



Ottawa, Tuesday, June 22, 1999

Review No.: RR-98-005

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding of material injury made by the Canadian International Trade Tribunal on June 22, 1994, in Inquiry No. NQ-93-005, concerning:

**12-GAUGE SHOTSHELLS ORIGINATING IN OR EXPORTED FROM
THE CZECH REPUBLIC AND THE REPUBLIC OF HUNGARY**

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of its finding of material injury made on June 22, 1994, in Inquiry No. NQ-93-005.

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

Richard Lafontaine

Richard Lafontaine
Presiding Member

Anita Szlazak

Anita Szlazak
Member

Pierre Gosselin

Pierre Gosselin
Member

Michel P. Granger

Michel P. Granger
Secretary

Ottawa, Tuesday, June 22, 1999

Review No.: RR-98-005

**12-GAUGE SHOTSHELLS ORIGINATING IN OR EXPORTED FROM
THE CZECH REPUBLIC AND THE REPUBLIC OF HUNGARY**

Special Import Measures Act - Whether to rescind or continue, with or without amendment, the finding of material injury made by the Canadian International Trade Tribunal on June 22, 1994, in Inquiry No. NQ-93-005.

Place of Hearing: Ottawa, Ontario
Date of Hearing: April 28, 1999
Date of Order and Reasons: June 22, 1999

Tribunal Members: Richard Lafontaine, Presiding Member
Anita Szlazak, Member
Pierre Gosselin, Member

Director of Research: Réal Roy

Research Manager: Richard Cossette

Research Officer: Piyanjali Tissaaratchy

Economist: Perpetua Katepa-Kalala

Statistical Officers: Julie Charlebois
Margaret Saumweber

Counsel for the Tribunal: Tamra Alexander

Registration and Distribution Officer: Claudette Friesen

Participant: Pierre Richard, Q.C.
David M. Attwater
for Société d'expansion commerciale Libec Inc.
(Domestic Manufacturer)

Witnesses:

Elie Zarifé
President
Société d'expansion commerciale Libec Inc.

Mike Ross
Buyer
Leisure Products Division
Canadian Tire Corporation, Limited

Jacques Vézina
Director
Wholesale Department
Magasin Latulippe Inc.

Address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Ottawa, Tuesday, June 22, 1999

Review No.: RR-98-005

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding of material injury made by the Canadian International Trade Tribunal on June 22, 1994, in Inquiry No. NQ-93-005, concerning:

**12-GAUGE SHOTSHELLS ORIGINATING IN OR EXPORTED FROM
THE CZECH REPUBLIC AND THE REPUBLIC OF HUNGARY**

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member
ANITA SZLAZAK, Member
PIERRE GOSSELIN, Member

STATEMENT OF REASONS

BACKGROUND

This is a review, under subsection 76(2) of the *Special Import Measures Act*¹ (SIMA), of the finding of material injury made by the Canadian International Trade Tribunal (the Tribunal) on June 22, 1994, in Inquiry No. NQ-93-005,² concerning 12-gauge shotshells originating in or exported from the Czech Republic and the Republic of Hungary.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the finding and issued a notice of review³ on December 14, 1998. This notice was forwarded to all known interested parties. As part of this review, the Tribunal sent questionnaires to Canadian producers, importers, purchasers and foreign manufacturers of 12-gauge shotshells. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

The record of this review consists of all relevant documents, including the finding in Inquiry No. NQ-93-005, the notice of review, public and confidential replies to the questionnaires for the 1998 review, and the public and protected pre-hearing staff reports for the 1994 inquiry and the 1998 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 undertaking with the Tribunal.

Public and *in camera* hearings were held in Ottawa, Ontario, on April 28, 1999.

The domestic producer, Société d'expansion commerciale Libec Inc. (Libec), was represented by counsel at the hearing. Counsel submitted evidence and made arguments in support of continuing the finding. No importers or exporters were represented at the hearing. However, representatives of Canadian Tire Corporation, Limited (Canadian Tire) and Magasin Latulippe Inc. (Magasin Latulippe) attended the hearing as Tribunal witnesses.

1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.
2. *Finding*, June 22, 1994, *Statement of Reasons*, July 7, 1994.
3. *Canada Gazette* Part I, Vol. 132, No. 52, December 26, 1998, at 3405.

PRODUCT

The goods under review are described as 12-gauge shotshells originating in or exported from the Czech Republic and the Republic of Hungary.

In Canada, shotshells also are produced for 10-, 20-, 28- and .410-calibre shotguns. According to Libec, 12-gauge shotshells account for over 95 percent of the Canadian shotshell market. The 12-gauge shotshells are available in various shot sizes and loads,⁴ containing between 24 and 53 g (between 7/8 and 1 7/8 oz.) of lead or steel, depending on the hunting or shooting requirements. Larger shot sizes are used for hunting migratory birds and small game, while smaller shot sizes are used for hunting small birds and for trap and skeet shooting.

In general, there are two types of 12-gauge shotshells: promotional and first-line. Promotional shotshells usually contain 32 g (1 1/8 oz.) of lead, have a shorter base, are available in a wider range of shot sizes and are sold under private brand names. First-line shotshells include all loads, but generally contain 36 g (1 1/4 oz.) of lead or steel,⁵ have a longer base, are sold under national brand names such as Winchester, Remington, Federal, Imperial or Challenger and are featured in major advertising campaigns. First-line shotshells contain more lead or steel and powder and are produced for various calibre shotguns. On the other hand, promotional shotshells are produced for 12-gauge shotguns only.

