



Ottawa, Monday, November 27, 1995

Reference No.: RE-95-003

IN THE MATTER OF a reference, under paragraph 34(1)(b) of the *Special Import Measures Act*, made by Becton Dickinson and Company, an exporter, and Becton Dickinson Canada Inc., an importer, 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 of bacteriological culture media originating in or exported from the United States of America and produced by or on behalf of Becton Dickinson and Company or produced by or on behalf of Difco Laboratories, their respective successors and assigns, and bacteriological culture media originating in or exported from the United Kingdom and produced by or on behalf of Unipath Limited, its successors and assigns.

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 of bacteriological culture media originating in or exported from the United States of America and produced by or on behalf of Becton Dickinson and Company or produced by or on behalf of Difco Laboratories, their respective successors and assigns, and bacteriological culture media originating in or exported from the United Kingdom and produced by or on behalf of Unipath Limited, its successors and assigns, has caused material injury or is threatening to cause material injury to the domestic industry.

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

Reference No.: RE-95-003

Date of Advice: November 27, 1995

Tribunal Members: Lyle M. Russell, Presiding Member
Arthur B. Trudeau, Member
Robert C. Coates, Q.C., Member

Research Director: Sandy Greig
Research Manager: Douglas Cuffley

Counsel for the Tribunal: Joël J. Robichaud



Ottawa, Monday, November 27, 1995

Reference No.: RE-95-003

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

**BACTERIOLOGICAL CULTURE MEDIA ORIGINATING IN OR EXPORTED
FROM THE UNITED STATES OF AMERICA AND PRODUCED BY OR ON
BEHALF OF BECTON DICKINSON AND COMPANY OR PRODUCED BY OR
ON BEHALF OF DIFCO LABORATORIES, THEIR RESPECTIVE
SUCCESSORS AND ASSIGNS, AND BACTERIOLOGICAL CULTURE MEDIA
ORIGINATING IN OR EXPORTED FROM THE UNITED KINGDOM AND
PRODUCED BY OR ON BEHALF OF UNIPATH LIMITED, ITS SUCCESSORS
AND ASSIGNS**

TRIBUNAL: LYLE M. RUSSELL, Presiding Member
ARTHUR B. TRUDEAU, Member
ROBERT C. COATES, Q.C., Member

STATEMENT OF REASONS

On September 29, 1995, on the basis of a properly documented complaint filed by Quélab Laboratories Inc. (Quélab), the Deputy Minister of National Revenue (the Deputy Minister) initiated an investigation into the alleged injurious dumping in Canada of bacteriological culture media originating in or exported from the United States of America and produced by or on behalf of Becton Dickinson and Company or produced by or on behalf of Difco Laboratories, their respective successors and assigns, and bacteriological culture media originating in or exported from the United Kingdom and produced by or on behalf of Unipath Limited, its successors and assigns (the subject goods). The Deputy Minister was of the opinion that the evidence disclosed a reasonable indication that the alleged dumping “has caused and is threatening to cause injury to the production of like goods in Canada.”¹

On October 27, 1995, counsel for Becton Dickinson and Company and Becton Dickinson Canada Inc. 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 before the Deputy Minister disclosed a reasonable indication that the dumping of the subject goods had caused injury or retardation or was threatening to cause injury.

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.

Bacteriological culture media are preparations made up of chemical and organic products used to grow, detect and identify bacteria. They are used primarily in hospitals, microbiology laboratories, research centres, private clinics and quality control laboratories in the agri-food, pharmaceutical and environmental industries.

1. Department of National Revenue, Statement of Reasons, September 29, 1995, at 7.
2. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47, s. 164.

There are more than 800 different bacteriological culture media. Each bacteriological culture medium has a unique composition which varies with its intended use. The nature and dosage of the ingredients used in the preparation of each bacteriological culture medium are public knowledge. When mixed together, the ingredients form a powdery mixture (dehydrated form) to which water or, in some cases, an enriching supplement, such as blood, serum or antibiotics, is added (prepared form) before use. Bacteriological culture media are sold in “prepared” form or in “dehydrated” form.

Dehydrated bacteriological culture media are generally sold in quantities of 100 g, 125 g, 500 g, 2.5 kg or 10.0 kg. Prepared bacteriological culture media are generally sold in small containers called Petri dishes, which are available in 100-mm or 150-mm sizes. Prepared bacteriological culture media are also available in tubes, flasks or vials.

