



Ottawa, Wednesday, October 2, 1991

**Inquiry No.: NQ-91-002**

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

**CERTAIN BEER 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 following the issuance by the Deputy Minister of National Revenue for Customs and Excise of a preliminary determination of dumping dated June 4, 1991, and of a final determination of dumping dated August 30, 1991, respecting the importation 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 or consumption in the province of British Columbia.

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 from the United States of America has caused, is causing and is likely to cause material injury to the production in British Columbia of like goods.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

Michèle Blouin  
Michèle Blouin  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

The statement of reasons will be issued within 15 days.

**Inquiry No.: NQ-91-002**

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: September 4 to 6 and  
September 9 to 12, 1991

Date of Finding: October 2, 1991

Tribunal Members: Charles A. Gracey, Presiding Member  
Sidney A. Fraleigh, Member  
Michèle Blouin, Member

Director of Research: J.A. (Sandy) Greig  
Project Manager: Douglas Cuffley  
Research Manager: Don Shires  
Research Officer: Peter Rakowski

Statistical Officer: Gilles Richard

Counsel for the Tribunal: Debra P. Steger  
Robert Desjardins

Registration and Distribution Officer: Margaret J. Fisher

**Participants:** Peter Clark,  
Chris Hines,  
Michael Flavell and  
Geoffrey Kubrick  
for Molson Brewery B.C., Ltd.,  
Labatt Breweries of British Columbia and  
Pacific Western Brewing Company

**(Complainants)**

and Brewers' Association of British Columbia and  
Brewers' Association of Canada

**(Parties Supporting the Complainants'  
Position)**

John T. Morin, Q.C.,  
Michael Round,  
Michael Beber and  
Bill Alberger  
for G. Heileman Brewing Company Inc.

**(Exporter)**

Allan H. Turnbull,  
Paul D. Burns and  
Ms. Carol S. Osmond  
for The Stroh Brewery Company

**(Exporter)**

P. John Landry, Esq., and  
David J. Richardson  
for Pabst Brewing Company

**(Exporter)**

James L. Shields and  
John S. Tyhurst  
for Director of Investigation and Research  
*Competition Act*

**(Interested Party)**



Ottawa, Thursday, October 17, 1991

Inquiry No.: NQ-91-002

**CERTAIN BEER 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**

*Special Import Measures Act* - Whether the dumping of the above-mentioned goods has caused, is causing or is likely to cause material injury, or has caused or is causing retardation to the production in British Columbia of like goods.

**DECISION:** The Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods from the United States of America has caused, is causing and is likely to cause material injury to the production in British Columbia of like goods.

Place of Hearing: Ottawa, Ontario

Dates of Hearing: September 4 to 6 and  
September 9 to 12, 1991

Date of Finding: October 2, 1991  
Date of Reasons: October 17, 1991

Tribunal Members: Charles A. Gracey, Presiding Member  
Sidney A. Fraleigh, Member  
Michèle Blouin, Member

Director of Research: J.A. (Sandy) Greig  
Project Manager: Douglas Cuffley  
Research Manager: Don Shires  
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Statistical Officer: Gilles Richard

Counsel for the Tribunal: Debra P. Steger  
Robert Desjardins

Registration and Distribution Officer: Margaret J. Fisher

**Participants:** Peter Clark,  
Chris Hines,  
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Geoffrey Kubrick  
for Molson Brewery B.C., Ltd.,  
Labatt Breweries of British Columbia and  
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**(Complainants)**

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Ms. Carol S. Osmond  
for The Stroh Brewery Company

**(Exporter)**

P. John Landry, Esq., and  
David J. Richardson  
for Pabst Brewing Company

**(Exporter)**

James L. Shields and  
John S. Tyhurst  
for Director of Investigation and Research  
*Competition Act*

**(Interested Party)**

**Witnesses:**

Barry Seims, C.A.  
Chief Financial Officer  
Pacific Western Brewing Company

John R. Winter  
President  
Molson Breweries  
Western Division

A.L. Peterson, C.A., C.M.A.  
Controller  
Molson Breweries  
Western Division

David L. Durandt  
Manager Cost and Inventory  
Molson Breweries

B.D. Walker  
Director of Marketing  
Regional Brands  
Labatt Breweries of Canada

Patrick J. Mulhern  
Director, Corporate Planning  
Labatt Breweries of Canada

R.R. Booker, B.A., C.G.A.  
Comptroller  
Labatt Breweries of British Columbia

Ken Conway  
Comptroller  
Labatt Breweries of Canada

C.E. Ruddick  
Director of Public Affairs  
Labatt Breweries of British Columbia

Gordon Hall  
Manager, Corporate Research and Policy  
Development  
Liquor Distribution Branch  
Ministry of Labour and Consumer  
Services  
Province of British Columbia

R.H. Reinhardt  
President  
Haida Trading Inc.

John L. Currie  
Controller  
G. Heileman Brewing Co., Inc.

Robert L. Bennardo  
Managing Director  
G. Heileman Brewing Co., Inc.  
International Division

Christopher T. Sortwell  
Senior Vice-President, Finance  
The Stroh Brewery Company

Ronald C. Wiepz  
Controller  
Pabst Brewing Company  
Tumwater Division

Address all communications to:

Secretary  
Canadian International Trade Tribunal  
Journal Tower South  
365 Laurier Avenue West  
20th Floor  
Ottawa, Ontario  
K1A 0G7



Ottawa, Thursday, October 17, 1991

**Inquiry No.: NQ-91-002**

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

**CERTAIN BEER 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: CHARLES A. GRACEY, Presiding Member  
SIDNEY A. FRALEIGH, Member  
MICHÈLE BLOUIN, Member

**STATEMENT OF REASONS**

**THE CONDUCT OF THE INQUIRY**

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act* (SIMA),<sup>1</sup> has conducted an inquiry following the issuance by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) of a preliminary determination of dumping dated June 4, 1991, and of a final determination of dumping dated August 30, 1991, respecting the importation 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 (Pabst), G. Heileman Brewing Company Inc. (Heileman) and The Stroh Brewery Company (Stroh), their successors and assigns, for use or consumption in the province of British Columbia. The Deputy Minister's investigation into dumping covered importations of the subject goods between January 1, 1990, and March 31, 1991.

The notices of preliminary and final determinations of dumping were published in Part I of the June 22, 1991, and September 21, 1991, editions of the Canada Gazette, respectively. The Tribunal issued a notice of commencement of inquiry on June 6, 1991, which was published in Part I of the June 15, 1991, edition of the Canada Gazette.

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1. R.S.C., 1985, c. S-15.

On August 9, 1991, the Tribunal gave notice that the Director of Investigation and Research, *Competition Act*,<sup>2</sup> and Stroh had asked for an opportunity to make representations on the question of whether the Tribunal should, if it finds material injury, report to the Minister of Finance, giving its opinion on whether the imposition of an anti-dumping duty, or the imposition of such a duty in the full amount, would not be or might not be in the public interest. The Tribunal heard arguments on the question of public interest on September 23, 1991. The Tribunal's opinion on the public interest question will be issued forthwith as a separate document.