Since Inquiry No. NQ-93-005, Canadian laws have been amended to prohibit the use of toxic shot when hunting migratory birds.⁶ Libec commenced production of shotshells using non-toxic (steel) shot in 1997.

Production Process

The production of 12-gauge shotshells (promotional and first-line) consists of the manufacture and assembly of a plastic shell tubing which comes with a primer and a metal base, a propellant (gunpowder), a plastic or fibre wad gas seal and shot protector, and lead or steel shot. The assembly of these components is carefully controlled in terms of the quantity and composition of the gunpowder, the height of the metal base and the quantity and type of shot load. Samples are taken regularly from the production lines and are computer tested in order to ensure that the specifications are met.

First-line shotshells require more raw materials than promotional shotshells. Canadian producers source their component and raw material requirements domestically and from offshore suppliers and use automatic loading machines to produce shotshells.

DOMESTIC INDUSTRY

In the 1994 inquiry, there were three Canadian manufacturers, i.e. Libec, in Sainte-Justine-de-Newton, Quebec, whose production volume was over 90 percent of total Canadian production, and two other smaller manufacturers, Superior Canadian Munitions Ltd. (Superior), in Edmonton, Alberta, and Les Cartouches Tony Inc. (Tony), in Montréal, Quebec.

4. Refers to the size and the number of pellets of shot in the shotshell.

5. Some first-line shotshells also may be made of other non-toxic materials, such as tungsten.

6. *Regulations Respecting the Protection of Migratory Birds*, C.R.C. 1978, c. 1035, s. 15.1, as amended by SOR/97-400, August 18, 1997, *Canada Gazette* Part II, Vol. 131, No. 18 at 2657.

There has been no change in the composition of the domestic industry since the finding, with Libec continuing to hold a very significant share of total domestic production.

Libec was founded in 1980 and began manufacturing shotshells in 1984 at its factory in Sainte-Justine-de-Newton. Libec is a family business and, since 1993, has had a French associate, Cheddite France, a manufacturer and supplier of raw materials for shotshells. Libec started with one loading line and currently operates five lines, with a plant area of 20,000 square feet. The company produces only shotshells, with the production of 12-gauge shotshells representing some 98 percent of total production. Libec also produces shotshells in 20, 28 and .410 gauges.

IMPORTERS AND EXPORTERS

At the time of the original inquiry, 12-gauge shotshells were exported to Canada primarily from the Czech Republic, the Republic of Hungary and the United States. The exporters from the subject countries were Sellier & Bellot, in Vlašim, Czech Republic, and Nike-Fiocchi Ltd. (Nike-Fiocchi) in Füzfögyártelep, Republic of Hungary. The importers sourcing from the subject countries were Omnitrade Limited (Omnitrade) in Ville Saint-Laurent, Quebec, Pragotrade, Division of Motokov Canada Inc. in Rexdale, Ontario, and Sumner Sports Inc. in Québec, Quebec.

For the current review, Omnitrade and London Arms Ltd.⁷ were identified as potential importers of the subject goods. Both these firms indicated that they had not imported 12-gauge shotshells from the subject countries since the finding. The United States was, by far, the largest source of imports of 12-gauge shotshells. Major exporters in the United States include Winchester/Olin Corp. (Winchester), Remington Arms Co., Inc. (Remington) and Federal Cartridge (Federal). Major importers sourcing from the United States include Olin Canada Inc., Remington,⁸ Canadian Tire and Federated Co-operatives Ltd.

Although one importer (Omnitrade) was a party in the original inquiry, no importers were parties in the present review. In this instance, Mr. Mike Ross, Buyer, Leisure Products Division of Canadian Tire, and Mr. Jacques Vézina, Director, Wholesale Department of Magasin Latulippe, attended the hearing as Tribunal witnesses. These firms have not imported 12-gauge shotshells from the subject countries since the finding, but currently are purchasing imported 12-gauge shotshells from the United States and domestic 12-gauge shotshells from Libec.

During the hearing, these witnesses responded to a number of questions pertaining to factors affecting the market for 12-gauge shotshells in Canada, including changes that have occurred in the marketplace since the finding, the physical characteristics and end uses of promotional and first-line 12-gauge shotshells and their companies' purchasing policies for 12-gauge shotshells.

SUMMARY OF THE 1994 FINDING

In its decision of June 22, 1994, the Tribunal found that dumped imports of 12-gauge shotshells originating in or exported from the Czech Republic and the Republic of Hungary had not caused, were not causing, but were likely to cause material injury to the production in Canada of like goods. The domestic industry had experienced price erosion in the past and present, but it did not suffer material injury within the

7. Previously importing under the name Motokov Canada Inc.

8. Remington was identified as a non-resident importer of 12-gauge shotshells.

meaning of SIMA. With regard to the future, the Tribunal considered that continued dumping was likely to cause material injury to the domestic production of like goods.

