



Ottawa, Thursday, May 2, 1991

Reference No.: RE-91-001

IN THE MATTER OF a reference, under section 34 of the *Special Import Measures Act*, made by The Stroh Brewery Company to the Canadian International Trade Tribunal;

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

RESPECTING the alleged dumping in British Columbia of malt beverages, commonly known as beer, of an alcoholic strength by volume of not less than 1.0 percent and not more than 6.0 percent, packaged in bottles or cans not exceeding 1,180 ml (40 oz.), originating in or exported from the United States of America by or on behalf of Pabst Brewing Company, G. Heileman Brewing Company Inc., and The Stroh Brewery Company, their successors and assigns, for use of consumption in the province of British Columbia.

ADVICE

The Tribunal hereby concludes that the evidence before the Deputy Minister of National Revenue for Customs and Excise discloses a reasonable indication that the alleged dumping of the subject goods from the three named exporters has caused, is causing or is likely to cause material injury to the production in British Columbia of like goods.

Date of Advice: May 2, 1991

Tribunal Members: Robert J. Bertrand, Q.C., Member
Sidney A. Fraleigh, Member
Charles A. Gracey, Member

Director of Research: Réal Roy

Research Officer: Douglas Cuffley

Counsel of the Tribunal: Debra P. Steger



Ottawa, Thursday, May 2, 1991

Reference No.: RE-91-001

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

MALT BEVERAGES, COMMONLY KNOWN AS BEER, OF AN ALCOHOLIC STRENGTH BY VOLUME OF NOT LESS THAN 1.0 PERCENT AND NOT MORE THAN 6.0 PERCENT, PACKAGED IN BOTTLES OR CANS NOT EXCEEDING 1,180 ml (40 oz.), ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA BY OR ON BEHALF OF PABST BREWING COMPANY, G. HEILEMAN BREWING COMPANY INC., AND THE STROH BREWERY COMPANY, THEIR SUCCESSORS AND ASSIGNS, FOR USE OR CONSUMPTION IN THE PROVINCE OF BRITISH COLUMBIA

TRIBUNAL: ROBERT J. BERTRAND, Q.C., Presiding Member
SIDNEY A. FRALEIGH, Member
CHARLES A. GRACEY, Member

ADVICE

On March 6, 1991, the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister), having received a properly documented complaint from Labatt Breweries of British Columbia, Molson Breweries (B.C.) and Pacific Western Breweries Limited, all located in Vancouver, British Columbia, decided to initiate an inquiry into the alleged dumping of the subject goods. In so doing, the Deputy Minister was of the opinion that the evidence disclosed a reasonable indication that the alleged dumping had caused, was causing or was likely to cause material injury to the production in British Columbia of like goods.

On April 1, 1991, pursuant to section 34 of the *Special Import Measures Act* (SIMA), an exporter of the subject goods, The Stroh Brewery Company (Stroh), referred to the Tribunal the question of whether the evidence before the Deputy Minister discloses a reasonable indication that the dumping of the subject goods by Stroh has caused, is causing or is likely to cause material injury to the production in British Columbia of like goods.

The Tribunal, pursuant to section 37 of SIMA, is required to render its advice on the question without holding any hearings, on the basis of the information that was before the Deputy Minister when she reached her decision and not later than 30 days after the reference was made. In this case, because April 1 fell on a public holiday (Easter Monday) the deadline for the advice is May 2, 1991.

Although the reference to the Tribunal was made by Stroh, an exporter of the goods in question, this advice is not specifically directed to the question of whether there is a reasonable indication that the dumping of the goods from Stroh has caused, is causing or is likely to cause material injury, but concerns the cumulative injurious effect of the dumping of the subject goods from all three exporters mentioned in the complaint: Pabst Brewing Company, G. Heileman Brewing Company Inc. and Stroh. The Tribunal is not required to assess at this time the injurious impact solely of the dumped goods from Stroh. A reference pursuant to section 34 infers that the scope of the advice encompasses "any goods in respect of which the Deputy Minister has caused the investigation to be initiated." The Tribunal is thus required, at this stage, to assess the injurious impact of the subject goods as stated by the Deputy Minister's notice of investigation. Therefore, the Tribunal has to take into account exports of the subject goods from all identified exporters on a cumulative rather than on an individual basis.

Furthermore, since the complaint to the Deputy Minister makes allegations of material injury solely to the production of like goods in British Columbia and not to the rest of Canada, the Tribunal must examine whether the evidence discloses a reasonable indication that the conditions of a regional industry are met.¹ Subsection 42(3) of SIMA requires the Tribunal "in considering any question relating to the production in Canada of any goods or the establishment in Canada of such production" to take "fully into account" the provisions of paragraph 1 of Article 4 of the GATT Anti-dumping Code (the Code). This Article of the Code allows, in exceptional circumstances, the division of the territory of a contracting party into two or more competitive markets and the producers within each market may be regarded as a separate industry if the following conditions are met:

- (a) the producers within such market sell all or almost all of their production of the product in question in that market, and
- (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory.

