

Ottawa, Thursday, October 26, 1995

Reference No.: RE-95-002

IN THE MATTER OF a reference, under paragraph 34(1)(b) of the *Special Import Measures Act*, made by Bertolli Canada Inc., the Delegation of the Commission of the European Communities (Ottawa), Delverde S.r.l. and UNIPI (Unione Industriali Pastai Italiani) to the Canadian International Trade Tribunal;

AND IN THE MATTER OF an advice rendered by the Canadian International Trade Tribunal, under section 37 of the *Special Import Measures Act*;

RESPECTING the dumping in Canada and subsidizing of dry pasta, not stuffed or otherwise prepared, and not containing eggs, in packages up to and including 2.3 kg in weight, originating in or exported from Italy.

ADVICE

The Canadian International Trade Tribunal hereby concludes that the evidence before the Deputy Minister of National Revenue discloses a reasonable indication that the dumping and subsidizing of dry pasta, not stuffed or otherwise prepared, and not containing eggs, in packages up to and including 2.3 kg in weight, originating in or exported from Italy, have caused injury or are threatening to cause injury.

Lise Bergeron
Lise Bergeron
Presiding Member

Raynald Guay
Raynald Guay
Member

Anita Szlajak
Anita Szlajak
Member

Michel P. Granger
Michel P. Granger
Secretary

Reference No.: RE-95-002

Date of Advice: October 26, 1995

Tribunal Members: Lise Bergeron, Presiding Member
Raynald Guay, Member
Anita Szlajak, Member

Director of Research: Selik Shainfarber
Lead Researcher: Tom A. Geoghegan
Researcher: Paule Couët

Counsel for the Tribunal: Hugh J. Cheetham
Shelley Rowe



Ottawa, Thursday, October 26, 1995

Reference No.: RE-95-002

ADVICE rendered under section 37 of the *Special Import Measures Act* respecting:

THE DUMPING IN CANADA AND SUBSIDIZING OF DRY PASTA, NOT STUFFED OR OTHERWISE PREPARED, AND NOT CONTAINING EGGS, IN PACKAGES UP TO AND INCLUDING 2.3 kg IN WEIGHT, ORIGINATING IN OR EXPORTED FROM ITALY

TRIBUNAL: LISE BERGERON, Presiding Member
RAYNALD GUAY, Member
ANITA SZLAZAK, Member

STATEMENT OF REASONS

On August 30, 1995, on the basis of a properly documented complaint filed by the Canadian Pasta Manufacturers' Association (CPMA), the Deputy Minister of National Revenue (the Deputy Minister) initiated an investigation into the alleged injurious dumping in Canada and subsidizing of dry pasta, not stuffed or otherwise prepared, and not containing eggs, in packages up to and including 2.3 kg in weight, originating in or exported from Italy. The Deputy Minister was of the opinion that the evidence disclosed a reasonable indication that the alleged dumped and subsidized goods "have caused injury and are threatening to cause injury to the production of like goods in Canada."¹

On September 26, 1995, counsel for Bertolli Canada Inc., the Delegation of the Commission of the European Communities (Ottawa), Delverde S.r.l. and UNIPI (Unione Industriali Pastai Italiani), referred to the Canadian International Trade Tribunal (the Tribunal), under paragraph 34(1)(b) of the *Special Import Measures Act*² (SIMA), the question of whether "the evidence discloses a reasonable indication that the dumping or subsidizing of pasta has caused injury or retardation or is threatening to cause injury."³

Paragraph 37(b) of SIMA provides that the Tribunal shall render its advice on the question without holding hearings, on the basis of the information that was before the Deputy Minister when he reached his decision or conclusion on that question, forthwith after the date on which the reference is made to it and, in any event, not later than 30 days after that date.

The subject goods are defined as dry pasta, not stuffed or otherwise prepared, and not containing eggs, in packages up to and including 2.3 kg in weight, originating in or exported from Italy.

1. Department of National Revenue, Statement of Reasons, August 30, 1995, at 2.

2. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47, s. 164.

3. Letter of referral dated September 25, 1995, to the Tribunal from Gottlieb & Pearson.

Dry pasta products are often referred to as macaroni or vermicelli products, depending on their shape. Long shapes are generally referred to as vermicelli and include spaghetti, capelli, linguini, vermicelli, angel hair and fettucini. Short lengths are generally referred to as macaroni and include elbow macaroni, penne, rigatoni, rotini, fusilli and ziti. In addition, there are “specialty shapes” which include bows, shells, cannelloni, lasagna and wagon wheels.