As part of the inquiry, the Tribunal sent detailed questionnaires to B.C. producers and the importer of the subject goods, requesting production, financial, import and market information, as well as other information covering the period from January 1, 1987, to March 31, 1991. A supplementary questionnaire requested financial information for the period under review for the brewery operations of Labatt Breweries of Canada and Molson Breweries located in provinces other than British Columbia. In addition, the Brewers' Association of Canada was asked to provide information on sales of domestic and imported packaged beer in the provinces and territories of Canada. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and confidential pre-hearing staff reports covering the period of review in this inquiry.

Further, the Tribunal wrote to the Director General, Assessment Programs, Department of National Revenue, Customs and Excise, and requested information on the volume and value of subject imports into each province from each of the three named exporters. As well, the Tribunal requested an indication of whether these goods were sold at dumped prices and an estimation of the magnitude of dumping by each exporter. This information was requested to assist the Tribunal in determining the regional industry question and, in particular, whether there was a concentration of dumped imports in the B.C. market, as compared with the rest of Canada.

The record of this inquiry consists of all Tribunal exhibits, including the public and confidential replies to questionnaires, all exhibits filed by the parties at the hearing, as well as the transcript of all proceedings. All public exhibits were made available to interested parties and confidential exhibits, to independent counsel only.

Public and *in camera* hearings were held in Ottawa starting on September 4, 1991. The complainants, Labatt Breweries of British Columbia (Labatt), Molson Brewery B.C., Ltd. (Molson) and Pacific Western Brewing Company (PWB), and the exporters, Pabst, Heileman and Stroh, as well as the Director of Investigation and Research, *Competition Act*, were all represented by counsel at the hearing.

A finding that the dumped goods have caused, are causing and are likely to cause material injury to the production in British Columbia of like goods was issued by the Tribunal on October 2, 1991.

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2. *Competition Act*, R.S.C., 1985, c. 34, s. 125, as amended.



## **THE PRODUCT**

The product definition includes ale, lager, stout and porter. Beer in kegs or containers with a capacity in excess of 1,180 mL, normally referred to in the trade as draft beer, is not included in the product definition. Non-pasteurized or cold-filtered beer, which may be labelled draft, in packages of 1,180 mL or less is included in the definition. Beer coolers and shandies are excluded from this definition.

## **THE B.C. INDUSTRY**

There are currently three major breweries in British Columbia which produce the subject beer. These are Labatt, Molson and PWB. These three companies, which are the complainants in this case, account for 99 percent of production in British Columbia. The balance of B.C. production is accounted for by a number of micro-breweries.

Labatt is an operating division of Labatt Breweries of Canada, which is, in turn, a division of the Labatt Brewing Company Limited, which is wholly owned by John Labatt Limited of London, Ontario. Labatt operates two breweries in British Columbia, one in New Westminster and one in Creston.

Molson is a wholly owned subsidiary of Molson Breweries. Molson Breweries, formed in August 1989, is a 50-50 partnership involving The Molson Companies Limited, a Canadian public company, and Carling O'Keefe Breweries of Canada Limited, a wholly owned subsidiary of Foster's Brewing Group Limited (formerly Elders IXL Limited of Australia). Following the merger, Molson closed Carling O'Keefe's B.C. brewery and modernized its existing brewery located in Vancouver.

PWB, the smallest of the three producers, operated until recently one brewery in Prince George, British Columbia, and one in St. Catharines, Ontario. PWB was an operating division of International Potter Distilling Corporation (Potter) of Vancouver. On February 28, 1991, Potter sold the Prince George operation to Pacific Pinnacle Investments, a Vancouver based company. As the new owner also supports the complaint, PWB has remained a complainant in this case.

## **THE IMPORTER/EXPORTERS**

The British Columbia Liquor Distribution Branch (Liquor Distribution Branch), which is part of the provincial Ministry of Labour and Consumer Services, is the sole importer of the subject goods into British Columbia. It is responsible for the importation, distribution and retailing of imported beer in the province. While the Liquor Distribution Branch is the importer for all of the subject goods, other companies or agents, acting on behalf of the exporters, are responsible for certain administrative and promotional activities related to the importation and resale of the subject goods.

Revenue Canada investigated three U.S. producers of the subject beer: Pabst, Heileman and Stroh. The B.C. industry's complaint of dumping concerned only these three foreign producers.

## **THE PRODUCT DISTRIBUTION**

The Liquor Distribution Branch operates 2 warehouses and 217 government liquor stores located throughout the province. The main warehouse is located in Vancouver and the other is located in Kamloops. In addition to the liquor stores, the government authorizes 132 private retail outlets (rural agency stores) to act as agents of the Liquor Distribution Branch. There are over 6,400 establishments licensed to sell beer for consumption on the premises, of which 740 are also permitted to make over the counter off-premise sales of packaged beer (licensees). In 1985, these licensees were allowed to apply for a license to operate a retail outlet attached to the establishment. There are currently 219 of these outlets (licensee retail stores), commonly referred to as cold beer and wine stores.

B.C. brewers deliver directly from their plants to all retail outlets. Molson and Labatt use their own fleets of trucks and, in addition, the fleet of their joint venture, Pacific Brewers Distributors Ltd.

Imported beer is delivered solely from the two Liquor Distribution Branch warehouses to government liquor stores. The Liquor Distribution Branch has its own fleet for deliveries within the greater Vancouver area and hires common carriers for shipments to all other localities in the province. The proprietors of rural agency stores and licensee establishments (pubs, hotels) must pick up imported beer from a government liquor store. The Liquor Distribution Branch also operates a store at the Vancouver warehouse that exclusively supplies licensees. A second such outlet for licensees is operated in Victoria. Licensee retail stores are not permitted to carry imported beer.

## **THE RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION**

The period of investigation selected by the Deputy Minister covered imports of the subject beer during the period January 1, 1990, to March 31, 1991.

In the final determination of dumping, the Deputy Minister indicated that nearly all subject beer exported to British Columbia during the period of investigation, except for a very small number of cases from Stroh, was found to have been dumped. The overall margin of dumping was 29.8 percent, while the weighted average margins for each exporter were 14.9 percent for Pabst, 33.6 percent for Heileman and 15.7 percent for Stroh.

## **THE COMPLAINT**

Counsel for the complainants submitted that, based on the evidence in this case, the Tribunal ought to find that the dumping of the subject packaged beer by Heileman, Stroh and Pabst has caused, is causing and is likely to cause material injury to the production in British Columbia of like goods. Counsel argued that the injury had primarily taken the form of price suppression, margin suppression, reduced profitability and reduced investment.

Counsel also submitted that British Columbia is an isolated or regional market for the subject goods, in accordance with Article 4 of the Anti-dumping Code<sup>3</sup> and subsection 42(3) of SIMA. They argued that all four criteria had been met: (1) all, or virtually all, of the beer produced in British Columbia is consumed in British Columbia; (2) the movement of product into British Columbia from other provinces is small; (3) there is a concentration of dumped imports into British Columbia; and (4) material injury has been, is and is likely to be caused to all or almost all of the production in British Columbia.

