



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

## FINDING AND REASONS

Inquiry No. NQ-2004-003

Frozen Self-rising Pizza

*Finding issued  
Wednesday, August 18, 2004*

*Reasons issued  
Thursday, September 2, 2004*

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IN THE MATTER OF an inquiry, under section 42 of the *Special Import Measures Act*,  
respecting:

**FROZEN SELF-RISING PIZZA ORIGINATING IN OR EXPORTED FROM  
THE UNITED STATES OF AMERICA**

**FINDING**

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping in Canada of prepared uncooked frozen pizza products containing uncooked self-rising dough and cooked and/or uncooked toppings which typically may include processed vegetables and/or meats and/or poultry and/or cheeses and/or a prepared sauce, put up for retail sale, originating in or exported from the United States of America, has caused injury or retardation or is threatening to cause injury to the domestic industry.

This inquiry is pursuant to the issuance by the President of the Canada Border Services Agency of a preliminary determination dated May 17, 2004, and of a final determination dated August 16, 2004, that the aforementioned goods have been dumped, that the margin of dumping is not insignificant and that the volume of dumped goods is not negligible.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods has not caused injury or retardation and is not threatening to cause injury to the domestic industry.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Patricia M. Close  
Patricia M. Close  
Member

Meriel V. M. Bradford  
Meriel V. M. Bradford  
Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

The statement of reasons will be issued within 15 days.

|                            |   |
|----------------------------|---|
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**PARTICIPANTS:****Domestic Producers**

McCain Foods Limited

Canadian Restaurant and Foodservices Association

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## STATEMENT OF REASONS

1. The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,<sup>1</sup> has conducted an inquiry to determine whether the dumping in Canada of prepared uncooked frozen pizza products containing uncooked self-rising dough and cooked and/or uncooked toppings which typically may include processed vegetables and/or meats and/or poultry and/or cheeses and/or a prepared sauce, put up for retail sale, originating in or exported from the United States of America (the subject goods) has caused injury or retardation or is threatening to cause injury to the domestic industry.

2. On January 2, 2004, the President of the Canada Border Services Agency (CBSA), following a complaint filed by McCain Foods Limited (McCain), initiated an investigation to determine whether the subject goods had been dumped. On January 5, 2004, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping of the subject goods had caused injury or retardation or was threatening to cause injury to the domestic industry. On March 2, 2004, pursuant to subsection 37.1(1), the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury to the domestic industry.

3. On May 17, 2004, the CBSA issued a preliminary determination of dumping with respect to the subject goods. It was satisfied, as a result of this preliminary investigation, that the subject goods had been dumped, that the margins of dumping were not insignificant and that the volume of dumped goods was not negligible.<sup>2</sup>

4. On May 18, 2004, the Tribunal issued a notice of commencement of inquiry.<sup>3</sup> The inquiry covered the period from January 1, 2001, to March 31, 2004. As part of the inquiry, the Tribunal sent questionnaires to domestic producers, importers, purchasers and foreign producers. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

5. On August 16, 2004, the CBSA issued a final determination that the subject goods had been dumped and that the margins of dumping were not insignificant.<sup>4</sup>

6. An oral hearing was scheduled to commence in Ottawa on August 16, 2004. On August 10, 2004, McCain sent a letter to the Tribunal stating that it was withdrawing from participation in the inquiry and withdrawing its case (including its witness statements), its expert report and its reply brief.<sup>5</sup> On August 10, 2004, the Tribunal notified parties that it was cancelling the hearing.<sup>6</sup> On August 18, 2004, the Tribunal issued its finding based on the remaining documents on the record.

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1. R.S.C. 1985, c. S-15 [*SIMA*].

2. Tribunal Exhibit NQ-2004-003-38.02, Administrative Record, Vol. 7 at 13-18.

3. C. Gaz. 2004.I.1660.

4. Tribunal Exhibit NQ-2004-003-04 Administrative Record, Vol. 1 at 71.1-71.11.

5. Tribunal Exhibit NQ-2004-003-43, Administrative Record, Vol. 1 at 96-98.

6. Tribunal Exhibit NQ-2004-003-44, Administrative Record, Vol. 1 at 99-103.

7. The record of this inquiry consists of all Tribunal exhibits, including the public and protected record of the preliminary injury inquiry (PI-2003-006), the public and protected replies to questionnaires, the requests for information and for a product exclusion and the replies thereto, as well as the witness statements and exhibits filed by parties<sup>7</sup> other than McCain throughout the inquiry. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel and experts who had filed a declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

## RESULTS OF THE CBSA'S INVESTIGATION

8. The CBSA's investigation covered imports of the subject goods from January 1 to December 31, 2003.

9. The CBSA made a final determination that over 95 percent of the volume of subject goods from the United States were dumped and that the weighted average margin of dumping of all goods, expressed as a percentage of the export price, was 28.7 percent.<sup>8</sup>

## ANALYSIS

10. Pursuant to subsection 42(1) of *SIMA*, the Tribunal is required to make inquiry as to whether the dumping of the subject goods has caused injury or retardation or is threatening to cause injury. "Injury" is defined in subsection 2(1) as "material injury to a domestic industry". "Domestic industry", in turn, is defined, in part, as "the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods".