The evidence before the Deputy Minister when he made the decision to initiate the investigation included a confidential complaint from Quélab, a case analysis prepared by officers of the Department of National Revenue (Revenue Canada), a letter from PML Microbiologicals (PML) of Mississauga, Ontario, supporting the complaint, and other correspondence between Revenue Canada and Canadian producers.

The Tribunal notes that, besides Quélab and PML, there are three other Canadian producers: Biomedica Unlimited Ltd. (Biomedica) of Toronto, Ontario; Dalynn Laboratory Products (Dalynn) of Calgary, Alberta; and Kelran Microbiologicals (Kelran) of Prince Albert, Saskatchewan, which began operations in 1995. Quélab and PML account for over 80 percent of the Canadian production of bacteriological culture media, while Biomedica, Dalynn and Kelran account for the remaining production.

The Tribunal notes that the Deputy Minister, using information submitted by Quélab, estimated that the subject goods were being dumped by the three named exporters at significant margins, ranging from 39 to 81 percent.

The Tribunal also notes from other information obtained by Revenue Canada that, in 1994, the estimated domestic market for bacteriological culture media was approximately \$22 million. Imports from the three named exporters held more than 50 percent of the market, while the Canadian producers held less than 40 percent of the market. The remaining share of the market was held by other exporters, largely from the United States. Market estimates or shares were not available for other periods.

Quélab, whose production represents more than 25 percent of total Canadian production, presented information on the question of injury. Quélab’s production of prepared bacteriological culture media has declined by more than 30 percent since 1992, while its production of dehydrated bacteriological culture media has declined by more than 50 percent. Quélab claims that its decline in production of prepared and dehydrated bacteriological culture media and loss of market share were caused by the dumped prices of the three named exporters. Quélab is currently operating at less than 25 percent of its production capacity.

Quélab’s sales data show, on average, a decline of 15 percent in sales of bacteriological culture media, in dollar terms, for each of the past four fiscal years. Quélab presented confidential evidence, in the form of comparative tables of bids submitted by Quélab and the exporters in response to tender calls by hospitals, laboratories and purchasing groups, to show that many sales were lost to the allegedly dumped imports for reasons of price.

Quélab has also been forced to lower its prices in order to compete with the alleged dumped prices. The tables of bids and the tables of product costs and profits provide evidence of price suppression and

erosion. In many instances, Quélab's tendered prices and sales prices in 1994 were lower than its production costs. For certain items, Quélab was able to increase prices in response to market price increases by Becton, but the price increases were still insufficient to ensure a profit. As a consequence of the price suppression and erosion, Quélab's financial performance was poor. In both 1993 and 1994, financial performance for bacteriological culture media was substantially below that of its other operations. Although Quélab did not provide a separate statement of profit and loss for bacteriological culture media for fiscal year 1995, which ended on June 30, 1995, the income statement for total company operations, of which bacteriological culture media account for more than 50 percent, showed a continued and growing deterioration in profits.

With respect to the issue of threat of injury, the Tribunal notes that imports of the subject goods by the three named exporters have increased sharply since 1992, and more so during the first six months of 1995. This evidence of increasing imports, low prices of the dumped subject goods in the marketplace and the continued deterioration of Quélab's profitability during its past fiscal year provide a reasonable indication that the dumping of the subject goods is threatening to cause injury.

Pursuant to section 34 of SIMA, the Tribunal must be satisfied that there is a reasonable indication of a causal link between the dumped imports and the material injury suffered by the domestic industry. Upon reviewing the evidence before the Deputy Minister in this case, the Tribunal observes an apparent correlation between several of the injury indicators and the dumping of the subject goods. The Tribunal considers that this correlation provides a reasonable indication that the dumping has caused and is threatening to cause material injury to the domestic industry. However, it is only through an inquiry that the Tribunal will be able to fully explore the causation element, including other factors, apart from the dumping, that may be causing injury.

Therefore, under section 37 of SIMA, the Tribunal concludes that the evidence discloses a reasonable indication that the dumping of bacteriological culture media originating in or exported from the United States of America and produced by or on behalf of Becton Dickinson and Company or produced by or on behalf of Difco Laboratories, their respective successors and assigns, and bacteriological culture media originating in or exported from the United Kingdom and produced by or on behalf of Unipath Limited, its successors and assigns, has caused material injury or is threatening to cause material injury to the domestic industry.

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