On the concentration criteria, counsel stated that the Canadian Import Tribunal (CIT) *Recreational Vehicle Entrance Doors* case<sup>4</sup> provides two alternative tests, the density and the penetration tests.<sup>5</sup> They argued that the penetration test had been met.

Counsel argued that the Tribunal must examine each industry that appears before it in the light of the circumstances of that industry. They referred to the fact that the alcoholic beverage industry in Canada is highly regulated by provincial authorities. All, or virtually all, of the production in British Columbia is dedicated to serving that regional market. They stated that they did not know what the upcoming GATT panel report<sup>6</sup> would mean to that regional market, but one could not reasonably expect that it would further restrict U.S. access to the B.C. market. Regarding the recent government agreement<sup>7</sup> on the intended removal of interprovincial barriers to the beer trade, counsel argued that attempting to put a fixed time frame on this integration would be highly speculative and conjectural. The common industry position is that the removal of barriers should be done over a reasonable period of time.

With regard to their claim of material injury, counsel argued that in 1988, the B.C. producers experienced a decline in their production volumes and a loss of market share to the subject imports, which imports increased by 50 percent in 1988. In order to prevent further growth in sales of the subject imported beer, the B.C. producers decreased their prices in December of that year. Counsel contended that the pricing studies of Molson pointed toward the growing importance of the discount segment of the market. Counsel submitted that the decision to reduce prices in December 1988 was intended to arrest the growth in the discount market.

This reduction in prices in December 1988 by the B.C. producers succeeded in preventing further growth in subject imports, as these imports only increased their market share by 1/10 of 1 percent in 1989. However, in 1990, the first period specifically examined by the Deputy Minister, the dumped imports grew by 35 percent and gained a further 1.8 percentage points of market share.

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3. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, signed in Geneva, Switzerland, on December 17, 1979, GATT BISD 265 (1980).

4. *Recreational Vehicle Entrance Doors, Produced or Exported by, or on Behalf of, Elixir Industries, Gardena, California, United States of America, for Use or Consumption in the Provinces of Alberta and British Columbia*, [1989] 16 C.E.R. 174.

5. These two tests are further discussed in The Reasons for Decision section of this statement of reasons.

6. U.S. complaint concerning certain practices of Canadian provincial liquor boards.

7. Intergovernmental Agreement on Beer Marketing Practices, January 1, 1991.

Counsel further argued that the dumped imports depressed significantly the price of like goods in British Columbia and limited to a significant degree increases in prices by the producers, as well as reduced gross margins and profits for the B.C. producers. In a price sensitive market, counsel argued, prices of the Rainier brand produced by Heileman, which were significantly lower than the prices of other competitors in 1990, kept the prices of other subject exports low and caused the price erosion to the B.C. industry. They also suggested that the same subject imports, which were severely injuring PWB, were also materially injuring Labatt and Molson.

The financial data, counsel argued, showed a deterioration of returns and performance over the period reviewed. B.C. producers were not performing as well as producers in the rest of Canada. It was also argued that the dumping negatively affected the producers' ability to undertake additional investment.

With respect to the switch from bottles to cans, counsel argued that it would have been too risky for the domestic producers not to respond to the imported beer in cans with domestic beer in cans. Counsel contended that consumers will buy beer in cans if it is cheaper than bottled beer. Counsel further argued that if the canned beer market segment is unrestrained by anti-dumping measures, it will grow rapidly in the future.

Concerning the efficiency of the B.C. producers, counsel stated that the subject exporters may claim that their dedication to canned beer production in the U.S. market makes them more competitive than B.C. producers. Counsel referred to the *Carbon Steel Welded Pipe* decision,<sup>8</sup> where the Tribunal said, in its reasons, that in considering whether dumped imports are injurious, the Tribunal assesses the impact of those imports on production as it is currently carried out. For the Tribunal to be persuaded that high production costs were a factor in injury, counsel would have needed to demonstrate that the domestic industry would be unable to compete with imports at prices inclusive of dumping duties. Counsel argued that the issue was the same in this inquiry, that the U.S. brewers could not compete in the discount segment of the market without dumping.

With regard to future injury, counsel referred to testimony given by the witness for PWB to the effect that it would not survive without the imposition of anti-dumping duties and that no better measure of injury could be found than that proposition. Moreover, counsel contended that in a situation with no dumping, PWB can be an effective force in the marketplace and an effective brake on Molson and Labatt.

Finally, it was questioned whether the American market can absorb all of the production capacity of its producers.

Counsel also stated that the cost of service charge imposed by the Liquor Distribution Branch on imports is unrelated to the dumping. With regard to not increasing prices immediately after the cost of service charge was introduced, counsel argued that this was a sound business decision because the Goods and Services Tax was coming in and consumers might not have reacted positively to increased prices. These prices have since, however, gone up.

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8. *Certain Carbon Steel Welded Pipe Originating in or Exported from Argentina, India, Romania, Taiwan, Thailand, and Venezuela*, Canadian International Trade Tribunal Inquiry No. NQ-90-005, July 26, 1991.

With regard to the requests for exclusion by Stroh and Pabst, counsel argued that the Tribunal usually cumulates in situations where the party in question, though small, is dumping.

## **THE RESPONSE**

Counsel representing the interests of exporters of beer submitted that the subject imports have not caused, are not causing and are not likely to cause material injury to the B.C. producers.

### **G. Heileman Brewing Co. Inc.**

Counsel for Heileman argued that any injury suffered by the B.C. producers is due to their own conduct and their own actions beginning in late 1988. As an alternative submission, counsel stated that if there is any injury that has been caused by the subject imports, that injury has been caused only to PWB and that is not sufficient in a regional industry case because of the requirement that there be injury to all, or almost all, of the production in the regional market.

Counsel also contended that there is no concentration of dumped imports in British Columbia that would allow the Tribunal to make a finding of material injury in this case because the subject imports only represented 8 percent of the B.C. market and less than one-third of the imports in the whole country. Counsel observed that these numbers were considerably lower than those in the *CIT Recreational Vehicle Entrance Doors* case.<sup>9</sup> Counsel further observed that on both tests, Alberta had higher or the same levels of concentration of subject imports from 1988 through 1990.

Counsel referred to specific testimony by the witnesses for Molson and Labatt and to specific market studies, and argued that these studies dealt with the game plan that was eventually put into effect by Molson and also by Labatt, which had a similar market strategy. In counsel's view, what happened to Molson and Labatt beginning in 1988 and through 1991 was caused by marketing plans and actions that backfired and worsened their financial positions. What happened, in counsel's view, was not caused by the subject imports. Moreover, the difficulties faced by PWB during this period, counsel contended, could also be traced to these marketing actions of Molson and Labatt. Counsel also argued that the market share gained by the subject imports was taken from PWB, and not from Molson and Labatt.

