With the carpet industry accounting for the greater proportion of the total demand for nylon, the Tribunal believes that nylon producers could not afford to lose the volume that the carpet industry represents and will continue to supply this industry, even if better margins may be earned on sales to lower-volume industries.

There was a consensus among the witnesses that appeared before the Tribunal that carpet tufting capacity is not constrained in the United States.³⁹ The U.S. Department of Commerce, Bureau of the Census, in the *Survey of Plant Capacity: 1994*, reports for its sample of carpet producers an average utilization of carpet tufting capacity of 84 percent in 1995.⁴⁰ All of the witnesses for the US carpet mills testified that, because of the wide range of styles produced and the varying demand for each style, it is normal practice in the industry to have one or more tufting machines idle at any given time. Consequently, the Tribunal is not convinced that the US carpet industry's ability to produce machine tufted carpeting for all of its historical markets, both domestic and export, will be constrained by either raw material supplies or tufting capacity.

The domestic industry submitted numerous allegations, supported by exhibits, of US carpeting being sold in third country markets at prices below US domestic list prices as evidence of the US carpet producers' "propensity to dump" machine tufted carpeting in export markets. This evidence was supported by the testimony of the witnesses for the domestic industry.

Shaw, Queen and Mohawk responded to these allegations through either oral testimony or written submissions. With regard to the allegations about the prices at which certain styles of US carpets were being sold in third country markets, the witnesses for the US producers responded by presenting the normal values for some specific styles of carpets or by providing prices for other specific styles of carpets obtained through their commercial intelligence. They also questioned the trade level of price lists and the origin of the documents submitted by the domestic industry. The Tribunal notes that US producers did not provide any documentary evidence to support their responses.

Witnesses for Shaw, for Queen and for Mohawk testified about the level of their respective company's gross margins earned on domestic sales, export sales to Canada, sales to other export markets and overall company sales. Each producer provided a slightly different set of data.⁴¹ The producers did not provide any supporting documentation to substantiate this testimony. The testimony of one witness for a

36. *Transcript of In Camera Hearing*, Vol. 4, February 14, 1997, at 414-15.

37. *Transcript of Public Hearing*, Vol. 4, February 13, 1997, at 788; and Tribunal Exhibit RR-96-004-63, Administrative Record, Vol. 1C at 72.

38. Exporter's Exhibit B-2 at 2, Administrative Record, Vol. 11.

39. *Transcript of Public Hearing*, Vol. 4, February 13, 1997, at 880 and 916, and Vol. 5, February 14, 1997, at 958.

40. Tribunal Exhibit RR-96-004-61, Administrative Record, Vol. 1C at 9.

41. One US producer provided gross margin percentages earned on domestic sales, Canadian sales, overall company sales and the net income percentage. Another producer provided the gross margin percentage earned on overall company sales and US domestic sales. A third producer provided the gross margin percentages earned on domestic sales (including Canada) and export sales.

US producer supports the contention that gross margins earned on export sales are higher than those earned on domestic sales.⁴² However, the testimony of the witness for another producer did not provide sufficient details for the Tribunal to reach a conclusion on that proposition, although the testimony did indicate that margins earned by that US producer in Canada are higher than those earned in the United States.⁴³ Further, the testimony given by the witness for another US producer leads the Tribunal to conclude just the opposite, as its margins earned in export markets are lower than those earned in the domestic market.⁴⁴ The Tribunal notes that this producer stated that this did not constitute dumping because the lower margins were offset by lower selling and administrative expenses incurred on export sales.⁴⁵

The domestic industry also presented evidence showing that, in 1995, the average value per ounce of total weight for US nylon carpeting sold in 30 export markets was lower than the average value per ounce of total weight for US nylon carpeting sold in Canada and 4 other industrialized countries.⁴⁶ Thus, for exports of nylon carpets to 30 out of 35 markets reported in the U.S. Department of Commerce statistics, the average price per ounce was lower than the average price per ounce of nylon carpets exported to Canada, where anti-dumping measures are being enforced. This, the CCI submitted, indicates that the US exporters have a “propensity to dump” machine tufted carpeting in export markets.

On balance, the Tribunal found the evidence on pricing in third country export markets to be inconclusive as to whether or not it supports the allegation that there is a “propensity to dump” machine tufted carpeting in export markets.