The complainant to the Department of National Revenue (Revenue Canada) was Libec, the principal Canadian manufacturer of 12-gauge shotshells. The other producers of shotshells in Canada, i.e. Superior and Tony, informed Revenue Canada that they supported Libec's complaint.

During the Tribunal's period of inquiry, 12-gauge shotshells were exported primarily by the subject countries and the United States. The 12-gauge shotshells exported from the subject countries had been primarily promotional. The United States was, by far, the largest exporter of 12-gauge shotshells. The 12-gauge shotshells from the United States had been primarily first-line. Imports from countries other than the subject countries and the United States represented less than 5 percent of total imports during the period of inquiry.

The volume of total apparent imports decreased from 32.8 million units in 1990 to 20.5 million units in 1993, a decrease of 38 percent. During this period, imports from the subject countries increased by 226 percent, while imports from non-subject countries, mainly the United States, decreased by 55 percent.

Weighted average prices of promotional 12-gauge shotshells from the subject countries were stable between 1990 and 1992, before falling substantially in 1993. During this time, the weighted average prices of promotional 12-gauge shotshells produced by Canadian manufacturers decreased consistently. The weighted average prices of promotional 12-gauge shotshells from non-subject countries had increased continuously since 1992, after falling in 1991.

Although the importer of Czech shotshells testified that it had ceased to import 12-gauge shotshells, the Tribunal observed the Czech exporter's continued interest in the Canadian market. This was manifested by the export to Canada of more than 4 million units in a very short period of time in 1993. The witness for the Czech exporter also indicated that the majority of the company's large production was destined for export markets and that it could respond to Canadian orders rapidly. Furthermore, evidence was adduced that the importer of 12-gauge shotshells from the Czech Republic had made offers to supply these shotshells to the largest Canadian retailer, Canadian Tire, in the fall of 1993.

Despite a reduction in the quantity of 12-gauge shotshells imported in 1993, nothing heard in testimony indicated that the Hungarian quantities imported in 1991 could not be reached again.

On the basis of the evidence, including the large increase in imports from the subject countries since 1990 and the loss of sales by Libec because of the low prices of the subject goods, the Tribunal was persuaded that the dumping of the 12-gauge shotshells from the subject countries had caused past and present injury to the Canadian industry. The Tribunal noted that Libec's sales to accounts other than Canadian Tire were lower in 1992 and 1993 than in 1991, despite lower average unit prices. Nevertheless, Libec's overall situation had improved, due entirely to Libec gaining the Canadian Tire account. As a result, the injury caused by the dumped imports was not considered to be material, as required by SIMA.

However, the Tribunal was of the opinion that continued dumping, absent anti-dumping measures, likely would injure materially Libec's future production. The Tribunal concluded that, absent a finding, large quantities of 12-gauge shotshells, mainly promotional, would be imported from the subject countries at low prices. These imports likely would cause Libec to continue to encounter a loss of accounts at dumped prices and would put Libec at risk of losing its principal sales account. Further, these imports likely would have a

negative impact on Libec's ability to sell first-line shotshells in Canada, which, in turn, would have serious consequences on Libec's profitability and employment, since most of Libec's profits were derived from first-line 12-gauge shotshells. The Tribunal also was convinced that continued dumping could jeopardize Libec's investment plans for the production of certain shotshell component parts.

The Tribunal therefore concluded that, although the dumped imports had not caused and were not causing material injury, such imports were likely to cause material injury to the Canadian production of like goods.

In the event of a material injury finding, the witnesses for the Czech exporter and its importer had requested that the Tribunal exclude first-line 12-gauge shotshells from the decision. However, most of the witnesses heard by the Tribunal testified that there were no physical characteristics that would allow for an objective distinction between first-line and promotional shotshells. Therefore, the Tribunal rejected the request for exclusion.

POSITION OF PARTIES

Party Supporting a Continuation of the Finding

Counsel for Libec argued in support of a continuation of the Tribunal's finding, submitting that, in the absence of anti-dumping duties, Hungarian and Czech manufacturers are likely to resume dumping 12-gauge shotshells in Canada and that this dumping is likely to cause material injury to the Canadian industry.

As a preliminary matter, counsel for Libec submitted that it is always very difficult for domestic producers to make their case on a review where there have been no imports of the subject goods over several years. They stated that this difficulty is further increased when foreign manufacturers do not participate in the review. Counsel asked the Tribunal not to advantage Sellier & Bellot, the Hungarian manufacturer and exporter of the subject goods, in any way because it did not participate in the review.

On the question of a likelihood of a resumption of dumping, counsel for Libec argued that, should the finding be rescinded, a number of different factors will lead Hungarian and Czech manufacturers and exporters to dump 12-gauge shotshells in Canada. Counsel submitted that exporters from the subject countries continue to view Canada as a viable export market. They noted that exporters from the subject countries have made exports of non-subject cartridges to Canada over the last five years. Counsel stated that some of the importers that were identified as importers of the dumped goods five years ago continue to participate in the Canadian market and today import non-subject cartridges from the subject countries. In particular, counsel noted that Nike-Fiocchi has maintained its relationship with its Canadian distributor. Therefore, counsel submitted, the infrastructure remains for easy re-entry of the subject goods into Canada.