Counsel further submitted that there are three important features of the B.C. market that one must bear in mind when comparing the performance of the domestic brewers in that province with their performance in the rest of Canada. The first important feature is that since 1981, prices have been deregulated and price competition exists in British Columbia. A second important feature is that there existed, in the past, a relatively strong regional brewer (PWB), which created the discount market and initiated the price competition in the market. The third important factor is that, historically, the major brewers have been less profitable in British Columbia than in the rest of the country because of higher production costs due to higher wages paid to their workers.

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9. *Supra*, footnote 4.

Counsel also submitted that while there was competition for market share in the discount segment beginning in 1988, there was a decline in sales in the regular segment, but there was also a compensating increase in the premium segment that went to Molson and Labatt. This suggests a significant shift in consumer buying habits in British Columbia.

In responding to the B.C. industry's claim that the switch from bottled to canned product was caused by the imports, counsel argued that the switch was instead due to a consumer preference for cans over bottles. Counsel cited examples in other provinces, where the proportion of cans was high during periods when they were cheaper to buy than bottles and still significant when a premium was charged for canned beer, such as in Ontario. In referring to the B.C. market, counsel cited a 60-40 ratio in favour of cans, but also stated that the same ratio existed in both liquor stores and cold beer stores. Because there was no imported product available in cold beer stores, but only Canadian product, counsel concluded that the consumers' buying habits in their choice of container were very clear.

Counsel also asked the Tribunal to consider the limitations that exist in British Columbia on the ability of the subject imports to acquire a major share of the market. They referred to the difficulty of getting a listing for a U.S. beer, to the fact that U.S. beers are excluded from large parts of the B.C. market and to the recent cost of service fee which resulted in higher charges for American beer, and thus higher prices and declining volumes. Counsel contended that because of those limitations, U.S. imports would continue to have only a small share of the B.C. market in the future.

### **The Stroh Brewery Company**

Counsel for Stroh submitted that the complainants had not proven their complaint of material injury as a result of dumped imports into the B.C. market. It was submitted that the B.C. producers failed to establish or satisfy the regional market exception as set out in Article 4 of the Anti-dumping Code. Counsel argued that if the Tribunal were to consider the B.C. market a regional market, it also would have to address whether two further requirements of Article 4 of the Anti-dumping Code for finding injury are met. As for a concentration of dumped imports, counsel claimed that the density and penetration tests, as set out in the *Recreational Vehicle Entrance Doors* case,<sup>10</sup> have not been satisfied by the complainants. As for the final requirement, counsel argued that the dumped imports are not causing injury to the producers of all, or almost all, of the production within the regional market. If anyone has been injured, it has been only PWB and not the two major producers.

Counsel supported the submissions of Heileman that any injury suffered by the complainants was caused by other factors within the control of their management.

Counsel argued that any injury associated with the switch from bottles to cans was not related to the dumped imports. This was true, counsel contended, irrespective of how one characterized the switch. If the complainants decided to compete in the discount segment with anything other than their lowest cost package, then any injury that resulted was their own doing. Alternatively, if the complainants decided to compete

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10. *Ibid.*

in the discount segment with cans because consumers found that package more convenient, then the complainants were responding to a consumer preference, not dumped imports.

It was submitted that the cost of service implemented on January 1, 1991, on imports provides more than sufficient insulation to the complainants. It was argued that following the implementation of the cost of service and the levying of dumping duties, the complainants did not increase their prices to recoup the loss of revenue and profits, which, in counsel's view, reinforces the exporters' position that the subject imports are not the cause of the injury.

Finally, counsel submitted that in the event that the Tribunal were to find injury, Stroh should be excluded from such a finding as its exports represented less than 1 percent of the B.C. market during the period reviewed.

### **Pabst Brewing Company**

Counsel for Pabst emphasized that the discount segment in British Columbia existed well before the U.S. exporters became real players in that market. It existed as a result of deregulation and because there is a regional brewer in British Columbia. That regional brewer, PWB, by the fall of 1988, was a major player in the discount segment and making significant inroads with beer in cans. In counsel's view, Molson's and Labatt's price reductions in December 1988 were primarily a reaction to PWB's significant inroad into their discount market share.

Counsel observed that the prices of regular brand beers increased from \$5.95 in January 1988 to \$6.80<sup>11</sup> in June 1988 for a six-pack of cans. Counsel contended that an increase in the regular market of such a substantial amount at that point in time was going to drive people to the discount price beer, which at the time was priced at \$4.85 to \$4.90 per six-pack, and increase the size of the discount market. Counsel urged the Tribunal to consider material injury, not in relation to the peak prices in 1988, but rather in relation to a time before the substantial increase in price.

Counsel also argued that, as a result of the January 1, 1991, introduction of the cost of service, the price of the subject imports went up substantially, from \$4.60 to \$5.20, which has alleviated a substantial part of any problem the B.C. producers may have had. During the first and second quarters of 1991, prior to the imposition of dumping duties, the subject imports, according to counsel, went down respectively by 5 percent and 27 percent. Counsel put forward the proposition that the producers, having been aided by the cost of service increase, would not gain in a material way as a result of the dumping duties because of PWB's market strategy.

Counsel finally argued that if the Tribunal were to find injury, Pabst should also be excluded from the finding as it actually has a lesser share of the market than Stroh.

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11. The record shows that for volume regular brands, the June 1988 price was \$6.60 for a six-pack of cans.

### **Director of Investigation and Research**

Counsel for the Director of Investigation and Research stated that the Director's sole role in these proceedings was to bring to the Tribunal's attention those concerns that flow from his responsibilities under the *Competition Act*.

Counsel explained that the Director had intervened in the proceedings because of his decision under the *Competition Act* not to challenge the 1989 merger between Molson and Carling O'Keefe. In not challenging the merger, the Director specifically singled out the role that the low-priced beer imports from the United States played in the beer industry in British Columbia. Counsel also confirmed that the Director is monitoring the state of competition in the Canadian beer industry through to 1992.

Counsel urged the Tribunal, in assessing the information in the staff report with regard to the concentration criterion for a regional market, to give consideration to the relevant case law, the CIT *Recreational Vehicle Entrance Doors* case,<sup>12</sup> and to the aid to argument on this issue presented by counsel for Heileman. Counsel also referred to a comment made by a previous panel in the CIT *Carbon Steel Reinforcing Bars* case<sup>13</sup> that if a complainant should fail on one of the expressed criteria, then the regional market proposition fails.

Counsel urged the Tribunal to consider carefully the recent agreement to remove barriers, the mandatory aspect of the agreement, the trend to increase interprovincial traffic, the support of the producers for freer movement and the changes that have been made already without the formalities of the agreement. Counsel suggested that it was fair for the Tribunal to surmise that one of the factors contributing to the lack of profitability has been the interprovincial barriers, which have caused certain inefficiencies in operations.

Counsel also drew the attention of the Tribunal to the first quarter of 1991, a very crucial time frame in counsel's view because of the fundamental change that occurred. The cost of service fee had an immediate and visible effect in the marketplace in terms of market share. Also, it was advanced that this fee is likely to rise to meet whatever increased costs may be experienced by the B.C. government because the amount of the fee is solely at the government's discretion.