It is readily apparent to the Tribunal that the US carpet producers and the Canadian carpet producers compete vigorously in many markets, including the Canadian market. In the absence of anti-dumping measures, there is no reason to believe that this competition would not continue and intensify in the Canadian market. Many of the products that were named in the domestic industry’s allegations about pricing in third country markets are sold by companies that continue to dump machine tufted carpeting to Canada while the finding is in place. Consequently, the Tribunal concludes that these companies will continue to dump carpeting in Canada in the absence of the finding.

Counsel for the CCI argued that market share gains in the US market by some of the larger carpet producers would force other smaller producers to fight for volume to achieve economies of scale in this capital intensive industry. With Canada being the logical closest export market, counsel argued that, in the absence of anti-dumping measures, these firms are likely to resort to dumping to increase market share and volume. Witnesses for the domestic industry testified about the capital intensive nature of the carpet manufacturing industry and the consequent pressures to maintain production volumes and utilize production capacity.⁴⁷

The Tribunal recognizes that there is an incentive to increase production volumes in capital intensive industries and agrees that firms losing market share in their domestic market are likely to attempt to regain that volume elsewhere in order to maintain or improve economies of scale. In addition, the outlook for the

42. *Transcript of In Camera Hearing*, Vol. 3, February 13, 1997, at 277-80.

43. *Transcript of In Camera Hearing*, Vol. 4, February 14, 1997, at 401-2.

44. *Transcript of In Camera Hearing*, Vol. 4, February 14, 1997, at 439-40.

45. *Transcript of Public Hearing*, Vol. 5, February 14, 1997, at 999-1000.

46. Manufacturer’s Exhibit A-1, Annex H, Administrative Record, Vol. 9.

47. *Transcript of In Camera Hearing*, Vol. 1, February 11, 1997, at 83, and Vol. 2, February 12, 1997, at 158.

US carpet market is for minor growth,⁴⁸ while the outlook is for improved growth in the Canadian carpet market.⁴⁹ These factors suggest to the Tribunal that the US carpet producers that are losing market share in the United States will show an increased interest in the Canadian market. Moreover, as stated previously, many of the US producers have continued to dump machine tufted carpeting in Canada in spite of the enforcement of the Tribunal's 1992 finding.

The Tribunal is not convinced that those US exporters that are not currently dumping would be able to withstand the pressure of low-priced machine tufted carpeting offered by other US carpet producers in the Canadian market that have a greater incentive to dump. These exporters would be faced with the same dilemma as the domestic industry, either lower their prices or concede market share.

Finally, the Tribunal observes that, while the US producers have been able to continue to sell machine tufted carpeting in the Canadian market with the finding in place, their share of this market decreased after the finding was made and has not returned to pre-finding levels.⁵⁰ Thus, in the absence of anti-dumping measures, there is likely to be an incentive to be more price competitive in the Canadian market in order to regain the market share lost when the finding was made.

In light of the foregoing, the Tribunal is of the opinion that the dumping in Canada of machine tufted carpeting from the United States is likely to continue and intensify if the finding is rescinded. The continued dumping of machine tufted carpeting during the enforcement of the finding is compelling evidence that many US producers will continue to dump their products in the Canadian market in the absence of the finding. The Tribunal believes that the nylon shortages experienced in 1996 by the US producers that testified at the public hearing will soon be alleviated. Moreover, it is not persuaded that these shortages will have an impact on the ability of those producers and others to produce machine tufted carpeting for sale in the Canadian market. On the contrary, the Tribunal believes that, because of available tufting capacity, the capital intensiveness of the carpet industry and the softening of the US carpet market, US carpet manufacturers are likely either to continue or to resume dumping machine tufted carpeting in Canada.

Likelihood of Material Injury to the Domestic Industry

Having found that dumping of machine tufted carpeting is likely to resume if the finding is rescinded, the Tribunal must now turn its attention to the question of whether the resumption of dumping is likely to cause material injury to the domestic industry.

The domestic industry submitted that, while the finding had been a positive influence on its performance since it was made in 1992, the earnings recorded by the industry were still disappointing. It submitted that, due to this disappointing financial performance, the industry is still vulnerable to the effects that low-priced, dumped machine tufted carpeting from the United States would have on the prices of carpeting in Canada.