Canadian-made dry pasta is packaged for retail sale in various sizes, in cellophane or in cartons, with 500-g and 900-g packages being the most popular sizes. Imported pasta is most commonly sold in 450-g and 500-g packages, although there are also 900-g packages being sold. In addition, both domestic and imported pasta are available in 2.3-kg (5-lb.) packages, accounting for a small percentage of the market.

According to the Deputy Minister’s Statement of Reasons, the investigation concerns dry wheat-based pasta products in packages up to and including 2.3 kg which are sold to the retail market. Pasta products made from other types of grain or feedstock, as well as pasta sold in bulk form, i.e. in packages greater than 2.3 kg, are not under investigation by the Deputy Minister. The complainant also indicates that the complaint only deals with dry wheat-based pasta. Furthermore, the evidence indicates that Italian pasta exports to Canada are exclusively wheat-based.

Dry wheat-based pasta is usually produced by mixing semolina in a press with water. Semolina is a special flour made from durum wheat — a very hard, amber-coloured wheat. Large dough balls are formed and then mixed to form a uniform, cohesive plastic mass. The dough is extruded through different machines, either for long pasta, short pasta or specialty shaped pasta. Other ingredients can be added for aesthetic and nutritional purposes, such as spinach, tomatoes and vitamins. These ingredients are added at the last stage of mixing just prior to the extrusion process.

The information before the Deputy Minister provided to the Tribunal by the Department of National Revenue (Revenue Canada) includes a documented complaint from the CPMA, which provides information on Italian imports and prices, as well as on the alleged injury suffered by the domestic industry. This information also contains submissions contesting the complaint that were filed by, and on behalf of, the Delegation of the Commission of the European Communities (Ottawa), in addition to an analysis of the complaint prepared by Revenue Canada officials.

According to the evidence, the CPMA is comprised of four domestic pasta producers, namely, Borden-Catelli Canada, Primo Foods Limited, Italtasta Ltd. and Grisspasta Products Ltd., whose collective production represents 100 percent of the dry wheat-based pasta produced in Canada.

The Tribunal notes that, based on the normal values and export prices used by the Deputy Minister, the estimated weighted average margin of dumping, expressed as a percentage of normal value, was 37 percent during the period from July 1, 1994, to June 30, 1995. With respect to the amount of subsidy, the information on file indicates that the program concerned is called the “Export Restitution System,” under which export refunds are paid to European producers to assist them in exporting cereal and cereal products, such as pasta, onto world markets. The prevailing refund rates are published by the European Union. In 1992 and early 1993, the rates of export refund averaged about 30¢/kg of pasta, peaking at 35¢/kg in June 1993. However, the rates dropped to zero between November 1993 and March 1995, with the exception of August and September 1994, when a small export refund was available. The published rates show that the export subsidy resumed on April 1, 1995, but fell to zero again in July 1995.

The Tribunal notes that, under a procedure known as “pre-fixing,” exporters that meet certain criteria are able to lock into an established refund rate on their export shipments over the following six months. This procedure would allow exporters to receive export refunds on their shipments at the pre-fixed rates, even though the prevailing rates at the time of shipment may have fallen or been set at zero. Revenue Canada has indicated that it will be examining further, in its investigation, the extent to which pre-fixing has been used by exporters in this case to access export refunds.

The information before the Deputy Minister indicates that pasta imports from Italy increased by 124 percent, from 7.9 million kg in 1992 to 17.6 million kg in 1994. Over the same period, total imports from the United States, the only other significant source of wheat-based pasta imports into Canada, increased by 43 percent, with volume rising from 14.5 million kg in 1992 to 20.7 million kg in 1994. Of the increase of 6.2 million kg in total U.S. imports from 1992 to 1994, about half is attributable to an increase in U.S. imports by the domestic industry itself, as its own U.S. imports rose from 3.5 to 6.5 million kg.

According to the evidence, the total Canadian market grew by 12.8 million kg, or 11.6 percent, from 1992 to 1994. Despite this growth, Canadian production fell by about 3.0 million kg over this period, and the share of the market held by Canadian production decreased from 79.4 to 68.7 percent. However, when the market share of U.S. pasta imported by the domestic industry, which rose from 3.2 to 5.3 percent from 1992 to 1994, is included, the total market share held by the domestic industry declined by a somewhat smaller amount, from 82.7 to 74.0 percent. The industry’s market share declines are reflected in the market share increases for Italian imports, which doubled from 7.1 to 14.3 percent from 1992 to 1994. In addition, over the same period, the market share of U.S. imports, excluding U.S. imports by the domestic industry, rose from 9.9 to 11.5 percent.