Counsel for Libec submitted that, as the Tribunal found five years ago, the production capacity of the manufacturers of the subject goods is considerably larger than the entire Canadian market and is aimed primarily at export markets. It was counsel's position that manufacturers of the subject goods very quickly could export large volumes of the subject goods to Canada.

Counsel for Libec also argued that manufacturers of the subject goods would aggressively pursue the Canadian market. Counsel noted that Nike-Fiocchi has indicated that it intends to increase its export sales and suggested that it would be consistent with its export policy to export to Canada, if the market became

available. As the subject goods currently are exported to the United States, counsel submitted that it is a natural extension for the subject goods to be exported to Canada.

Counsel for Libec submitted that, in order for the manufacturers of the subject goods to pursue the Canadian market, they would have to dump the subject goods. In support of this submission, counsel noted that there have been no imports of the subject goods since the finding. Counsel repeated the evidence of the witnesses for Canadian Tire and Magasin Latulippe to the effect that, without brand recognition, the subject goods could compete only on price and that a significant discount would be required to attract purchasers. In addition, counsel suggested that the evidence before the Tribunal indicates that Nike-Fiocchi currently is dumping the subject goods in its export markets.

Finally, counsel for Libec submitted that the history of the manufacturers of the subject goods demonstrates their propensity to dump. These manufacturers were found to be dumping the subject goods in 1979 and again in 1994.

Turning to the question of whether there is a likelihood that the Canadian industry would be materially injured if the finding were rescinded and dumping resumed, counsel for Libec argued that, without brand recognition, the subject goods would have to be sold as promotional shotshells at significantly discounted prices. Counsel noted that imports of the subject goods at the time of the finding were primarily promotional and that the majority of Nike-Fiocchi's exports in 1997 and 1998 consisted of promotional shotshells.

Counsel for Libec submitted that a very small percentage of the manufacturers' production of the subject goods could flood the Canadian market. Counsel stated that even a very small quantity of dumped goods would be very disruptive to the Canadian market because of the significant discount in price at which they would be required to be offered and because of "price shopping" in the Canadian market. Counsel submitted that dumped prices quickly would become known in the Canadian market and would act as a benchmark, driving domestic prices down.

Counsel for Libec further submitted that there is a concentration of purchasers in the Canadian market. It was counsel's submission that this concentration in purchasers means that exporters of the subject goods need approach only a few purchasers to access the entire Canadian market. Counsel stated that this permits swift penetration of the Canadian market.

Finally, counsel for Libec submitted that the domestic producers are vulnerable to injury. Counsel noted that promotional shotshells account for the majority of domestic production. Therefore, they suggested, there is greater exposure to the importation of dumped promotional shotshells. With reference to the statements of the witness for Magasin Latulippe, counsel suggested that purchasers would drop the domestic supplier of 12-gauge shotshells if cheaper subject goods were available. Counsel also suggested that the smaller size of the domestic producers, as compared to the US producers, rendered them less able to withstand low prices and, in particular, a protracted price war brought on by the presence of dumped goods. Further, counsel submitted, should the domestic industry lose sales of promotional shotshells to dumped imports, it also will lose sales of first-line shotshells, the product from which the domestic industry derives its major revenue, as there is a clear link between the sale of promotional shotshells and the sale of first-line shotshells.

In conclusion, counsel for Libec urged the Tribunal to “break this cycle” of making a finding of injury, rescinding the finding, only to make a finding of injury again. Counsel asked the Tribunal to continue the finding without amendment.

ANALYSIS

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, the Tribunal considers two fundamental issues. It first determines whether there is a likelihood of resumed dumping. If the Tribunal finds that there is a likelihood of resumed dumping, it then determines whether such dumping is likely to cause material injury to the domestic industry.

Likelihood of Resumed Dumping

In assessing the likelihood of a resumption of dumping, the Tribunal may consider a range of factors to understand what market conditions are likely to be for the product under review, absent the finding. In this case, the factors which the Tribunal has considered include changes that have taken place in the domestic market since the finding, including the extent of imports from the subject countries and from other sources, the marketing strategy of the exporters from the subject countries, the size and availability of production capacity and inventories in the subject countries, the nature of the product, the purchasing policy of Canadian buyers, the pricing of exports made by the subject exporters and the past behaviour of those exporters.

There has been little change in the composition of the domestic industry since the finding. Libec continues to hold the vast majority of total domestic production and, as such, constitutes the domestic industry for purposes of this review. During this period, the size of the two smaller Canadian producers, i.e. Superior and Tony, has remained essentially static. However, there has been a significant change in the market participation of imports into the Canadian market since 1994.

Since the finding, the apparent Canadian market for 12-gauge shotshells has grown, with the majority of this increase taking place over the 1996 to 1998 period. While Libec disputed the Tribunal’s assessment of the size of the market, arguing that it had remained stable,⁹ rather than grown, over the period of review, the Tribunal is confident, based on the data received in response to the questionnaires, that its assessment accurately reflects market reality. One explanation for the increase in the size of the market for 12-gauge shotshells since 1996 is the Canadian law imposing a ban on the use of toxic (lead) shot for hunting migratory birds. Indeed, the witnesses for both Canadian Tire and Magasin Latulippe indicated that the legislation requiring the use of non-toxic (steel) shot in certain applications had increased the demand, at least at the wholesale level, for 12-gauge shotshells over the last two years.¹⁰ However, the witness for Canadian Tire stated that the lack of enforcement of this law also has had a destabilizing effect in the marketplace,¹¹ leaving retailers with large amounts of unsold steel shotshells that had to be warehoused.¹²

With the finding in place, there have been shifts in the market shares held by the major suppliers. In this regard, the Tribunal has examined the level of imports since the finding and, more particularly, over the recent period for which detailed import and sales data were obtained, i.e. 1996 to 1998. Imports from the

9. *Transcript of Public Hearing*, April 28, 1999, at 85.