48. *Transcript of Public Hearing*, Vol. 4, February 13, 1997, at 788 and 799; and Tribunal Exhibit RR-96-004-63, Vol. 1C at 72.

49. *Transcript of Public Hearing*, Vol. 1, February 10, 1997, at 152; *Transcript of In Camera Hearing*, Vol. 2, February 12, 1997, at 148 and 151; and Manufacturer's Exhibit A-3, Administrative Record, Vol. 9.

50. *Protected Pre-Hearing Staff Report*, January 15, 1997, Tribunal Exhibit RR-96-004-6 (protected), Administrative Record, Vol. 2 at 119-21.

As indicated earlier, the carpet manufacturing industry is very capital intensive, especially for those firms that are backward integrated into fibre production. In capital intensive industries, shifts in production volume can have significant effects on the financial performance of the industry. Production volumes and capacity utilization reported by the domestic industry started to improve in 1992, but peaked in 1994 and have declined since then.⁵¹

The domestic industry lost over 30 percentage points of market share between 1988 and 1992. Since the finding in 1992, the industry has only regained approximately half of the market share that it lost. During the same period from 1988 to 1995, the size of the market decreased by almost 25 percent.⁵² Thus, during the period since the finding, the Canadian carpet manufacturers were faced with a market that is recovering slowly and which has yet to return to the volume demanded in the late 1980s.⁵³

The record indicates that the financial performance of the Canadian producers, taken individually, has been uneven.⁵⁴ Some producers reported profits on their domestic sales of machine tufted carpeting, while others reported losses. Overall, since 1992, the industry reported a profit only during 1994 and the first nine months of 1996, and those profits were well below the profits reported in the late 1980s.

Thus, the domestic industry has been struggling to recapture market share that it lost to dumped imports prior to the Tribunal's finding, in a market that has declined in volume, while, overall, it is incurring losses on its domestic sales of machine tufted carpeting. The industry has restructured and consolidated and has made significant efforts to reduce costs.⁵⁵ However, the industry has not yet been able to recover the costs of restructuring and enjoy the benefits that these measures should bring, nor has it been able to increase its production to operate its facilities at optimum levels. The Tribunal notes that, even after this significant restructuring and consolidation in the Canadian industry, there is still a large amount of excess production capacity in Canada.

The evidence indicates that many US producers are very competitive in the Canadian market, even with the enforcement of anti-dumping measures. As previously stated, the Tribunal believes that, if the finding were rescinded, the dumping of machine tufted carpeting, that has continued since the finding was made, would intensify. The intensified dumping would, in the Tribunal's opinion, lead to lower prices in the Canadian market. The domestic producers would be forced to meet these lower prices or face the prospect of losing production volume and market share. Either alternative would lead to a lower level of gross margins for the Canadian producers. The lower gross margins would have a materially detrimental effect on the financial performance of the domestic industry and the ability of some of the domestic producers to survive and ultimately strengthen sufficiently to reap the rewards of their restructuring and cost control efforts.

51. *Ibid.*

52. *Protected Pre-Hearing Staff Report*, January 15, 1997, Tribunal Exhibit RR-96-004-6 (protected), Administrative Record, Vol. 2 at 122.

53. *Ibid.*

54. *Protected Pre-Hearing Staff Report*, January 15, 1997, Tribunal Exhibit RR-96-004-6 (protected), Administrative Record, Vol. 2 at 89, 152, 158, 167, 171, 177, 186, 189 and 195.

55. *Transcript of Public Hearing*, Vol. 2, February 11, 1997, at 498-99; and *Transcript of In Camera Hearing*, Vol. 2, February 12, 1997, at 150.

Consequently, the Tribunal finds that the resumption of dumping is likely to cause material injury to the domestic industry through reduced selling prices or reduced production volume and market share, either of which would reduce the already inadequate financial returns that the industry has been able to earn.

Exclusions

Counsel for several importers and exporters requested product or producer exclusions. In this regard, the Tribunal notes that it has a discretion which has been recognized by the courts.⁵⁶ The Tribunal has previously indicated that it will only grant exclusions in exceptional circumstances where the case for exclusions has been adequately demonstrated. The Tribunal is persuaded that, in this case, such circumstances have been demonstrated with respect to four products, namely, patterned carpeting, tile accessory carpeting, carpeting with a secondary backing of vinyl cushion and carpeting with a secondary backing consisting principally of polyurethane foam cushion.