Counsel also commented that the suggestion by counsel for the complainants that PWB would be an effective brake on Labatt and Molson contradicts the evidence with respect to what happened in the draft beer market.

Finally, counsel made the proposition that cans were a consumer preference. How else, counsel asked, could the experience in Ontario and Saskatchewan be explained where cans took a large share of the market. Also, the question was asked as to how one could explain the decision by the complainants to compete with the subject imports with cans rather than with bottles, which are cheaper to produce.

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12. *Supra*, footnote 4.

13. *Certain Hot Rolled Carbon Steel Concrete Reinforcing Bars, Bars and Structural Originating in or Exported from Mexico and the United States of America for Use or Consumption in the Province of British Columbia*, [1989] 15 C.E.R. 253.



## **THE ECONOMIC INDICATORS**

The total B.C. market for the subject packaged beer has grown from 1.71 million hL in 1987 to 1.94 million hL in 1990, an overall increase of 13.4 percent during this period. During the first quarter of 1991, it increased by a further 4.4 percent in comparison to the same quarter of 1990.

The major share of this market is held by the complainants. In 1990, their sales from B.C. production accounted for 87.5 percent of all packaged beer consumed in British Columbia, down from the 92.7-percent share held in 1987.

Sales of imports from the subject sources accounted for 4.1 percent of the total B.C. market in 1987. These sales had grown from 71,000 hL in 1987 to 156,000 hL in 1990 and accounted for 8.1 percent of the market. During the first quarter of 1991, their share declined to 6.6 percent.

The B.C. market is divided into three segments, namely, the low-priced brand category or discount segment, the medium-priced brand category or regular segment and the high-priced brand category or premium segment. The subject U.S. imports and the brands of PWB are generally targeted to the discount segment of the market. Molson and Labatt target brands to all three segments of the market.

Average prices for domestic regular brands (all package configurations) rose in the spring of 1988 and peaked in June 1988. The prices then fell back somewhat in July 1988 and then more markedly in December 1988. The average price for domestic regular brands was lower in 1989 and 1990 than it was in 1988 and, by March 1991, had not recovered to the June 1988 level.

Average monthly prices for domestic discount brands (all package configurations) showed a similar pattern. The prices peaked in April 1988 and then fell back in the summer, and again in December 1988 through February 1989. Domestic discount prices, however, recovered more quickly than did domestic regular prices. The average annual price in 1989 was less than the average price in 1988, but the average 1990 price was higher than the average 1988 price.

Over the 1988 to 1990 period and the first quarter of 1991, the price spread between domestic regular and domestic discount brands narrowed as a result of the relatively faster recovery of discount compared to regular brand prices.

Average monthly prices for the subject imported brands were generally lower than the prices of domestic discount brands, whether considering all package configurations or cans only. For can package configurations only, there were two notable periods when prices of domestic brands were lower. The first was in the period of December 1988 through February 1989, at the time of the domestic discount price reductions. The second was between January and March 1991, after the coming into force of the cost of service charge on imports. The prices of domestic discount bottles were generally slightly higher than prices for domestic discount cans.

In 1989, the price spread between the subject imports and the domestic discount beer (all package configurations) narrowed. It widened in 1990 as a result of relatively higher price increases on domestic discount beer compared to the subject imported beer.

For the first quarter of 1991, domestic discount brand prices were marginally lower than the prices of the subject imported discount brands.

The combined financial results of the three complainants for their sales of packaged beer in British Columbia showed that between their fiscal year 1987 and 1991, sales volumes increased, net sales revenues increased, unit revenues decreased, unit costs increased and gross profits, as well as net income before taxes, fell.

The financial results of the combined B.C. operations of Labatt and Molson may be compared with the financial results of the combined "rest of Canada" operations of Labatt Breweries of Canada and Molson Breweries. The two major B.C. producers were less profitable than their counterparts in the rest of Canada in each of the five fiscal periods under review. Furthermore, while the B.C. producers were experiencing a decline in their profits, the profits of their counterparts in the rest of Canada generally exhibited a rising trend.

### **THE REASONS FOR DECISION**

There are four main issues in the present inquiry. First, the Tribunal must determine whether the B.C. producers of packaged beer represent a separate regional industry. Second, the Tribunal must determine whether the B.C. producers have experienced, are experiencing or are likely to experience material injury. Third, the Tribunal must determine whether there is a causal link between material injury and the dumped imports. Finally, the Tribunal must decide whether to exercise its discretion to grant an exclusion to Pabst and/or Stroh on the basis of their allegations that their market shares are minimal and that these two firms are not contributing to the injury.

### **Domestic Industry**

At the outset, the Tribunal must address the key issue as to whether the B.C. producers constitute a separate regional industry. In an anti-dumping case, pursuant to paragraph 42(3)(a) of SIMA, the Tribunal must take fully into account paragraph 1 of Article 4 of the Anti-dumping Code, which sets out the definition of domestic industry. Subparagraph 1(ii) of Article 4 provides:

*in exceptional circumstances the territory of a Party may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (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. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.<sup>14</sup>*

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14. *Supra*, footnote 3.

In the view of the Tribunal, subparagraph 1(ii) of Article 4 of the Anti-dumping Code involves a two-part analysis.<sup>15</sup> First, producers within a particular geographic market may be considered as a regional industry where (i) they sell all, or almost all, of their production within that market and (ii) the demand in that market is not supplied to any substantial degree by producers outside that market. In other words, a separate regional industry may be found to exist where there is an isolated market. Second, where a regional industry exists, injury may be found to exist only if (i) there is a concentration of dumped imports into the isolated market and (ii) the dumped imports are causing injury to producers of all, or almost all, of the production within that market.

The Tribunal finds that the complainants represent a separate regional industry in this case. With regard to the first requirement, the evidence indicates that from April 1, 1990, to March 31, 1991, the combined sales of packaged beer by Labatt and Molson in British Columbia accounted for 95 percent of their total domestic sales of packaged beer. As for PWB, from the information released to the Tribunal by the previous owner for this period, it is not clear whether some of PWB's production was sold to other provinces. However, the new owner reported for its first month of operation, March 1991, that 100 percent of its total domestic sales were made in British Columbia. Although these three producers do export some of their production, the Tribunal does not take into account their exports in determining whether they sell all, or almost all, of their production in that market. As stated by the CIT in the *Solid Urea* case:<sup>16</sup>

*... Paragraph 1 of Article 4 focuses on the conditions under which the production in one particular region may be considered separately from the production in the rest of the national territory, rather than on the isolation of that regional market from the international movement of goods....*

Therefore, the Tribunal is satisfied that the first requirement that the producers sell all, or almost all, of their production in the regional market is met.

With respect to the second requirement for an isolated market, the evidence indicates that the penetration into the B.C. market of beer produced in the other provinces is minimal. Less than 1 percent of the packaged beer consumed in British Columbia in the years 1987 through 1990 was supplied by producers located in the other provinces. The Tribunal, therefore, considers that the demand in British Columbia for packaged beer is not supplied to any substantial degree by producers located elsewhere in Canada.

