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Trade Cases 2006: China Goods



Greg Kanargelidis, partner, Blake, Cassels & Graydon LLP

By Greg Kanargelidis and Lindsay Bunt

Member Profile	2
Liner Conferences Face Disappearance	3
Trade Cases 2006: China Goods	5
Bank of Montreal	6

This article will discuss the dumping and subsidy cases involving the People's Republic of China (PRC) that were initiated or concluded in 2006.

Canadian Rules on Dumping Investigations

In keeping with international trade rules, where exporters are found to

be “dumping” goods into Canada which results in “material injury” to Canadian manufacturers, Canada is authorized to impose an “anti-dumping” duty equal to the margin of dumping. Furthermore, if a country is found to be unfairly subsidizing its exporters, Canada is authorized to impose a “countervailing duty” equal to the amount of the subsidy expressed as a percentage of the export price of the goods. These duties remain in place for five years and can be renewed for additional terms of five years.

Allegations of Dumping and Unfair Subsidization in 2006

In 2006, Chinese exporters of *Certain Copper Pipe Fittings* were the subject of a dumping and unfair subsidization investigation by the Canada Border Services Agency (CBSA). Based on the investigation, the CBSA made a preliminary determination that the goods were dumped into the Canadian market and estimated that the average margin of dumping amongst exporters was equal to 48.3 per cent of the ex-

China, cont'd on pg. 4

HS Amendments 2007: Seminar Series

In just one month, a dizzying array of significant changes will be made to the Harmonized Tariff Schedule. As you know, importers are ultimately responsible for the accurate classification of their imported goods. Are you ready to comply?

To help you prepare for the changes that will take effect on January 1, 2007, we've organized a series of seminars in early December across Ontario. The sessions will help you to understand how the changes to the tariff schedule will affect your opera-

Seminars, cont'd on pg. 3

U.S. Border Fees

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service is delaying the effective date and establishing a staggered implementation for the collection of user fees for inspections of Canadian-grown fruits and vegetables, commercial vessels, trucks, railroad cars and aircraft, as well as international passengers entering the United States from Canada. The delay is intended to allow affected industries time to prepare for the change.

The interim rule establishing these fees was originally scheduled to take effect on November 24. This delay is intended to allow affected groups to make necessary preparations in order to comply with the inspection and collection procedures that will be instituted.

Effective January 1, 2007, air passengers arriving in the United States from Canada will no longer be exempt from the international air passenger user fee. Effective March 1, 2007, the remaining provisions of the rule will take effect, including the removal of the user fee exemption for all commercial conveyances entering the United States from Canada.

All inspections on the U.S. side of our shared border are conducted

User Fees, cont'd on pg. 4

Member Profile



The following member profile was written by Eric Johnston of Fabtrends. In preparing the profile, Eric answered a series of questions posed by Jane Carter of I.E.Canada.

Fabtrends International Inc. has been a member of I.E.Canada since November 2004.

Company Background

Fabtrends is a Montreal-based group of independent, entrepreneurial textile companies, which has served the domestic and international apparel industry since 1983. Robert and Loren Litwin founded Fabtrends as a small, wholesale textile company dealing primarily in woven fabrics. Over the years, Fabtrends has expanded into both knitted and other novelty fabrics.

The Fabtrends advantage in woven and knitted fabrics is its in-house design team, which anticipates trends and then designs and creates original fabrics to meet consumer demand. The company also works directly with customers to develop exclusive fabrications for their unique needs. This originality gives Fabtrends and its customers a distinct competitive advantage.

Fabtrends couples quality, uniqueness and reliability with state-of-the-art production and top-of-the-line service. In all of our divisions we have a well-established reputation for innovative fabrications, superior quality and customer satisfaction.

Fabtrends has an in-house staff of more than 50 people. Our research and development team is made up of people from various disciplines. We work very closely with mills in

the Far East and we travel the world on a regular basis seeking out new ideas to bring home and improve upon.

We have our own full-time staff member living in Hong Kong who liaises with the mills on our behalf and acts as our "eyes and ears" during the development of new fabrications.

What is your role in your company?

I am the traffic and customs manager at Fabtrends. I oversee import and export customs filings as well as the shipment of our goods and those of our affiliated companies all over the world.