Patterned Carpeting

Durkan requested an exclusion for custom-designed machine tufted carpeting which is made to order to the customers' specifications in respect of design, pattern and colour, manufactured using the patented Zimmer Chromojet jet dye technology and exported to Canada by Durkan. A similar exclusion was granted, in the 1992 finding, to Milliken in respect of Millitron printed product. Durkan submits that the product for which it is requesting an exclusion occupies a high-end niche market in the hospitality sector and does not compete with patterned carpeting produced by the domestic industry.

The CCI and the domestic producers appearing at the hearing, including Interface, opposed this request. The CCI argued that Durkan's product competes with patterned carpeting produced in Canada. While acknowledging that its pattern repeat capabilities are more limited than those of Durkan and that its patterned carpeting does not have other characteristics of Chromojet printed carpeting, the domestic industry submitted that all patterned carpeting is competitive, regardless of how it is made.

The Tribunal notes that evidence attempting to demonstrate competition with respect to Durkan in Canada was provided for only one account. This evidence indicates that Durkan had sold to this account on two previous occasions and that it was competing for a third sale which was subsequently awarded to a Canadian carpet producer. However, there is no evidence that the Durkan product in question was a Zimmer Chromojet printed product. Further, no Canadian producer was of the view that it had been injured by imports of Millitron printed products, which were excluded from the 1992 finding. Durkan's evidence as to competition in the hospitality sector in Canada indicates that its primary competitor in this segment is Milliken.⁵⁷ The witness for Peerless stated that he was unaware of any 12-ft. printed broadloom in the market imported under this exclusion.⁵⁸

The Tribunal notes that the domestic industry is using basically the same machinery to produce printed carpeting⁵⁹ as it did at the time of the 1991 inquiry. In the Tribunal's view, the evidence shows that

56. *Hitachi Limited v. The Anti-dumping Tribunal*, [1979] 1 S.C.R. 93; *Sacilor Aciéries v. The Anti-dumping Tribunal* (1985), 9 C.E.R. 210 (F.C.A.), Court File No. A-1806-83, June 27, 1985; and *Stelco Inc. v. Canadian International Trade Tribunal*, Federal Court of Appeal, unreported, Court File No. A-360-93, May 23, 1995.

57. Exporter's Exhibit L-4 at 2, Administrative Record, Vol. 11G.

58. *Transcript of Public Hearing*, Vol. 4, February 13, 1997, at 662.

59. *Transcript of Public Hearing*, Vol. 3, February 12, 1997, at 706 and 711-12.

patterned carpeting produced by the domestic industry is not competitive with Milliken's product and, by extension, Durkan's product. Notwithstanding the fact that Milliken filled hundreds of orders in Canada between 1992 and 1996,⁶⁰ the domestic industry is seemingly unaware of Milliken's presence in the Canadian market with its Millitron printed product. Given that Milliken's Millitron printed carpeting has entered the Canadian market without its presence being felt and that Durkan is competing with Milliken in Canada, Durkan's request for an exclusion for similar products is granted.

Finally, with respect to this request, an issue arises as to whether the exclusion should also be extended to Bentley Mills Inc. (Bentley).⁶¹ The Tribunal notes that the witness for Interface testified that Bentley has the same technology and products for which Durkan is requesting an exclusion. The witness for Durkan also testified that Bentley owns the only other Zimmer machine for wide width in the United States.⁶² However, he noted that it is a much older machine than Durkan's machine. In addition, it uses earlier versions of Zimmer technology and software, which is far more limited than the Zimmer printer used in Durkan's Chromojet printing process. Although the evidence on the record with respect to Bentley and the capabilities of its production process is limited, the Tribunal is of the view that the exclusion being granted to Durkan should also be extended to Bentley, for the same reasons that it is being granted to Durkan.

Consequently, the Tribunal excludes from this order custom-designed machine tufted carpeting which is made to order to the customers' specifications in respect of design, pattern and colour, manufactured using the patented Zimmer Chromojet jet dye technology and exported to Canada by Durkan Patterned Carpet, Inc. or Bentley Mills Inc., and area rugs exceeding five square metres which are manufactured using the patented Zimmer Chromojet jet dye technology and exported to Canada by Durkan Patterned Carpet, Inc. or Bentley Mills Inc.