According to the complaint, the surge in Italian imports at dumped and subsidized prices has denied the domestic industry the opportunity to participate in the growth of the market which has occurred. Moreover, the industry claims that low-priced Italian imports have prevented it from raising its prices to meet rising costs over the past few years, especially the cost of durum wheat. This has put a squeeze on industry operating margins and caused substantial deterioration in the industry’s financial performance.

In support of its contention that the injury that it was suffering was being caused by dumped and subsidized Italian imports, the domestic industry submitted to the Deputy Minister documentation describing examples of price erosion, price suppression, lost sales and reduced listings and shelf space at large food retailers. This documentation included a survey of dry pasta sales volumes and values at supermarkets and chain stores, conducted by Nielsen Marketing Research, showing market trends for domestic and imported pasta over specified time periods. According to the industry, these trends showed that Italian dry pasta was making major inroads, at the domestic industry’s expense, into the large supermarkets and chain stores, which account for some 93 percent of retail sales in Canada.

The domestic industry contends that the pattern of Italian market penetration today is different from the situation in 1987. At that time, the industry had launched a similar trade action against the European Economic Community.⁴ However, the Canadian Import Tribunal found no injury, in part because Italian imports were found not to be competing with domestic products at major supermarkets and chain stores. Instead, they were considered to be primarily serving independent stores and food retailers, largely located in

4. *Dry Pasta Originating in or Exported from the European Economic Community*, Canadian Import Tribunal, Inquiry No. CIT-5-86, Finding, January 28, 1987, Statement of Reasons, February 12, 1987. This case involved subsidizing of dry pasta from the European Economic Community, focussing primarily on imports from Italy.

the ethnic sections of cities such as Montréal, Quebec, and Toronto, Ontario. This was no longer the case, as indicated by the survey done by Nielsen Marketing Research.

The complaint also addressed the issue of U.S. imports. According to the domestic industry's information, U.S. imports were entering Canada at prices substantially higher than those of Italian-made pasta. Moreover, U.S. imports by domestic producers were brought in to complement and supplement domestic production, and they were sold under Canadian brand names. Accordingly, U.S. imports were not a cause of injury, as far as the industry was concerned.

With respect to the issue of threat of injury from the subject goods, the evidence indicates that there is excess production capacity in Italy which could be used for expanded export production. The evidence also refers to the existence of a U.S. dumping and subsidy investigation against Italy. According to the Deputy Minister, if access to the U.S. market by Italian producers became limited as a result of the U.S. action, this could cause a trade diversion by increasing Italian pasta exports to Canada.

As noted earlier, the record in this case includes submissions from the Delegation of the Commission of the European Communities (Ottawa). These submissions contest many of the statistics supporting the complaint, as well as dispute much of the other evidence. For example, the submissions claim that Italian import figures and market shares have been overstated in the complaint, while U.S. import figures and market shares have been understated. Alternative figures are presented in support of the contention that, if the domestic industry is suffering injury in the form of stagnant sales and declining market share, U.S. imports are the cause, not Italian imports.

These submissions also deny the domestic producers' claim that there has been a substantial change in the market since 1987, insofar as Italian imports are concerned. They maintain that Italian imports are still largely concentrated in the independent food stores serving ethnic markets. Surveys done by Nielsen Marketing Research have also been submitted to the Deputy Minister to support this contention. In addition, the submissions note that export subsidies have been virtually non-existent for most of the past two years and, hence, they could not be a cause of injury to domestic producers.

The Tribunal notes that the advice that it is required to give under section 37 of SIMA must be based solely and exclusively on the information before the Deputy Minister. At this stage of the process, it is not possible for the Tribunal to gather additional data or test any of the evidence. It is only in doing so that the Tribunal will be able to resolve the conflicting claims that are currently in the information before the Deputy Minister. Nevertheless, that having been said, the Tribunal considers that, at this stage, there is sufficient information on the record to establish a reasonable indication of a causal link between the alleged dumped and subsidized imports and the apparent injury suffered by domestic producers.

The Tribunal observes that the alleged dumping appears to have been a more significant factor than the alleged subsidizing in the apparent injury to the domestic industry over the past two years or so. The contribution of dumping and subsidizing to the industry's injury will have to be carefully examined by the Tribunal, if the Deputy Minister issues a preliminary determination of both dumping and subsidizing.

Having regard to the foregoing and on the basis of the information before it, the Tribunal concludes, under section 37 of SIMA, that the evidence discloses a reasonable indication that the dumping and subsidizing of dry pasta, not stuffed or otherwise prepared, and not containing eggs, in packages up to and including 2.3 kg in weight, originating in or exported from Italy, have caused injury or are threatening to cause injury.

Lise Bergeron
Lise Bergeron
Presiding Member

Raynald Guay
Raynald Guay
Member

Anita Szlajak
Anita Szlajak
Member