### Like Goods

11. Subsection 2(1) of *SIMA* defines "like goods", in relation to any other goods, as "(a) goods that are identical in all respects to the other goods, or (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods".

12. On the question of like goods, the Tribunal notes that, in both its preliminary and final determinations of dumping, the CBSA defined the goods as prepared uncooked frozen pizza products containing uncooked self-rising dough and cooked and/or uncooked toppings which typically may include processed vegetables and/or meats and/or poultry and/or cheeses and/or a prepared sauce. The Tribunal also notes that, in its complaint, McCain indicated that frozen self-rising pizza produced in Canada was effectively identical to the subject goods. Based on the evidence on the record, the Tribunal affirms its preliminary determination on the issue and finds that the frozen self-rising pizza produced in Canada are "like goods" to the subject goods.

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7. Other parties are: Kraft Canada Inc. (Kraft Canada) and Canada Safeway Limited (Safeway), importers of the subject goods; Palermo Villa Inc. (Palermo) and Kraft Foods North America, Inc. (Kraft North America), exporters of the subject goods; Dairy Farmers of Canada (DFC); and Canadian Restaurant and Foodservices Association (CRFA). Kraft Canada and Kraft North America claimed that the dumping of the subject goods had not caused injury and did not threaten to cause injury to the domestic industry. The CRFA supported McCain. Palermo and Safeway requested a product exclusion. The DFC did not state a position.

8. Canada Border Services Agency, *Final Determination of Dumping*, 16 August 2004, Tribunal Exhibit NQ-2004-003-04, Administrative Record, Vol. 1 at 71.1-71.11.

## Domestic Industry

13. The evidence indicates that McCain is the primary producer of like goods in Canada and that it represented more than 50 percent of the total production of like goods throughout the period of inquiry.<sup>9</sup> Therefore, the Tribunal finds that McCain constituted the domestic industry for the purposes of its injury inquiry.

## Injury

14. In its complaint to the CBSA, McCain alleged that the dumping of the subject goods had caused and/or threatened to cause injury to the Canadian production of frozen self-rising pizza and other non-like pizzas, e.g. “regular crust” frozen pizza, including injury from lost sales, price erosion, price suppression and reduced financial performance. More specifically, relative retail price competition, facilitated by dumped wholesale prices, led to lower sales volumes, prices and profits than would otherwise have been the case. McCain further claimed that continued dumping threatened the delisting of its frozen self-rising pizza at significant accounts.<sup>10</sup>

15. As noted above, just days prior to the hearing, McCain notified the Tribunal that it was withdrawing from participation in the proceedings and withdrew its case, its expert report and its reply brief. In the Tribunal’s opinion, McCain’s decision detracts from the probative value and persuasiveness of its complaint and remaining evidence.

16. The Tribunal has reviewed the remaining written record and is not persuaded by the evidence therein that the domestic industry has suffered injury as a result of the dumped subject goods.

## Threat of Injury

17. As to the threat of injury, where no past injury has been found, the Tribunal must determine if there is evidence that discloses a change in circumstances that suggests that dumped imports might have a different effect in the future. In this case, the Tribunal can see no such change in circumstances. Specifically, the evidence on the record does not indicate that there is any imminent major increase in U.S. frozen self-rising pizza shipments to Canada. Indeed, by all accounts, the U.S. producers of frozen self-rising pizza are running at high rates of capacity utilization, and this is not likely to change in the near future.

## REQUEST FOR EXCLUSION

18. On July 13, 2004, Palermo submitted a request for exclusion with respect to private label frozen self-rising pizza “produced by Palermo Villa, Inc., its successors and assigns, on behalf of Safeway Canada Limited or Manitoba Ltd. 3170241, c.o.b. as T.H. Foods.”<sup>11</sup>

19. In light of the foregoing, the Tribunal need not address the request for exclusion.

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9. Tribunal Exhibit NQ-2004-003-07 (protected), Administrative Record, Vol. 2.1 at 16.

10. Tribunal Exhibit NQ-2004-003-38.03 (public), Administrative Record, Vol. 7 at 7-79.

11. Tribunal Exhibit NQ-2004-003-36.01, Administrative Record, Vol. 1 at 75.



**CONCLUSION**

20. The Tribunal finds, pursuant to subsection 43(1) of *SIMA*, that the dumping of the subject goods has not caused injury and is not threatening to cause injury to the domestic industry.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Patricia M. Close  
Patricia M. Close  
Member

Meriel V. M. Bradford  
Meriel V. M. Bradford  
Member