Tile Accessory Carpeting

Shaw and Milliken requested an exclusion for tile accessory carpeting. These companies noted that imports of carpet tile are not subject to the finding. However, tile accessory carpeting, which often accompanies an order for carpet tile, is considered to be subject carpeting. They identified two specific applications where tile accessory carpeting may form part of the overall scope of supply of a tile order:

- (a) machine tufted carpeting for use solely as "cove moulding,"⁶³ which must be a custom colour match to the accompanying carpet tile; and
- (b) machine tufted carpeting for use on stairs and staircases landings, which must also be a custom colour match to the accompanying carpet tile.

Counsel for Shaw and Milliken submitted that it is only logical that tile accessory carpeting be excluded from the scope of the Tribunal's order, as it is essentially a colour match, machine tufted carpeting

60. Exporter's Exhibit E-8 (protected), Administrative Record, Vol. 12C.

61. *Transcript of Public Hearing*, Vol. 5, February 14, 1997, at 1056. Bentley is owned by Interface and is located in City of Industry, California. It manufactures ink jet printed carpeting using a Chromojet machine made by the Zimmer Corporation.

62. *Transcript of Public Hearing*, Vol. 6, February 17, 1997, at 1269; and Exporter's Exhibit L-1, paragraph 14, Administrative Record, Vol. 11G.

63. The term "cove moulding" is used by Shaw and Milliken to describe "the small strip of carpet that may be installed on the lower portion of the wall in a commercial application. This small strip of machine tufted carpeting for use as cove moulding rises vertically a few inches up the wall from the floor surface that has been covered with carpet tile." It is used for both aesthetic appeal and comfort.

incidental to the tile portion of a particular order. The amount of tile accessory carpeting accompanying a carpet tile order will not usually represent more than 10 percent of the aggregate area of the carpet tile on the same order. As such, the quantity of tile accessory carpeting involved is so small that, in the view of Shaw and Milliken, the tile accessory carpeting effectively could not be diverted for use as standard floor covering. Furthermore, because the tile accessory carpeting must always be sold with the carpet tile, and given that the custom matching carpet tile is produced by Shaw and Milliken in the United States, it follows that there is effectively no Canadian source of tile accessory carpeting which could be sold with Shaw's and Milliken's carpet tile.

Counsel for Shaw and Milliken addressed the issue of the enforcement of such an exclusion and suggested that US producers could label their tile accessory carpeting and related documentation pertaining to an export shipment in a particular manner in order to assist Revenue Canada. Specifically, counsel suggested that each shipment could be labeled as:

Machine tufted carpeting of an area greater than 5 m² for use as carpet tile accessory being shipped as part of Order No. [123]. We certify that the total area of tile accessory carpet being supplied against this Order does not exceed 10 percent of the total area of Order No. [123] and is destined for end user [XYZ].⁶⁴

Counsel for the CCI, while acknowledging that it was not cost efficient for its members to produce this product, suggested that the exclusion should not be granted because Interface could make this product. Counsel for the CCI and counsel for Interface raised the difficulty in enforcing this exclusion and, thus, the possibility of circumvention of any continuation of the finding.

The Tribunal is persuaded that this exclusion should be granted, as it is not practicable for Canadian producers to provide tile accessory carpeting that is colour matched to Shaw's and Milliken's carpet tile. The Tribunal believes that the Canadian industry's concerns about circumvention are overstated, given the precise limits proposed in the exclusion, together with the suggestion put forward by counsel for Shaw and Milliken to assist Revenue Canada in the enforcement of this exclusion and to prevent circumvention.

Consequently, the Tribunal excludes from this order machine tufted carpeting of an area exceeding five square metres for use as tile accessory carpeting when part of the same order for individual pieces of carpet tile, each piece of which does not exceed one square metre, where the machine tufted carpeting exceeding five square metres for use as tile accessory carpeting does not exceed 10 percent of the aggregate area of the carpet tile on the same order and where all carpeting on the same order, whether or not exported to Canada together, is ultimately destined to the same end user.