My 25 years in the transportation field have given me a great depth and breadth of experience and have provided me with the knowledge and tools to handle many different problems. I keep my tool kit, so to speak, up to date by reading current industry literature, attending seminars and staying in close touch with my suppliers and peers. This keeps the job interesting and challenging.

What are the benefits of being a member of I.E.Canada?

The benefits of being an I.E.Canada member include the various trade committees set up to find solutions to shared problems, *I.E.Today* (the daily newsletter), conferences, seminars and the opportunities to network with other members. The access to information is a big plus.

How has the association helped your company in relationship to trade issues?

I.E.Canada tracks emerging issues

that affect members. I.E.Canada puts forward the pros and cons for each issue and offers members very constructive suggestions as to how to gear themselves accordingly.

What are the most valuable benefits you receive from I.E.Canada?

One of the most valuable benefits for Fabtrends is *I.E.Today*. The daily newsletter provides us with very important information, which can be used by various departments within our company.

What is the value of membership to a new importer or exporter?

Aside from the benefits listed above, new importers or exporters who join the association can also gain from strength in numbers. It helps to be part of an association with a membership as large as I.E.Canada's when problems arise. The experience and expertise of the staff at I.E.Canada are also a huge asset.

Are there any issues your company would like I.E.Canada to address in the future?

I would like I.E.Canada to set up a committee that would ask the government agencies and departments in question to account for their actions and/or decisions. The customs administrations in Canada and the United States need a better understanding of the ramifications of the regulations they implement. One size does not fit all.

Do you find our seminars and conferences beneficial to your company?

The seminars and conferences are truly beneficial to us. They help us to keep up with all the changes in customs and transportation in the U.S. and Canada since 9/11. I.E.Canada's seminars and conferences also give us the chance to discuss issues with fellow members, hear other points of view and learn about different solutions to similar problems.

Shipping and Trade Horizons



Leo Ryan

Shipping and Trade Horizons, a Tradeweek column, is produced by Leo Ryan. The column addresses Canadian industry issues and trade developments of interest to our members.

Liner Conferences Face Disappearance

For decades, shippers around the world, including Canada, have had to co-habit with a virtual cartel system known as liner shipping conferences which benefit from national legislation according them exemptions from anti-trust regulations as they fix rates collectively and other terms of service. The existence of such conferences has been justified by the tremendous investments required to offer importers and exporters stable and reliable services to and from ports.

Such a system has survived strong challenges in recent years, thanks in part to some modifications. But determined to eradicate what it views as an anti-competitive anachronism, the European Commission of the European Union (EU) recently approved the abolition of liner conferences and new enforcement rules for cabotage and tramp shipping, effective in October 2008.

The timing took both carriers and shippers by surprise, and it has not taken long for industry bodies in Europe, North America and Asia to react.

In late September, ministers from the EU states endorsed plans to repeal Regulation 4056/86 which contains the anti-trust block exemption for liner shipping conferences, allowing them to fix freight rates.

“Noting that liner conferences will continue to be tolerated in other jurisdictions, the Commission will take appropriate initiatives to advance the removal of price-fixing liner conferences and thus promote further competitive reform of the liner shipping sector,” said a press release.

The European Shippers’ Council hailed the EU decision as “another landmark day” symbolizing the beginning of a new era of shipper-carrier cooperation.

Marking the culmination of three years of in-depth consultations and lobbying, the decision will impact on EU and non-EU carriers operating on routes to and from Europe. “It’s the opening shot and will increase pressure to soon dismantle the conferences in other world jurisdictions like Canada and the United States,” says Robert Ballantyne, president of the Canadian Industrial Transportation Association (CITA), whose members account for an annual freight bill of about \$6 billion.

Amendments in 2001 of Canada’s Shipping Conferences Exemption Act (SCEA) closely mirrored the Ocean Shipping Reform Act (OSRA) in the United States. But shippers were disappointed that the legislation did not include a sunset clause that would have removed the anti-trust immunity within five years.

At the time, the conferences had

even found allies in the person of then Transport Minister David Collenette and in the Shipping Federation of Canada, which represents ocean carriers.

However, there has been a definite momentum shift. Canada is likely to follow the lead of the United States, where the powerful National Industrial Transportation League (NITL) has just made an evaluation of OSRA a top priority for 2007. Like their European counterparts, Asian shippers oppose the proposal by liner shipping interests to replace the conferences with a system of information exchange.