10. *Transcript of Public Hearing*, April 28, 1999, at 152 and 176.

11. *Transcript of Public Hearing*, April 28, 1999, at 106-107.

12. *Transcript of Public Hearing*, April 28, 1999, at 128.

Czech Republic and the Republic of Hungary have been virtually absent since the finding,¹³ and it would appear that the share vacated by dumped imports from these countries was captured largely by imports from the United States between 1993 and 1995. Between 1996 and 1998, there was little movement in the market share held by US imports, while Libec's share increased slightly.¹⁴ Between 1996 and 1998, there were no imports from any countries other than the United States, with the exception of 1998, when a small amount of Italian 12-gauge shotshells was sold in Canada.

The Tribunal examined the evidence to explain the lack of imports from the two subject countries since the finding. The significant margins of dumping for the Czech Republic and the Republic of Hungary in the final determination of dumping,¹⁵ and the fact that no new normal values have been established since then,¹⁶ lead the Tribunal to conclude that the manufacturers of the subject goods could not compete in the Canadian market. This view is supported by Nike-Fiocchi's comments regarding its absence from the domestic market since the finding.¹⁷ In addition, the subject goods had no brand recognition¹⁸ and could not command any premium in this very competitive end of the market.

The record shows, however, that Nike-Fiocchi is very export-oriented, with domestic sales representing only a fraction of its total sales of 12-gauge shotshells.¹⁹ With regard to Sellier & Bellot, as noted by the Tribunal in its statement of reasons in Inquiry No. NQ-93-005, its production "is aimed primarily at export markets".²⁰

In its response to the Tribunal's questionnaire, Nike-Fiocchi stated that it intends to increase sales of 12-gauge shotshells to its export markets over the next three years, including an increase over the current level of exports that it is making to the United States. Further, there is evidence in its response which suggests that it has not abandoned its intention to export to Canada, should the finding be rescinded.²¹ In the Tribunal's view, these statements clearly demonstrate Nike-Fiocchi's continued interest in the US and Canadian markets.

Sellier & Bellot also has shown continued interest in the Canadian market. Since the finding, it has made several shipments of non-subject cartridges to Canada, selling these cartridges to some of the same importers that were identified five years ago as importing dumped subject goods.²²

The Tribunal concludes from the foregoing that both exporters continue to view Canada as an attractive export market for 12-gauge shotshells and, while they are unable to compete in Canada with the finding in place, they undoubtedly would resume their shipments of 12-gauge shotshells to Canada, absent the finding.

13. Revenue Canada reports only one shipment of 12-gauge shotshells of Czech origin that entered in September 1995. No entries of the subject goods were reported for the Republic of Hungary.

14. The size of the apparent Canadian market for 12-gauge shotshells and respective market shares are protected data.

15. Tribunal Exhibit RR-98-005-1, Administrative Record, Vol. 1 at 9.

16. Tribunal Exhibit RR-98-005-3A, Administrative Record, Vol. 1 at 55.

17. Tribunal Exhibit RR-98-005-27.1A (protected), Administrative Record, Vol. 6.3 at 6 and 7.

18. Manufacturer's Exhibit A-3 at 2-3, Administrative Record, Vol. 11.

19. Tribunal Exhibit RR-98-005-27.1A (protected), Administrative Record, Vol. 6.3 at 8.

20. Tribunal Exhibit RR-98-005-1, Administrative Record, Vol. 1 at 15.

21. Tribunal Exhibit RR-98-005-27.1A (protected), Administrative Record, Vol. 6.3 at 6.

22. Tribunal Exhibit RR-98-005-4 (protected), Administrative Record, Vol. 2 at 4-11.

As further possible indicators of the likelihood of resumed shipments to Canada, the Tribunal looked at the extent of available production capacity of the manufacturers in the subject countries and their levels of inventories. The record shows that the combined capacity of Nike-Fiocchi and Sellier & Bellot to produce 12-gauge shotshells²³ is considerably larger than the entire Canadian market for these same goods.²⁴

Nike-Fiocchi's excess capacity alone in 1998, together with its reported level of inventory of 12-gauge shotshells,²⁵ amounts to significant volumes of available product that readily could be sold in the Canadian market, absent the finding. Moreover, the responses to the questionnaire by Nike-Fiocchi suggest that capacity could be added with relatively little effort.²⁶

As for Sellier & Bellot, the Tribunal noted, in its 1994 finding, that the company "produces over 32 million units of 12-gauge shotshells per year".²⁷ While no current data are available for Sellier & Bellot, which did not participate in this review nor respond to the Tribunal's questionnaire, there is nothing to suggest that its plant capacity has changed since that time. With regard to Sellier & Bellot's ability to export large volumes, the witness for Libec estimated that some 10 million units of Czech shotshells currently are sold annually in the US market.²⁸

Accordingly, the Tribunal is of the view that the two named exporters have the ability to supply the Canadian market with significant quantities of 12-gauge shotshells on very short notice.