Carpeting with a Secondary Backing of Vinyl Cushion

Collins & Aikman requested an exclusion for its products known as Powerbond and Powerbond RS. One of the alternative forms suggested for this exclusion was a generic exclusion for "machine tufted carpet with a secondary backing of vinyl cushion."⁶⁵ This would accommodate a request by counsel for Shaw that any exclusion for Collins & Aikman's products also cover similar products produced by Shaw.⁶⁶

64. Exporter's Exhibit E-6, Appendix 1, Administrative Record, Vol. 11C.

65. *Transcript of Public Hearing*, Vol. 1, February 18, 1997, at 1466.

66. *Transcript of Public Hearing*, Vol. 1, February 18, 1997, at 1540.

Counsel for Interface argued that this request for exclusion should not be granted because it produces a comparable product to Powerbond, namely, "Performance Broadloom." Counsel submitted that both Performance Broadloom and Powerbond are comparable as to raw materials, production process, physical characteristics, functions, sales and distribution, price and other production and marketing attributes.⁶⁷ The Tribunal notes that the evidence shows that Interface manufactures vinyl hard-back carpeting in Canada, while it currently imports vinyl cushioned carpeting.

Counsel for the CCI argued that backing systems, whether vinyl or polyurethane, compete with one another in the marketplace. The backing systems are simply competing technologies for the same end use. In this regard, one Canadian producer made reference to a new product which it believes has the potential to compete with vinyl- and polyurethane-backed carpeting in terms of being impervious to moisture.⁶⁸

The Tribunal is of the view that the evidence⁶⁹ shows that machine tufted carpeting with a secondary backing of vinyl cushion is a unique product with particular characteristics. The Tribunal notes that this carpeting has a permanent backing of vinyl cushion which is fused to the pre-coated face blanket. It is cushioned carpeting that has ergonomic characteristics to reduce leg fatigue. In addition, the carpeting is durable, impermeable to moisture and able to facilitate rolling traffic. This carpeting responds to special needs in a distinct market segment, namely, certain commercial and institutional end uses, such as healthcare facilities, nursing homes, education facilities and heavy traffic commercial facilities.

The evidence indicates to the Tribunal that, in general terms, products with a secondary backing of vinyl cushion are sold at higher prices than conventional broadloom. For example, the witness for Collins & Aikman testified that the choice of a Powerbond product over Canadian-made machine tufted carpeting is generally based on non-price factors.⁷⁰ This indicates to the Tribunal that there is a subsegment of this market which would only be served by vinyl cushioned carpeting.

Although there is domestic production of commercial carpeting for use in high traffic areas, including production of vinyl hard-back carpeting, the Tribunal is persuaded that this carpeting does not have the same set of characteristics as machine tufted carpeting with a secondary backing of vinyl cushion.

The Tribunal notes that Interface produced a very small amount of machine tufted carpeting with a secondary backing of vinyl cushion in Canada in 1995. However, there was no production in Canada of machine tufted carpeting with a secondary backing of vinyl cushion in 1993 or 1994, and there has been no production of the product in Canada since 1995.⁷¹ The Tribunal is, therefore, of the view that there is currently little or no production of this product in Canada.

For the above reasons, the Tribunal excludes from the order machine tufted carpeting with a secondary backing of vinyl cushion.

67. Manufacturer's Exhibit H-1, Administrative Record, Vol. 9E.

68. *Transcript of In Camera Hearing*, Vol. 1, February 11, 1997, at 54.

69. Exporter's Exhibit J-3, Administrative Record, Vol. 11F.

70. *Transcript of Public Hearing*, Vol. 6, February 17, 1997, at 1213-22.

71. Manufacturer's Exhibit H-10 (protected), Administrative Record, Vol. 10E.

Carpeting with a Secondary Backing Consisting Principally of Polyurethane Foam Cushion

Queen, Shaw, Milliken and Mohawk requested an exclusion for “machine tufted carpeting with a backing consisting principally of polyurethane compound.”⁷² The Tribunal observes that this request includes both hard-back and cushioned products.

Interface submitted that this request for exclusion for polyurethane-backed carpeting should be denied because it competes directly with Interface’s Performance Broadloom product. The company contended that, while there is greater comparability between stabilized vinyl-backed carpeting, such as Performance Broadloom, Powerbond and other similar products, these products also compete with polyurethane-backed and unitary backed carpeting.