In the global shipper community, feelings are widespread that ocean shipping should become a deregulated marketplace – much like what has transpired in the air transport, trucking and railway modes. Mark 2008 on your calendar as the likely end of an era.

One should not conclude, however, that there are no risks involved when there is much greater emphasis on the demand side of the equation than supply. Shipping lines need respectable returns to survive, as underlined by the current trend of vastly-reduced profits and capacity cut-downs on certain routes. Some observers consider that if the new environment provokes the further thinning out of service providers, the end result could be less competition when surviving large entities get still bigger. The ultimate challenge could be to find a middle ground based on mutual respect and dialogue.

Seminars, cont’d from pg. 1

tions. The seminars will also help your company to avoid improper tariff classification of imported products, cargo clearance delays and inaccurate NAFTA certificates of origin. For details, please visit www.iecanada.com and look under “Upcoming Events.”

User Fees, cont'd from pg. 1

by the U.S. Department of Homeland Security's Customs and Border Protection (CBP). The U.S. government has said that these inspections are necessary to further prevent the introduction of plant and animal pests and diseases into the United States via conventional pathways or through bioterrorism. In this context, the United States government has pointed to recent inspections along the Canadian-U.S. border, which led to numerous interceptions of prohibited fruits and vegetables, originating from regions other than Canada. The U.S. government has stated that these products pose a risk of introducing plant pests into the United States. APHIS is also concerned about agricultural and other products originating in Canada that could serve as host material for pests and diseases if left uninspected.

I.E.Canada has heard from members who are very concerned about the impact of the APHIS interim rule. The association wrote a submission to the U.S. Department of Agriculture, which outlined members' concerns about the interim rule. Prior to making the submission, I.E.Canada discussed the interim rule with the Canadian Embassy in Washington and the U.S. Embassy in Ottawa. "United voices can make a difference," points out Mary Anderson, president of I.E.Canada.

China, cont'd from pg. 1

port price of the goods. The CBSA also made a preliminary determination that the exporters in question were receiving the benefits of certain subsidy programs offered by the PRC. Therefore, in addition to the estimated margin of dumping, the CBSA also estimated that the weighted amount of domestic subsidies was 17.4 per cent of the export price of the goods. Based on these preliminary determinations, the Canadian International Trade Tribunal (CITT) initiated a formal injury inquiry on October 23, 2006. If the CITT determines that the dump-

ing and subsidization of the goods has caused or threatens to cause material injury to the Canadian industry, the CITT will make an order imposing anti-dumping and countervailing duties on imports of the goods into Canada. The CITT is expected to render its final order on February 19, 2007.

Re-Investigations of Existing Findings

Approximately every 12-18 months after the imposition of anti-dumping/countervailing duties, the CBSA conducts re-investigations into existing findings. The re-investigations represent an opportunity for exporters to provide updated information about the variables that affect the normal values of their "dumped" products. The CBSA sends out questionnaires to the exporters and requests that they update their manufacturing information so that the CBSA can re-calculate the anti-dumping/countervailing duties imposed on their products. It is thus an opportunity for exporters to obtain lower normal values (and thus lower anti-dumping duties) or to demonstrate that they are not dumping at all. It is important to note that exporters do not have to wait for the CBSA to initiate a re-investigation to update their manufacturing information. Where an exporter becomes aware of changes to domestic prices, market conditions or costs associated with production and sales, they should inform the CBSA so that normal values can be reviewed and updated, if necessary, to reflect current conditions.

In 2006, three re-investigations were initiated and three were concluded. The three that were initiated in the year concerned the following goods: *Certain Carbon Steel and Stainless Steel Fasteners* (July 17, 2006); *Bicycles and Frames* (June 28, 2006); and *Certain Waterproof Rubber and Waterproof Footwear* (May 30, 2006). At the time

of writing, none of these re-investigations were concluded.

The re-investigations that were concluded in the year involved the following goods: *Bicycles and Frames* (January 18, 2006); *Certain Hot-Rolled Steel Plate* (February 3, 2006); and *Laminate Flooring* (May 5, 2006). In *Bicycles and Frames*, the CBSA indicated that any models for which interim normal values have not been established or those goods that have not been clearly identified on the customs documentation will be subject to 64 per cent anti-dumping duties. In *Certain Laminate Flooring*, three exporters had their countervailing duties reduced (ranging from 0.33 – 2.83 RMB per square metre), one exporter retained its initial countervailing duty level and three exporters had their countervailing duties increased (ranging from 0.33 – 3.54 RMB per square metre).