The Code further specifies that in such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured provided:

- (c) there is a concentration of dumped imports into such an isolated market, and
- (d) the dumped imports are causing injury to the producers of all or almost all of the production within such market.

Having reviewed the information that was before the Deputy Minister when she reached her decision to initiate the investigation, the Tribunal is of the opinion that the evidence discloses a reasonable indication that the British Columbia market for the subject goods is a separate market and that the complainants may be considered as a regional industry. The

1. The two major complainants, Labatt Breweries of British Columbia and Molson Breweries (B.C.), are locally incorporated subsidiaries of two national brewing companies. Molson Breweries (B.C.) operates one brewery in Vancouver while Labatt Breweries of British Columbia operates one brewery in New Westminster and one in Creston, all located in British Columbia. The third complainant, Pacific Western Breweries Limited, by far the smallest of the three, operates one brewery in Prince George, British Columbia, and one in St. Catharines, Ontario. The complainants are claiming injury solely to their production of like goods in British Columbia.

evidence shows that:

- (a) the complainants' sales of the subject packaged beer in the British Columbia market exceed 95 percent of their total domestic sales;
- (b) the quantities of beer that enter British Columbia from other Canadian provinces are negligible;
- (c) the share of the British Columbia market held by the dumped imports is close to the share held by imports from all other non-subject sources. The share of total shipments of the dumped goods to Canada that enter the British Columbia market is more than 3.5 times the British Columbia share of total Canadian consumption of packaged beer. Also, the per capita imports of the dumped goods in British Columbia are 6.4 L compared to the national average of 2.4 L; and
- (d) the complainants' production represent close to 100 percent of total British Columbia production.

However, even though the Tribunal is of the opinion at this time that the complainants' production may be considered as a separate industry, it notes that the standard used at the Advice stage is that of a "reasonable indication" or a *prima facie* case on the basis of the information before the Deputy Minister. If the Deputy Minister issues a preliminary determination of dumping and an injury inquiry is held pursuant to section 42 of SIMA, the Tribunal will wish to further examine the question of regional industry and particularly whether there is a concentration of dumped imports in the British Columbia market, as compared with the rest of Canada.

In their submission to the Deputy Minister, the complainants alleged that, as a result of the dumping of the subject goods, they have sustained material injury in the form of reduced employment, reduced market share, price suppression through imports forcing an increased share of total sales into discount brands, reduced profitability and margin suppression and erosion. Based on the information contained in the Deputy Minister's file, the Tribunal is of the opinion that the test of "reasonable indication" of material injury due to dumped imports has been met. The complainants provided documented evidence of list prices at British Columbia liquor outlets that showed a significant decline in prices of the subject imported brands between 1987 and 1990. Prices for the brands produced in British Columbia also declined between 1987 and 1989, allegedly as a result of the aggressive pricing of the subject imported brands. In 1990, however, the list prices for the brands produced in British Columbia generally increased while the prices for the alleged dumped brands were for the most part further reduced. In that same year, imports of the subject goods from the three named exporters increased by close to 50 percent over 1989 and gained two percentage points of market share at the expense of the complainants. The complainants alleged that they suffered a substantial erosion of their profitability as a result of the price suppression.

In order to meet the requirements of section 37 of SIMA, the Tribunal must also be satisfied that there is a reasonable indication of a causal link between the alleged dumped imports and the material injury suffered by the industry. The Tribunal observes a correlation between the injury and the alleged dumping of the goods even though the price suppression and loss of profitability may be in part caused by intra-industry competition or competition from imports from non-subject sources. The Tribunal considers that this correlation, supported by the complainants' description and explanation of the market behavior, gives a reasonable indication

that the alleged dumping has caused material injury. However, full proof of causation goes beyond correlation and can only be determined through a full injury inquiry.

In view of the information provided and of the conclusions of its analysis, the Tribunal advises, pursuant to section 37 of SIMA, that the evidence discloses a reasonable indication that the alleged dumping of malt beverages, commonly known as beer, of an alcoholic strength by volume of not less than 1.0 percent and not more than 6.0 percent, packaged in bottles or cans not exceeding 1,180 ml (40 oz.), originating in or exported from the United States of America by or on behalf of Pabst Brewing Company, G. Heileman Brewing Company Inc., and Stroh, their successors and assigns, for use of consumption in the province of British Columbia, has caused, is causing or is likely to cause material injury to the production in British Columbia of like goods.

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Robert J. Martin
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Secretary