Having established that there is an isolated market, the Tribunal concludes that the B.C. producers of beer may be regarded as a separate regional industry. The Tribunal considers that the circumstances characterizing the B.C. market for the subject

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15. The CIT also stated that subparagraph 1(ii) of Article 4 of the Code involved a two-part analysis in *Recreational Vehicle Entrance Doors, Produced or Exported by, or on Behalf of, Elixir Industries, Gardena, California, United States of America, for Use or Consumption in the Provinces of Alberta and British Columbia*, [1989] 16 C.E.R. 174.

16. *Solid Urea Originating in or Exported from the German Democratic Republic and the Union of Soviet Socialist Republics for Use or Consumption in Eastern Canada (Canadian Territory East of the Ontario-Manitoba Border)*, [1989] 15 C.E.R. 277.

goods constitute "exceptional circumstances" as contemplated in subparagraph 1(ii) of Article 4 of the Anti-dumping Code.

There was no clear evidence before the Tribunal of whether the interprovincial barriers affecting the isolation of the beer market in British Columbia will be effectively dismantled or removed in the near future. With respect to the Intergovernmental Agreement on Beer Marketing Practices,<sup>17</sup> the Tribunal heard evidence that it had not yet been implemented by the government of British Columbia and that the implementation of that Agreement will not result in any foreseeable changes in the existing regulatory system. The Tribunal heard evidence that the major remaining barrier is distribution practices and it is anticipated that this barrier will be discussed by a technical committee established as part of the Agreement. Should there be a change in the regulatory regime that would affect the isolation of the beer market in British Columbia as a result of any GATT panel report, federal-provincial negotiations or other reasons, it would be possible to review the matter under section 76 of SIMA.

Having determined that the B.C. producers represent a regional industry, the two mandatory conditions concerning injury to that industry must be examined. The first element is whether there is a concentration of dumped imports into the B.C. market. In previous cases, the CIT has considered two tests in examining this issue. The Tribunal identifies these tests as the "distribution test" and the "density test."

In the CIT *Recreational Vehicle Entrance Doors* case,<sup>18</sup> it was stated that there were two alternative tests that could be used in determining the concentration issue: (1) the "penetration test" (hereinafter referred to as the "distribution test"), which compares the volume of imports used in the regional market to the volume of imports used in the national territory as a whole and (2) the "density test," which compares the volume of dumped imports within the regional market to total regional market volume. In that case, the CIT found both tests to be met.

In the CIT *Solid Urea* case,<sup>19</sup> which was affirmed by the Federal Court of Appeal, it was found that the concentration criterion was met because all of the dumped imports from the German Democratic Republic and the Union of Soviet Socialist Republics were destined for use in the regional market. In that case, the decision on concentration was made solely on the basis of the distribution test.

In this case, the Tribunal believes that it is appropriate to apply the distribution test to determine whether there is a concentration of dumped imports into the isolated market. A plain reading of subparagraph 1(ii) of Article 4, which refers to "a concentration of dumped imports into such an isolated market," suggests that the issue of concentration is to be examined by comparing the volume of imports into the regional market to the volume of imports into the rest of the country.

Subparagraph 1(ii) of Article 4 also refers to "a" concentration, not "the" concentration of dumped imports. In a country such as Canada, with a federal system of government and vast geographical distances, regional markets sometimes exist because

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17. *Supra*, footnote 7.

18. *Supra*, footnote 4.

19. *Supra*, footnote 16.

of geographic, regulatory or other market conditions. In Canada, because of the different provincial regulatory systems, it could be argued that there are several regional isolated markets for the production, distribution and sale of beer. These isolated markets account for different proportions of overall beer consumption in Canada. In the Tribunal's view, therefore, it is logical in this case to assess concentration in terms of British Columbia's share of the subject imports<sup>20</sup> into Canada compared to its share of total packaged beer consumption in Canada.

The Tribunal notes that subparagraph 1(ii) of Article 4 calls for an examination of concentration of "dumped imports." In applying the distribution test, however, the Tribunal is faced with a practical difficulty. It has reliable evidence on the volumes of subject imports into British Columbia and into other provinces. However, as the Deputy Minister's investigation covered only subject imports into British Columbia, her finding of dumping applies only to imports into British Columbia. The Department of National Revenue, Customs and Excise, provided to the Tribunal estimates of the margins of dumping and the volumes of subject imports into other provinces. However, that information contains only estimates and not actual determinations of dumping.

Therefore, the Tribunal intends to rely on facts concerning volumes of subject imports into British Columbia, as compared with volumes of subject imports into the rest of Canada. In addition, it will look at the volume of subject imports found to have been dumped into British Columbia as compared with the volume of subject imports estimated to have been dumped into the rest of the country for 1990, as an indication of the likely concentration of "dumped" imports.

On the basis of the distribution test, the Tribunal concludes that the subject imports do indeed constitute "a concentration" of imports into the B.C. market. For the years 1988, 1989 and 1990, the record reveals that 37 percent, 20 percent and 29 percent, respectively, of the total subject imports into Canada were consumed in the province of British Columbia.<sup>21</sup> The share of total subject imports into British Columbia was 2.9 times British Columbia's share of total Canadian consumption of packaged beer in 1990. This compares to a ratio of 2.0 in 1989 and 4.1 in 1988.

In addition, the Tribunal notes that British Columbia accounted for 41 percent of all dumped, and estimated dumped, subject imports into Canada in 1990.

The Tribunal also determines that the complainants represent "all, or almost all, of the production" within British Columbia. Sales of packaged beer in British Columbia by the three complainants, from 1987 to 1990, accounted for 99 percent of the total sales of like goods made by all B.C. producers from B.C. production. The Tribunal considers this conclusive evidence that the complainants are the domestic producers of all, or almost all, of the production of packaged beer within the isolated B.C. market. Whether all, or almost all, of these producers have been materially injured by the dumped imports is a question the Tribunal considers later in its analysis of material injury and causality.

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20. "Subject imports" refers to subject goods exported by the three named U.S. exporters.

21. British Columbia's share of the total Canadian market was 9 percent, 10 percent and 10 percent in 1988, 1989 and 1990, respectively.

## **Material Injury**

Having found a regional industry, the next step is to consider whether that industry has suffered material injury. The information provided in responses to the Tribunal's questionnaires, as well as additional evidence adduced at the hearing, have enabled the Tribunal to review the range of factors which give an indication of injury to the B.C. industry. An assessment of the information and the evidence reveals a significant increase in import market share and the existence of price suppression in the marketplace during the period under review. This price suppression led to a steady erosion in gross profits and net income before taxes for all three producers. The erosion in gross profits was augmented by cost increases associated with the switch from the use of bottles to can package configurations. As well, the B.C. industry lost market share to the subject imports over the review period.

In assessing injury to the B.C. producers, the Tribunal is of the view that two considerations must be borne in mind. The first is that the B.C. market for packaged beer is price-sensitive. In British Columbia, pricing was deregulated in the early 1980s. This deregulation allowed producers and exporters to affect the ultimate consumer price: the lower the producer's or exporter's price to the Liquor Distribution Branch, the lower the final consumer price. In British Columbia, the battle for market share is fought with price and is not limited largely to advertising and sales promotion competition as it is in some other provinces with more price regulation. There were considerable data on prices and volumes obtained during the inquiry that confirmed the price sensitivity of the marketplace.