The re-investigation in *Certain Hot-Rolled Steel Plate* is of particular interest. In that case, it was determined by the CBSA that "section 20 conditions" exist in the subject industry in China. Section 20 of the *Special Import Measures Act* is applicable to China where, in the opinion of the president of the CBSA, domestic prices are substantially determined by the government and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. Therefore, normal values were determined for those Chinese producers that provided sufficient information, on the basis of domestic selling prices and cost of like goods in a surrogate country. In this case, the surrogate country chosen was South Africa. For any goods shipped to Canada from China for which specific normal values have not been determined, anti-dumping duties of 80.2 per cent will be applied.

China, cont'd on pg. 5

China, cont'd from pg. 4

Reviews of Injury Findings

An expiry review is initiated by the CITT at the end of a five-year term during which anti-dumping and/or countervailing duties have been imposed on certain goods imported or exported into Canada. The expiry review process consists of:

- a request for submissions from industry participants on whether an expiry review should be initiated;
- an investigation by the CBSA of whether it is likely that the expiration of the duties will result in a continuation or resumption of dumping; and
- an inquiry by the CITT of whether the expiration of the duties will result in injury or retardation to the Canadian industry.

In 2006, two expiry reviews were concluded and one expiry did not proceed to a formal review. In *Flat Hot-Rolled Carbon and Alloy Steel Sheet and Strip*, the CITT concluded an expiry review and determined that if the dumping finding was rescinded, material injury to the Canadian market would result. Consequently, the anti-dumping duties on these goods were continued. The tribunal noted in support of its decision that, among other things, numerous producers in China are experiencing the effects of global over-supply, have excess production capacity, insufficient domestic demand creating pressures to export, are subject to anti-dumping measures in several countries other than Canada indicating a propensity to dump, have recently sold into worldwide export markets at prices which suggest they continue to dump and have not demonstrated an ability to compete in Canada at undumped prices despite obtaining normal values.

In *Garlic*, the CBSA determined that the expiry of duties would likely result in the continuation or resump-

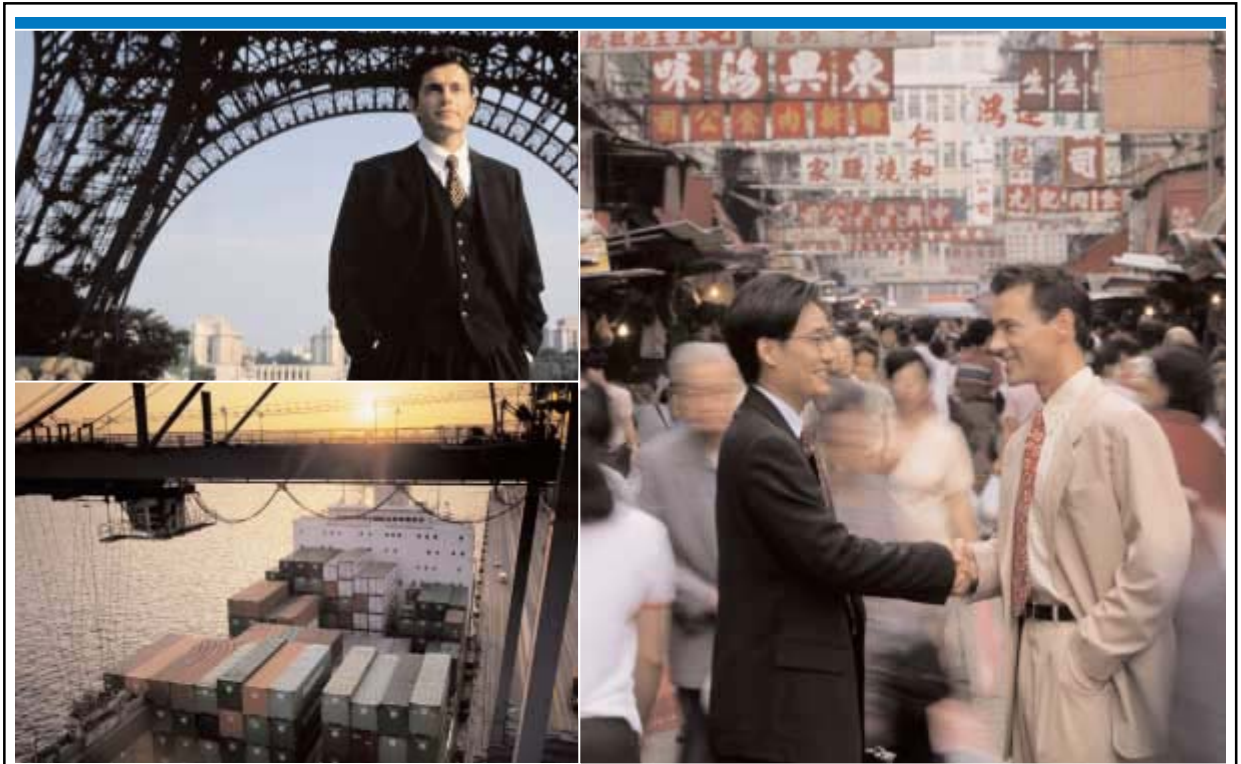
tion of dumping. However, during the inquiry stage of the expiry review, the CITT did not receive any responses to its questionnaires sent to domestic producers nor did it receive any notices of participation from any other interested party. As a result of a lack of information with which to conduct the inquiry, the CITT rescinded the initial dumping finding and, as of December 1, 2006, fresh garlic imported into Canada from China will no longer be subject to anti-dumping duties of \$1.82/kg CAD. The *Garlic* case highlights the importance of participation by the domestic industry in the expiry review process. Without comprehensive industry submissions, the CITT does not have accurate information about activity or performance in the current market with which to make a determination that duties should be continued. As a result, material injury to the domestic industry could occur when it could have possibly been avoided.