The Tribunal notes that this product has a secondary backing of polyurethane, which has been chemically bonded to the carpeting in a special polyurethane oven. Products with a polyurethane backing are generally considered to be “high performance” because of their longer life and appearance retention. Carpeting with a secondary backing consisting principally of polyurethane foam cushion has ergonomic characteristics that are of interest to certain sophisticated purchasers⁷³ and cannot be duplicated in high traffic commercial applications by the use of standard carpeting and a separate cushion underlay.⁷⁴

The Tribunal observes that, although some domestic producers sell polyurethane cushioned carpeting, the defining process in the production of this carpeting is performed in the United States, not in Canada. The fact that the domestic producers have sent carpeting out of Canada to be backed with polyurethane indicates to the Tribunal that there is a distinct demand for such a product in the Canadian marketplace.

The Tribunal agrees with the view that this production should not be considered “domestic production” for two reasons. First, the Tribunal previously indicated that products sent out of Canada for further processing, and subsequently returned for sale in Canada, do not constitute “production in Canada.”⁷⁵ Second, the Tribunal notes that Revenue Canada treats such carpeting as goods that are subject to the finding upon importation into Canada.⁷⁶ Further, the Tribunal notes that, although there was some discussion by the domestic industry of developing capability to apply polyurethane backing in Canada, it is not persuaded that these plans are sufficiently advanced to be taken into consideration.

For the above reasons, the Tribunal excludes from the order machine tufted carpeting with a secondary backing consisting principally of polyurethane foam cushion. An exclusion is not granted for

72. Exporters’ Exhibits C-3, D-3, E-3 and F-3, Appendix 1, Administrative Record, Vols. 11A, 11B, 11C and 11D.

73. *Transcript of Public Hearing*, Vol. 6, February 17, 1997, at 1309.

74. *Transcript of Public Hearing*, Vol. 6, February 17, 1997, at 1313-14.

75. *Stainless Steel Plate Originating in the Federal Republic of Germany, Japan and the Republic of South Africa and Stainless Steel Sheet, not Including Cold Rolled Sheet in Grades AISI 409, AISI 410S and AISI 434, Originating in the Federal Republic of Germany and Japan*, Anti-dumping Tribunal, Inquiry No. ADT-14-77, *Finding and Statement of Reasons*, January 13, 1978. See also *Stainless Steel Plate, Originating in or Exported from Belgium, the Federal Republic of Germany, France, Italy, Sweden and the United Kingdom*, Anti-dumping Tribunal, Review No. R-2-84, *Review Finding and Statement of Reasons*, August 22, 1984.

76. Exporter’s Exhibit J-16, Administrative Record, Vol. 11F.

polyurethane hard-back carpeting because the Tribunal believes that it is very similar to and competes with other Canadian-made hard-back and unitary backed carpeting.

The Tribunal also considered two other requests for exclusion which it did not grant, namely, area rugs exceeding five square metres and prime quality goods.

Area Rugs Exceeding Five Square Metres

Shaw and Mohawk requested an exclusion for area rugs exceeding 5 square metres, but less than 12 square metres.⁷⁷ The Tribunal notes that both companies submitted that the rugs that they produce do not compete in Canada with any Canadian-manufactured small area rugs currently protected by the finding. Shaw and Mohawk suggested that there is a fundamental difference between the area rugs that they produce and those produced in Canada. They referred to evidence that indicates that Canadian producers manufacture area rugs from remnants of broadloom. By contrast, Shaw's and Mohawk's machine tufted area rugs are made continuously on a loom with a specific pattern and colour and not made from carpet remnants. As such, Shaw and Mohawk submitted that their area rugs are not in the same market as the Canadian products.

The Tribunal is persuaded, however, that the evidence shows that the domestic industry produces area rugs that compete with the area rugs produced and imported by Shaw and Mohawk. In this respect, Venture subcontracts its production of area rugs to its subsidiary, Rugtech Inc. (Rugtech), which has a custom rug program division which makes custom rugs of any size.⁷⁸ Rugtech stated that it sources domestic machine tufted carpeting from several Canadian carpet producers for the manufacture of area rugs,⁷⁹ while acknowledging that it produces some area rugs from remnants. In addition, Rugtech identified a number of US area rug producers as being among its competitors.⁸⁰ National also produces area rugs in Canada. Specifically, it takes finished broadloom, cuts it, edges it, surges it to various sizes and fringes it. Finally, Peerless subcontracts its production of area rugs.

