



Ottawa, Monday, June 22, 1998

Expiry No.: LE-97-007

IN THE MATTER OF a request, under subsection 76(2) of the *Special Import Measures Act*, for a review of the order made by the Canadian International Trade Tribunal on November 23, 1993, in Review No. RR-93-001, continuing, without amendment, the review finding of the Canadian Import Tribunal made on November 24, 1988, in Review No. R-9-88, continuing, without amendment, the finding of the Anti-dumping Tribunal made on December 28, 1983, in Inquiry No. ADT-11-83, concerning:

DEEP TILLAGE SWEEPS, FIELD CULTIVATOR SWEEPS, REVERSIBLE POINTS, REVERSIBLE HEAVY DUTY CHISELS, REVERSIBLE TWISTED CHISELS AND REVERSIBLE FURROW SHOVELS, KNOWN AS TILLAGE OR EARTH ENGAGING TOOLS, USED ON CHISEL PLOWS AND FIELD CULTIVATORS, ORIGINATING IN OR EXPORTED FROM BRAZIL

ORDER

On February 23, 1998, the Canadian International Trade Tribunal issued a notice of expiry requesting views on whether the aforementioned order should be reviewed. The Tribunal has decided, pursuant to subsection 76(3) of the *Special Import Measures Act*, that a review is not warranted.

Peter F. Thalheimer

Peter F. Thalheimer
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Richard Lafontaine

Richard Lafontaine
Member

Michel P. Granger

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Secretary

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STATEMENT OF REASONS

BACKGROUND

The Canadian International Trade Tribunal (the Tribunal), on February 23, 1998, gave notice that its order made on November 23, 1993, in Review No. RR-93-001, continuing, without amendment, the review finding of the Canadian Import Tribunal made on November 24, 1988, in Review No. R-9-88, continuing, without amendment, the finding of the Anti-dumping Tribunal made on December 28, 1983, in Inquiry No. ADT-11-83, concerning deep tillage sweeps, field cultivator sweeps, reversible points, reversible heavy duty chisels, reversible twisted chisels and reversible furrow shovels, known as tillage or earth engaging tools, used on chisel plows and field cultivators, originating in or exported from Brazil, was scheduled to expire on November 23, 1998.

Persons or governments requesting or opposing the initiation of a review were invited to file submissions with respect to the likelihood of resumed dumping in Canada and the likelihood of material injury to domestic producers from resumed dumping if the order were allowed to expire. The Tribunal's notice identified a number of relevant factors to be addressed in submissions. These factors included the likely volumes and price ranges of dumped imports if the order were to expire, domestic trends in production, sales, market share, prices and profits, and other developments or changes in market conditions in Brazil, in other markets and in Canada that might be relevant.

Tillage tools are designed to be attached to chisel plows or field cultivators. The goods are made of high-grade, heat-treated carbon steel and are available in a variety of models, differing in size, shank length, shank angle, bolt size and bolt hole placement. Tillage tools are used in dryland farming areas of the North American Prairies. They are used to rip up the soil or to break down the soil for seed bed preparation. At the time of the 1993 review, there were three domestic producers of tillage tools, Ralph McKay Industries Inc. (McKay), J.I. Case - Hamilton Plant (Case) and F.P. Bourgault Tillage Tools Ltd. (Bourgault). At that same

time, there were two Brazilian exporters, Marchesan Implementos e Maquinas Agricolas “Tatú” S/A (Marchesan) and Baldan Implementos Agricolas S/A.

The Tribunal received submissions from Bourgault, McKay and Marchesan. Case, which was a party in the last review, did not file a submission. McKay and Case combined accounted for over three quarters of domestic production at the time of the last review. As there were opposing submissions on whether a review is warranted, the submissions were circulated to those who had made a submission. Responses were received from Bourgault and Marchesan.

Bourgault is the only domestic producer that requested a review and submitted that the order should be continued. McKay, the main domestic producer and a party in the original hearing, as well as in subsequent reviews, did not request a review. McKay stated that it was well established and that “the expiry of the injury finding should not hurt us to the [extent] it would have ten years ago, or even five years ago.”

Marchesan submitted that the order should be rescinded. The company stated that it had no need or desire to dump tillage tools in Canada or in other markets. According to Marchesan, the original finding was only a finding of threat of injury, and the order should be rescinded after 15 years of anti-dumping enforcement.

In Bourgault’s reply submission, the company submitted that, if the order were discontinued, Marchesan might export at lower prices instead of following the normal values established by the Department of National Revenue, and the result would be damaging to the other players in the market. In response to McKay’s submission, Bourgault agreed that McKay was well established. However, Bourgault stated that it was a latecomer and that it was still developing products and hoping to secure a place in the market. In its response to Bourgault’s submission, Marchesan noted that “Bourgault has not provided any evidence of the need for a review.”

ANALYSIS

For the Tribunal to initiate a review, it must be satisfied, on the basis of the information available, that a review is warranted. The information should give an indication that there is a likelihood of a resumption of dumping if the order is allowed to expire and that such dumping is likely to result in injury to the domestic industry. In making its request for a review, Bourgault submitted that, if the order were allowed to expire, there would be a likelihood of a resumption of dumping. In support of this submission, Bourgault submitted an advertisement from a trade journal to illustrate an importer’s selling price for a particular type of Brazilian tillage tool as compared with Bourgault’s dealer’s cost for a similar product. Bourgault also submitted that there would be a likelihood of injury. With respect to this submission, Bourgault indicated that there had been a decline in market demand for tillage tools of at least 25 percent in the last five years. A continued decline in demand would lead to stronger competition and, thus, likely price-cutting. Bourgault also submitted that Brazilian manufacturers were at an advantage in terms of price because their products were copies of other producers’ products, which allowed them to spend less money on product design and development than domestic producers.

The Tribunal is of the view that the information before it does not demonstrate that a review is warranted. More specifically, there is insufficient information of the kind described in the Tribunal’s notice of expiry. The limited information regarding alleged Brazilian low price policies is insufficient to give an indication that there might be a likelihood of a resumption of dumping from Brazil. In particular, a difference between the price in Canada of a Brazilian product and the price of a similar product produced by Bourgault

is not an indication that the Brazilian product is likely to be dumped if the order were rescinded. To consider if there might be a likelihood of a resumption of dumping, the Tribunal should have before it more information, including information relating to the activities of Brazilian exporters in the Canadian market, their domestic market and other markets.

Similarly, Bourgault's estimate of the recent decline in the Canadian market for tillage tools and Bourgault's expectation that the market will continue to decline are not sufficient to provide an indication that there might be a likelihood of injury if there is a resumption of dumping. To consider whether there might be a likelihood of injury, the Tribunal should have before it more information regarding the Canadian market for tillage tools. Such information would include, as described in the Tribunal's notice of expiry, recent trends in domestic production, sales, market share, prices and profits, as well as the likely volume of dumped imports if the order were rescinded.

CONCLUSION

The Tribunal has decided, on the basis of the information before it, that a review of the order is not warranted.

Peter F. Thalheimer

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