The Tribunal also considered whether the likely shipments of the subject goods would be sold at dumped prices. In its 1994 finding, the Tribunal noted that the evidence left no doubt that promotional shotshells were sold on the basis of price, while the most important factor in the sale of first-line shotshells was the brand name under which they were sold. Turning to the present review, the witnesses for Canadian Tire and Magasin Latulippe both testified that promotional shotshells were a commodity and were very price sensitive. Although brand recognition was an important factor at the high end of the market (i.e. first-line shotshells), it was not at the low end (i.e. promotional shotshells), where price was the principal consideration. Indeed, the witness for Canadian Tire indicated that, in the extreme situation where all other factors are equal, a price differential of as little as one penny on promotional shotshells could make the difference on where it would source its product.²⁹

For Canadian Tire, the issues of prime importance in deciding whether to carry a line were the supplier's infrastructure and reliability to deliver the quantities required for resale. However, the witness for Canadian Tire acknowledged that he would consider an offering from a less reliable supplier that would provide a discount in the order of 25 percent, to offset the greater risk associated with sourcing from an unknown supplier and having higher inventory costs.³⁰ He added that, should a major competitor carry

23. Tribunal Exhibit RR-98-005-1, Administrative Record, Vol. 1 at 15; and Tribunal Exhibit RR-98-005-27.1A (protected), Administrative Record, Vol. 6.3 at 9.

24. *Protected Pre-hearing Staff Report*, March 2, 1999, Tribunal Exhibit RR-98-005-6 (protected), Administrative Record, Vol. 2 at 32.

25. Tribunal Exhibit RR-98-005-27.1A (protected), Administrative Record, Vol. 6.3 at 8-9.

26. Tribunal Exhibit RR-98-005-27.1A (protected), Administrative Record, Vol. 6.3 at 5.

27. Tribunal Exhibit RR-98-005-1, Administrative Record, Vol. 1 at 15.

28. *Transcript of Public Hearing*, April 28, 1999, at 51.

29. *Transcript of Public Hearing*, April 28, 1999, at 138 and 150.

30. *Transcript of Public Hearing*, April 28, 1999, at 150-51.

shotshells at a low price point, Canadian Tire would be compelled to purchase and offer similarly low-priced shotshells.³¹

The witness for Magasin Latulippe testified that price was basically the driving consideration in the purchase of shotshells, particularly of the promotional variety. He also stated that his organization could carry only a certain number of suppliers and that taking on a new line could well be at the expense of an existing line or lines since, in his view, more brands would not mean more sales.³²

The Tribunal examined the evidence of the prices of the named exporters to their export markets for an indication of likely import pricing, absent the finding. With respect to Hungarian pricing, the Tribunal notes that the average selling price of promotional 12-gauge shotshells sold by Nike-Fiocchi in 1998 for its combined export sales is lower than its average selling price in its domestic market,³³ which is a strong indicator of possible current dumping.

Regarding evidence of Czech pricing, Libec filed evidence of current Czech prices in the US market. Based on its knowledge of the US market as a supplier of 12-gauge shotshells in that market, Libec provided an estimate of the landed price of promotional 12-gauge shotshells of Czech origin to a US retailer.³⁴ The evidence shows that the estimated landed price of Czech imports into the US market is below Libec's own unit cost of goods manufactured.³⁵ While this is not conclusive evidence of dumping, it is again an indicator of "likelihood".

The nature of past exports by Nike-Fiocchi and Sellier & Bellot provides a further indication of likely price levels from these two countries, absent a finding. In its 1994 finding, the Tribunal noted that 12-gauge shotshells from the subject countries were primarily promotional³⁶ and were competing directly with a significant proportion of Libec's sales. The current data filed by Nike-Fiocchi show that a large majority of its exports of 12-gauge shotshells continues to consist of promotional shotshells.³⁷

The evidence indicates that these promotional shotshells from the Czech Republic and the Republic of Hungary lack brand recognition in Canada.³⁸ Moreover, these imports have not had a market presence since the finding. The testimony of the witness for Canadian Tire and the responses of purchasers in Canada to the Tribunal's market characteristics questionnaires leave no doubt that purchasers and consumers would demand a significant discount before they would purchase 12-gauge shotshells from an unknown source, including imports from the subject countries. Estimates of the price discounting necessary for these purchasers to switch their business from current domestic suppliers to unproven imports range from 5 to 25 percent less than current domestic prices.³⁹ The fact that imports from the subject countries would have to be

31. *Transcript of Public Hearing*, April 28, 1999, at 149-50.

32. *Transcript of Public Hearing*, April 28, 1999, at 166.

33. *Protected Pre-hearing Staff Report*, March 2, 1999, Tribunal Exhibit RR-98-005-6 (protected), Administrative Record, Vol. 2 at 59. All prices were reported on an FOB plant basis and in US dollars.