The second consideration is that in response to dumped imports, domestic producers have, at the extreme, two options. They can decide to meet the competition by lowering their prices in order to maintain their market share. Alternatively, they can maintain their prices and surrender market share to the exporters. In analyzing this case, the Tribunal sees clearly that the B.C. industry has responded by cutting its prices in order to protect market share. For this reason, the dumped imports have had a negative impact on the B.C. industry that is out of proportion to their relatively small share of the market. It is obvious to the Tribunal that the market share held by the subject imports grew rapidly between 1987 and 1988, and was only checked when the large B.C. breweries dropped their prices sharply to compete with the subject imports.

At the end of 1987, the first year for which the Tribunal gathered sales data, the subject imports, which were sold principally as discount beers, had 4.1 percent of the overall B.C. market. During 1988, the subject imports increased their share of the market to 6.2 percent, an increase of about 50 percent.

In examining the price behaviour, the Tribunal paid particular attention to the price changes made by Labatt, Carling O'Keefe and Molson during the first part of 1988 and also in December 1988. The three large B.C. breweries increased the display price<sup>22</sup>

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22. This is a short-hand expression for what actually happened, i.e., the three large B.C. breweries increased their prices to the Liquor Distribution Branch by an amount which, when marked up by the Liquor Distribution Branch according to its standard policies, increased display prices from \$6.30 per six-pack of cans in March 1988 to \$6.60 per six-pack of cans in June 1988.

(i.e., the price to the consumer) of their volume brands in the regular segment from \$6.30 per six-pack of cans in March 1988, in two steps, to \$6.60 per six-pack of cans in June 1988, an increase of 4.8 percent. These price increases were on top of price changes which moved the display prices of these brands from \$6.00 in early 1987 to \$6.30 in January 1988. In 1988, the three breweries also increased the prices of their volume discount brands from a March price of \$4.75 to an April price of \$4.95, an increase of 4.2 percent. The price increases taken in 1988 followed a year of falling profits for these three large breweries. In April and May 1988, PWB also increased the prices of some of its volume brands.

The display prices of the subject imports did not increase to the same extent as the prices of the three large breweries and PWB. As a result, the subject imports captured more market share. Concerned with the growing size of the discount segment, the large breweries dropped the price of their regular brands from \$6.60 in June to \$6.30 in July 1988, to the level it was in March of that year. Moreover, the large breweries dropped the display price of their discount brands from \$4.95 in May 1988 to \$4.60 in June 1988, once again to the same price as in March 1988. PWB dropped the price of some of its volume brands from \$4.90 in May 1988 to \$4.60 in June 1988.

In October and November 1988, Molson completed a number of internal market studies. The studies considered the strategy Molson should adopt to address the pricing issue in the B.C. market. The company wanted to know how best to position its brands in the face of the expected growth of the discount market and the aggressively low pricing of the Rainier brand.

In December 1988, the large breweries further reduced the prices of their volume regular brands in cans by \$0.70 per six-pack, from \$6.30 to \$5.60. As well, the prices of their volume discount brands in cans were reduced from \$4.60 to \$4.30 per six-pack. PWB also reduced the price of its volume traditional lager brand from \$4.50 in December 1988 to \$4.05 in January 1989.

These pricing actions had two results. First, lower unit prices for beer flowed directly through the B.C. industry's combined income statement to result in lower gross profits. The B.C. industry's net income before taxes in fiscal 1989 declined further from 1988 levels. In fact, the B.C. industry, in fiscal 1989, incurred a net loss before taxes. Second, import volumes in calendar 1989 increased slightly to 6.3 percent of the total sales in the B.C. market.

Prices moved upwards during 1989, 1990 and the first quarter of 1991. Volume regular brands of Molson and Labatt increased in price per six-pack of cans to \$5.75 by the end of 1989, to \$5.95 by the end of 1990 and to \$6.10 in March 1991. Regular brand prices never recovered to the January 1988 price level (\$6.30), let alone to the June 1988 price level (\$6.60). For Molson and Labatt, prices of volume discount brands sold in cans rose to \$4.85 by the end of 1989, \$4.95 by the end of 1990 and between \$5.10 and \$5.35 in March 1991. For PWB, volume discount brands sold in cans rose to between \$4.85 and \$5.35 by the end of 1989, did not rise in 1990 and then rose to between \$5.10 and \$5.45 in March 1991.

With the gradual rise in domestic prices, subject imports again began to attract a greater share of the market. In 1990, the dumped imports accounted for 8.1 percent of the total sales in the B.C. market, a 29-percent increase over the 1989 volume.

In the first quarter of 1991, changes in government duties and taxes, and changes in the Liquor Distribution Branch's mark-ups, including the application of the cost of service fee to imported beer, caused the display price of imported beer to rise faster than the price of domestic beer. The market share of the dumped imports declined in that quarter to 6.6 percent from 7.2 percent in the same quarter in 1990.

The Tribunal has reviewed carefully the submissions of both Molson and Labatt regarding the cost implications of the switch from the use of bottles to that of can package configurations.<sup>23</sup> Although it affected the two producers differently, for Molson and Labatt combined, the switch from bottles to cans caused costs to rise more rapidly than they would have otherwise had the switch not taken place. Sales of beer in cans in British Columbia accounted for 63 percent of the total B.C. packaged beer sales in 1990, up from 30 percent in 1987. In comparison, in the rest of Canada, sales of beer in cans accounted for only 16 percent of the total market for packaged beer in 1990, up from 12 percent in 1987.

Between fiscal 1988 and fiscal 1991, the B.C. industry's net sales grew, average revenue per hectolitre declined and the average cost of goods sold per hectolitre increased. As a consequence, the B.C. industry suffered a substantial reduction in gross profits and net income before taxes. In fact, the B.C. industry moved from a profit in fiscal 1988 to an increasing loss position in each of fiscal periods 1989 through 1991. For PWB, the losses were too great to sustain. PWB had almost ceased its B.C. operations before it was sold to new owners in February 1991.

In summary, the Tribunal finds a significant increase in import market share and the existence of price suppression in the marketplace during the period under review. The price suppression was responsible, in large measure, for the steady erosion in gross profits and net income before taxes for the B.C. industry. The erosion in gross profits was augmented by cost increases associated with the switch from the use of bottles to that of can package configurations. As well, the B.C. industry lost market share to the subject imports over the review period. The Tribunal is of the view that the magnitude of the injury to the B.C. industry was, and is, material and that producers representing almost all of the production in British Columbia have been, and are being, materially injured.

### **Causality**

The Tribunal must next consider whether there is a causal link between the material injury experienced by the B.C. producers of like goods and the dumped imports.