The Tribunal denies this request for exclusion because the evidence indicates that there is domestic production of area rugs and that imports of area rugs from the United States compete to a significant degree with such production.

Prime Quality Goods

Finally, with respect to the request for exclusion for prime quality goods, the Tribunal notes that the evidence shows that prime quality goods represent approximately 98 percent of domestic production of like goods in Canada.⁸¹ The Tribunal appreciates the spirit in which this exclusion was proposed, that is, to prevent injury from off-quality goods and remnants in the event the finding were rescinded. However, given

77. Machine tufted carpeting cut and trimmed to an exact size and bound or serged along all four edges to form what is commonly referred to as an area rug, exceeding 5 square metres, but less than 12 square metres. During argument, counsel for Shaw and counsel for Mohawk suggested that the following wording be added to the wording of the exclusion: "tufted with a particular pattern and colour designed for the size of the rug" *Transcript of Public Hearing*, Vol. 1, February 18, 1997, at 1537.

78. *Transcript of Public Hearing*, Vol. 2, February 11, 1997, at 429.

79. Manufacturer's Exhibit AC-9 (protected), Administrative Record, Vol. 10C.

80. *Ibid.*

81. *Transcript of Public Hearing*, Vol. 1, February 10, 1997, at 100 and 155.

that the Tribunal has concluded that the finding should be continued with certain exclusions, the Tribunal is of the view that there is no reasonable basis upon which to consider this request. It is, therefore, denied.

CONCLUSION

The Tribunal believes that, if the finding is rescinded, there is a likelihood that dumping of machine tufted carpeting from the United States will resume and that the dumping is likely to cause material injury to the Canadian industry. Consequently, the Tribunal continues the finding. However, the Tribunal believes that the following four exclusions are warranted:

- (a) custom-designed machine tufted carpeting which is made to order to the customers' specifications in respect of design, pattern and colour, manufactured using the patented Zimmer Chromojet jet dye technology and exported to Canada by Durkan Patterned Carpet, Inc. or Bentley Mills Inc., and area rugs exceeding five square metres which are manufactured using the patented Zimmer Chromojet jet dye technology and exported to Canada by Durkan Patterned Carpet, Inc. or Bentley Mills Inc.;
- (b) machine tufted carpeting of an area exceeding five square metres for use as tile accessory carpeting when part of the same order for individual pieces of carpet tile, each piece of which does not exceed one square metre, where the machine tufted carpeting exceeding five square metres for use as tile accessory carpeting does not exceed 10 percent of the aggregate area of the carpet tile on the same order and where all carpeting on the same order, whether or not exported to Canada together, is ultimately destined to the same end user;
- (c) machine tufted carpeting with a secondary backing of vinyl cushion; and
- (d) machine tufted carpeting with a secondary backing consisting principally of polyurethane foam cushion.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

ADDITIONAL COMMENTS OF MEMBER COATES

It is clear, upon review of the section on like goods in the statement of reasons, that the Tribunal has taken a different view of this issue from that taken by the panel in the inquiry, of which I was a Member. Under the circumstances, I believe that it is appropriate for me to make a few comments regarding the different conclusion reached by the Tribunal in this proceeding.

First, I would note that the evidentiary record in this review is different from that which my colleagues and I considered in the 1991 inquiry. Second, upon reflection, I am of the view that the approach to analyzing the issue of like goods used in this review is more helpful than the one used in the inquiry. I believe that this approach is clearly set out in the reasons above. Third, I am persuaded that there have been changes in the marketplace since the finding which affected some of the factors that led the panel in the inquiry to find three classes of like goods at that time. For instance, as indicated above, over the period of review, polypropylene has become a more widely used fibre in the residential and commercial markets, as reflected in the increased popularity of “berber” style carpets in Canada. Also, the evidence shows that carpets of nylon and polypropylene are showing greater popularity in both the commercial and the residential markets and, as a result, there is increased overlap between them.

Accordingly, I agree with my colleagues in this case that a finding of one class of like goods is appropriate.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Member