34. Manufacturer's Exhibit A-3 at 3-4, Administrative Record, Vol. 11.

35. Manufacturer's Exhibit A-3 at 3-4, Administrative Record, Vol. 11; and *Protected Pre-hearing Staff Report*, March 2, 1999, Tribunal Exhibit RR-98-005-6 (protected), Administrative Record, Vol. 2 at 37.

36. Tribunal Exhibit RR-98-005-1, Administrative Record, Vol. 1 at 14.

37. Tribunal Exhibit RR-98-005-27.1A (protected), Administrative Record, Vol. 6.3 at 10.

38. *Supra* note 18.

39. *Public Pre-hearing Staff Report*, March 2, 1999, Tribunal Exhibit RR-98-005-5, Administrative Record, Vol. 1 at 94.

discounted heavily to obtain sales in Canada strongly suggests that these imports likely would be dumped, absent a finding.

It is always difficult to establish the likely behaviour of exporters of subject goods in the event of a rescission of a finding. In this case, however, there exists a clear history of past behaviour of exporters from the two countries subject to this review and involving the same products.

In 1979, the Anti-dumping Tribunal made a finding⁴⁰ of material injury respecting 12-gauge shotshells from certain countries, including Czechoslovakia and Hungary. In 1989, the Tribunal rescinded the finding.⁴¹ In its reasons, the Tribunal noted:

The Eastern European countries, namely, . . . Czechoslovakia and Hungary, against which a finding of injury was made in 1979, have shipped little, if any, of the subject goods to Canada since the finding was issued.⁴²

Yet shortly after the finding was rescinded, low-priced imports again entered the Canadian market. In fact, the Tribunal noted, in its 1994 decision, that the Czech exporter, over a very short period of time in 1993, exported to Canada over 4 million units.⁴³ The Tribunal further noted that, of the goods examined from January 1 to October 31, 1993, 97 percent of the subject goods exported by Sellier & Bellot had been dumped by a weighted average margin of 32 percent, while 99 percent of the subject goods exported by Nike-Fiocchi had been dumped at a weighted average margin of 37 percent.⁴⁴

This past behaviour and the other factors discussed earlier, together with the fact that none of the exporters have obtained new “normal values,” are a clear indication, in the Tribunal’s view, that Sellier & Bellot and Nike-Fiocchi are not prepared to trade at normal values and likely will dump 12-gauge shotshells in Canada again, should the finding be rescinded.

In conclusion, the Tribunal is persuaded that there is a likelihood of resumed dumping of 12-gauge shotshells from the subject countries. This conclusion is based on the following factors: the strong export orientation of the manufacturers of the subject goods and their continued interest in the Canadian market, their ability to supply the Canadian market with significant quantities on very short notice, the commodity nature and extreme price sensitivity of promotional shotshells, the evidence of low pricing by the named exporters in other export markets, the lack of brand recognition in Canada of shotshells from the subject countries necessitating significant discounts to obtain sales and their past history of repetitive dumping.

40. *12 Gauge Shotshells (Ammunition) Originating in or Exported from the Union of Soviet Socialist Republics, Poland, Czechoslovakia and Hungary*, Inquiry No. ADT-6-79, *Finding and Statement of Reasons*, September 27, 1979.

41. *12 Gauge Shotshells (Ammunition) Originating in or Exported from the Union of Soviet Socialist Republics, Poland, Czechoslovakia and Hungary and 12 Gauge Shotshells Originating in or Exported from Italy, France, Belgium and the United Kingdom*, Review No. RR-89-001, *Review Finding and Statement of Reasons*, October 4, 1989.

42. *Ibid.* at 7.

43. Tribunal Exhibit RR-98-005-1, Administrative Record, Vol. 1 at 15.

44. *Supra* note 15.

Likelihood of Material Injury

In considering whether the resumption of dumping of 12-gauge shotshells from the Czech Republic and the Republic of Hungary is likely to cause material injury to the domestic industry, the Tribunal examined a number of factors, including the size and availability of production capacity and inventories of the subject goods in the exporting countries, likely prices of dumped imports and their impact on the Canadian industry, the accessibility of the Canadian market and current competitive market conditions, and the recent and likely future performance of the Canadian industry.

In order to assess the likely volumes of imports from the subject countries, the Tribunal looked closely at the past and current demand and supply situation in the exporting countries. As noted earlier, the combined capacity of manufacturers in the subject countries to produce 12-gauge shotshells is considerably larger than the entire Canadian market, and their capacity is targeted principally at export markets. The Tribunal is of the view that Nike-Fiocchi, based on its method of determining its production capacity,⁴⁵ easily could increase its capacity by adding to the number of shifts per week or extending the hours in the workday. Nike-Fiocchi's inventories alone, although a small percentage of its overall production capacity,⁴⁶ still would be capable of causing a significant disruption to the Canadian market through rapid imports. These factors, in the Tribunal's view, would enable the subject exporters to supply the Canadian market with significant volumes of the subject shotshells in a very short period of time.

In all likelihood, imported 12-gauge shotshells from the subject countries would consist of promotional shotshells. The evidence indicates that a large proportion of Nike-Fiocchi's current exports to other countries consists of promotional shotshells. Further, 12-gauge shotshells from the Czech Republic and the Republic of Hungary lack brand recognition in Canada and, at least initially, could compete only on price. The evidence also indicates that, at the low end of the market, price is the key element in obtaining sales.