The Tribunal is satisfied that the serious price suppression that took place in the B.C. marketplace during the period under review was caused by the dumped imports, which kept market prices abnormally low. The Tribunal is of the opinion that the growth of the discount segment, driven by the low prices of the subject imports, caused the domestic price reductions that took place in 1988. Furthermore, it was the continuing low prices of the subject imports in 1989 and the dumping of the subject imports in 1990

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23. The Tribunal considered both the financial and operating cost implications incremental to the bottle-can mix that existed in 1987.



and the first quarter of 1991 that prevented the recovery of domestic regular brand prices<sup>24</sup> to early 1988 levels and slowed the recovery of domestic discount prices.

The pricing analysis prepared by the Tribunal's research staff showed that in 1988, the weighted average price of the subject imports (all package configurations) was \$14 per hectolitre below the average price of the B.C. industry's discount brands (all package configurations). In 1989, this difference was reduced to \$10 per hectolitre, but increased to \$19 per hectolitre in 1990. In the first quarter of 1991, the B.C. industry's prices for discount beers were \$1 per hectolitre below the prices of the dumped imports. The year 1990 and the first quarter of 1991 was also the period of investigation selected by the Deputy Minister to calculate normal values and export prices. The results of her investigation showed that the subject imports were dumped by nearly 30 percent on a weighted average basis.

The Tribunal reviewed the pricing of all of the subject imports. It focused, however, on the pricing of the Rainier brand because it was generally the lowest price brand in the B.C. market and it accounted for the greatest share of the subject imports. In June 1983, Rainier cans were first listed by the Liquor Distribution Branch. Rainier's f.o.b. price to the Liquor Distribution Branch at the time of its introduction was \$3.90 per 24 cans. The price remained constant for four years, at which point it was increased to \$4.00. A further increase to \$4.25 took place in July 1989. All other price fluctuations in display prices prior to January 1991 were caused primarily as a result of movements in the Canada-U.S. dollar exchange rate. In January 1991, Rainier's display price was increased primarily as a result of the imposition of the cost of service charge. The Tribunal believes that the pricing of Rainier, close to stable prices for seven years, undermined the ability of the B.C. industry to take reasonable price increases and, in fact, caused the industry to roll back certain price increases.

The Tribunal has considered carefully the U.S. exporters' argument that the injury to Molson and Labatt was self-inflicted as a result of their own pricing strategies. The Tribunal is convinced, however, that in the circumstances, Molson and Labatt made reasonable pricing decisions in response to the subject imports. It relies on the evidence of Molson and Labatt that the price reductions were necessary in order to hold sales volume and market share. The Tribunal also considered the analysis in the Molson study which recognized that although the price reductions would be costly to Molson, not making the price reductions would be even more costly in terms of its market share and financial performance.

The Tribunal is of the view that given the consumer preference for cans, the domestic producers had to fight the dumped imports of beer in cans with domestic product packaged in cans. The Tribunal recognizes that the decisions by the major B.C. breweries to compete with cans rather than bottles caused a major shift from bottled to canned product, which had cost implications to the major breweries and contributed to their poorer financial performance.

The Tribunal has also considered other cost factors that may have affected the declining profitability of the B.C. industry. In particular, it has considered the level and increase in costs in the B.C. industry. Regarding the level of costs, the Tribunal is

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24. Refers to prices of high-volume regular brands sold in six-packs of cans.

persuaded that the B.C. industry, at present cost levels, could compete with imports at prices inclusive of dumping duties. Regarding cost increases, the Tribunal observed that over the review period, the unit costs of goods sold have increased less rapidly in British Columbia than in the rest of Canada. For these reasons, the Tribunal does not find the level or the increase in the cost of goods sold in the B.C. industry to be a significant contributing factor to the injury.

As stated above, the Tribunal is convinced that the price suppression and, to a lesser degree, the costs associated with the switch from bottles to cans were responsible for the financial deterioration of the B.C. industry. The Tribunal is also satisfied that the price suppression and the costs associated with the switch from bottles to cans were caused by the presence of dumped imports. It is, therefore, of the opinion that the dumping of the subject imports has caused and is causing material injury to all three producers. As almost all of the B.C. industry has been materially injured by the dumped imports, the Tribunal is also satisfied that the fourth condition relating to a regional industry is now met.

With regard to the future, the Tribunal recognizes that the recent imposition of the cost of service on imports by the Liquor Distribution Branch has led to a sharp increase in the display prices of the dumped imports, which, if maintained at those levels, could allow the B.C. industry to recover some of its financial losses. However, evidence adduced during the hearing showed that the sales of Rainier, which brand accounted for the greatest share of dumped imports, to the Liquor Distribution Branch were made at profitable levels and, given the exporter's price strategy of being at the low end of the discount segment, the Tribunal is of the opinion that if the dumping duties were not kept in place, Heileman would resume its dumping and could absorb some or all of the cost of service, if required, to restore its prices at the low end of the market. At these low prices, the exporters would re-establish a strong presence in the marketplace and continue gaining market share at the expense of the B.C. industry. The Tribunal, therefore, finds that the dumping of the subject imports is likely to cause material injury to all, or almost all, of the production in British Columbia of like goods.

### **Request for Exclusions**

Stroh and Pabst requested that in the event of an affirmative finding by the Tribunal, their products be excluded on the basis that the volume of their importations was minimal. On the question of exclusion, the Tribunal has a discretion which has been recognized in the past by the courts.<sup>25</sup> Most recently, a Binational Panel under Article 1904 of the Canada-United States Free Trade Agreement re-affirmed this discretion in *Certain Dumped Integral Horsepower Induction Motors*.<sup>26</sup> In the case at hand, the Tribunal, having had regard to the margins of dumping and the price-sensitive nature of the B.C. beer market, finds that the low market prices of Stroh and Pabst brands have

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25. *Hitachi et al. v. Anti-dumping Tribunal et al.*, [1979] 1 S.C.R. 93; *Sacilor Aciéries et al. v. Anti-dumping Tribunal et al.*, [1985] 9 C.E.R. 210 (F.C.A.).

26. Article 1904 Binational Panel, Decision dated September 11, 1991, in *Certain Dumped Integral Horsepower Induction Motors, One Horsepower (1 HP) to Two Hundred Horsepower (200 HP) Inclusive, with Exceptions Originating in or Exported from the United States of America*.

contributed to the price suppression. Furthermore, the cumulative effect of the dumping of all three named exporters has caused material injury to the B.C. industry.

The Tribunal notes that all of the imports from Pabst and all but a small number of cases from Stroh were found to be dumped at margins of 14.9 percent and 15.7 percent, respectively. Given these high margins of dumping, the Tribunal is convinced that the removal of anti-dumping duties would permit renewed dumping by these two exporters at low prices in a market where Heileman is no longer permitted to sell the subject goods at dumped prices. As a consequence, Pabst and Stroh would increase their exports and exert downward price pressures, thereby continuing to cause material injury to the B.C. industry.

### **THE CONCLUSION**

In light of the foregoing, the Tribunal concludes that the dumping of the subject packaged beer 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, has caused, is causing and is likely to cause material injury to the production in British Columbia of like goods.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

Michèle Blouin  
Michèle Blouin  
Member