The *Leather Footwear* expiry is of particular interest. In that case, the CITT issued a notice of expiry requesting submissions on whether it should initiate an expiry review. Notwithstanding the filing of a submission in support of an expiry review by the domestic industry, the tribunal concluded that it was not satisfied that an expiry review was warranted. The reasons given by the tribunal included the following: no likelihood of continued or resumed dumping despite dumping determinations in Canada and elsewhere because such determinations are either very broadly defined or dissimilar to subject goods; the tribunal was unable to form any views regarding likely volume or likely price ranges of dumped goods in Canada if dumping were to resume; and the tribunal had no indicators to make a meaningful assessment of the recent performance of the domestic industry to satisfy itself that an expiry review is warranted.

The tribunal's decision not to proceed to a formal expiry review in *Leather Footwear* was welcomed by the foreign footwear producers and importers; however, the decision suggests that the tribunal has moved away from its previous approach to expiries and appears to have set a new precedent with this case. In all previous expiries, the tribunal typically would initiate a formal expiry review where the domestic industry expressed support for the continuation of the finding about to expire and presented some evidence to support its position. With *Leather Footwear*, notwithstanding a substantial submission by the industry, the tribunal chose not to proceed to a formal review. If the decision in *Leather Footwear* is any indication, the tribunal appears to have raised the evidentiary burden imposed on the domestic industry to show that an expiry review is warranted. The domestic industry in *Leather Footwear* did not seek judicial review of the tribunal's decision and therefore it is not clear whether the tribunal's apparently new approach to expiries will be sustained should a domestic industry appeal a similar conclusion in future.

Greg Kanargelidis is a partner with Blake, Cassels & Graydon LLP who practises exclusively in the areas of international trade, customs, and commodity tax. Greg is cited by The Canadian Legal Lexpert Directory as a leading lawyer in Canada in the areas of international trade and commodity tax/customs, by Chambers Global as a leading lawyer in the areas of WTO/International Trade, and by The Best Lawyers in Canada in 2006 as one of the leading lawyers in Canada in a peer-review survey in the areas of international trade and finance and tax law. Greg may be reached at 416-863-4306 or greg.kanargelidis@blakes.com.

Lindsay Bunt is a student-at-law at Blake, Cassels & Graydon LLP. Lindsay may be reached at 416-863-4005 or lindsay.bunt@blakes.com.



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Canadian Association of Importers and Exporters Inc.
Association canadienne des importateurs et exportateurs inc.

438 University Avenue, Suite 1618
Toronto, Ontario M5G 2K8
Telephone 416 595-5333
Fax 416 595-8226
www.iecanada.com

Editor: Melissa McCormack
Assistant and Desktop Publisher: Chris Neilson

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