The competitive climate in the Canadian market for 12-gauge shotshells is such that only a small quantity of low-priced goods is necessary to disrupt the marketplace. The testimony indicated clearly that price shopping takes place in the market⁴⁷ and that there is good market knowledge on the part of corporate buyers. If dumped imports were allowed to enter Canada, these low prices very quickly would become known in the trade and lead to downward pressure on prices generally. Given the degree of competition in the Canadian market, this downward pressure would affect all suppliers in the market, even those selling at the higher price levels.

The Tribunal also is persuaded that import penetration, given the concentration of the Canadian market, would be swift. In addition to two major retailers, Canadian Tire and Wal-Mart, there are only a few mid-sized retailers and five or six distributors serving the small retailers.⁴⁸ Importers, thus, easily can access a significant portion of the entire market by approaching a few buyers. As noted earlier, some of these importers already are present in the Canadian ammunition market, selling non-subject cartridges from the subject countries.

Canadian producers are particularly vulnerable to dumped imports. As compared to US suppliers in the Canadian marketplace, the Canadian producers of 12-gauge shotshells are significantly smaller. They

45. Tribunal Exhibit RR-98-005-27.1A (protected), Administrative Record, Vol. 6.3 at 5.

46. Tribunal Exhibit RR-98-005-27.1A (protected), Administrative Record, Vol. 6.3 at 8.

47. *Transcript of Public Hearing*, April 28, 1999, at 157-58.

48. Manufacturer's Exhibit A-3 at 4, Administrative Record, Vol. 11

also are smaller than their Czech and Hungarian counterparts. The larger producers are better able to compete on price and able to sustain low prices over a longer period of time. Their size alone makes Libec and the other smaller Canadian producers vulnerable to injury from dumped goods and, in particular, to the significant margins of dumping at which the subject exporters have been known to sell in the past.

Because the current Canadian market is very competitive, with price being the key factor at the low end, if lower-priced promotional product were to become available, higher-priced promotional product would not be sold. Under this scenario, Libec would be faced with two options: either to match price and suffer price erosion, or to choose not to meet dumped price offers and suffer a loss of sales or a loss of accounts. The degree of buyer concentration is such that the loss of a single large account, such as Canadian Tire, would be devastating for Libec.

Although the Canadian market for 12-gauge shotshells, in volume terms, has grown by 26 percent over the last three years, the outlook for the next few years is not as bright. The witness for Canadian Tire believes that the market will remain constant in the near future,⁴⁹ while the witness for Magasin Latulippe predicts modest growth.⁵⁰ Should the market stagnate, price would become a greater factor than already is the case.⁵¹

The Tribunal also is of the view that, if Libec's sales of promotional shotshells diminish as a result of dumped promotional shotshells from the subject countries, such imports also are likely to cause a loss of sales of Libec's first-line shotshells. According to Libec's evidence, which was uncontradicted, its sales of first-line shotshells are very dependent on its ability to sell promotional shotshells. Although sales of first-line shotshells account for much less than half of Libec's sales, they contribute to more than half of its sales revenues.⁵²

Libec now is associated with a French organization and has started to export 12-gauge shotshells to the United States. It plans to purchase new equipment to expand its product range, which would benefit sales for both domestic and export markets. These expansion plans are contingent on the overall financial health of the company, and any resumed dumping, in the Tribunal's view, undoubtedly would jeopardize these plans.

Although the Tribunal's finding has enabled Libec to enjoy good profits over the last few years, it remains vulnerable to dumped imports. An example of this vulnerability is the price war that was fought in the Canadian market between the major US suppliers in 1996, which caused Libec's sales revenues and profits to decline in the order of 25 percent. In the present situation, the Tribunal is persuaded that Libec would suffer material injury from dumped imports from the subject countries, which would significantly reduce its sales and market share and erode its prices, thus jeopardizing, in very short order, its profitability and very survival.

In summary, the Tribunal is persuaded that a resumption of dumping of 12-gauge shotshells by the subject exporters is likely to cause material injury to the domestic industry for the following reasons. Manufacturers in the subject countries have significant production capacity and inventories of 12-gauge shotshells available for export to Canada. There is a likelihood that dumped prices quickly would become known in the market and would become the benchmark for all suppliers. The market structure in Canada is

49. *Transcript of Public Hearing*, April 28, 1999, at 152-53.

50. *Transcript of Public Hearing*, April 28, 1999, at 176.

51. *Transcript of Public Hearing*, April 28, 1999, at 153.

52. Tribunal Exhibit RR-98-005-12.3 (protected), Administrative Record, Vol. 4 at 49.

concentrated, making possible penetration of the subject goods into the market swift. Canadian producers are relatively small in size and are unable to compete against dumped imports for any extended period of time. All of these factors likely will cause the domestic industry to suffer lost sales and market share, price erosion, lost profits, as well as jeopardize expansion plans.

CONCLUSION

For all of these reasons, the Tribunal hereby continues its finding concerning 12-gauge shotshells originating in or exported from the Czech Republic and the Republic of Hungary without amendment.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Anita Szlajak
Anita Szlajak
Member

Pierre Gosselin
Pierre Gosselin
Member