



Ottawa, Monday, January 4, 1993

Inquiry No.: NQ-92-003

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

**FRESH CAULIFLOWER 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 September 3, 1992, and of a final determination of dumping dated December 2, 1992, respecting the importation of fresh cauliflower originating in or exported from the United States of America 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 not caused, is not causing and is not likely to cause material injury to the production in British Columbia of like goods.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

The statement of reasons will be issued within 15 days.

Inquiry No.: NQ-92-003

Place of Hearing: Vancouver, British Columbia
Dates of Hearing: December 10 and 11, 1992

Date of Finding: January 4, 1993

Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Arthur B. Trudeau, Member
Desmond Hallissey, Member

Director of Research: Marcel J.W. Brazeau
Research Manager: Don Shires
Research Officer: Nancy Ross

Statistical Officer: Gilles Richard

Counsel for the Tribunal: Hugh J. Cheetham
Brenda C. Swick-Martin

Registration and Distribution
Officer: Margaret J. Fisher

Participants: Marvin R.V. Storrow, Q.C., and
Maria A. Morellato
for B.C. Vegetable Marketing Commission
(Complainant)

Marion I. Quesenbery
for Western Growers Association
(Irvine, California)
(Trade Association)

Michael Youngquist
Skagit Growers
(Mount Vernon, Washington)
(Exporter)

Ottawa, Tuesday, January 19, 1993

Inquiry No.: NQ-92-003

**FRESH CAULIFLOWER ORIGINATING IN OR EXPORTED
FROM THE UNITED STATES OF AMERICA**

Special Import Measures Act - Whether the dumping of the above-mentioned goods has caused, is causing or is likely to cause material injury 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 not caused, is not causing and is not likely to cause material injury to the production in British Columbia of like goods.

Place of Hearing: Vancouver, British Columbia
Dates of Hearing: December 10 and 11, 1992

Date of Finding: January 4, 1993
Date of Reasons: January 19, 1993

Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Arthur B. Trudeau, Member
Desmond Hallissey, Member

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B.C. Vegetable Marketing Commission

(Complainant)

for Marion I. Quesenbery
Western Growers Association
(Irvine, California)

(Trade Association)

Michael Youngquist
Skagit Growers
(Mount Vernon, Washington)

(Exporter)

Witnesses:

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General Manager
B.C. Vegetable Marketing Commission

George B. Rush
General Manager
Cloverdale Lettuce & Vegetable
Co-operative

Keith T. Maddocks
Farmer
Maddocks Farms Ltd.

Michael J. Bose
Manager
Medomist Farms Ltd.

Murray L. Driediger
Operations Manager
Driediger Brothers Farms Ltd.

Lorne Owen, P.Ag.
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Horticulture Farm Management Branch
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Ottawa, Tuesday, January 19, 1993

Inquiry No.: NQ-92-003

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

**FRESH CAULIFLOWER ORIGINATING IN OR EXPORTED
FROM THE UNITED STATES OF AMERICA**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
ARTHUR B. TRUDEAU, Member
DESMOND HALLISSEY, Member

STATEMENT OF REASONS

CONDUCT OF THE INQUIRY

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*¹ (SIMA), 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 September 3, 1992, and of a final determination of dumping dated December 2, 1992, respecting the importation of fresh cauliflower originating in or exported from the United States of America, for use or consumption in the province of British Columbia. The Deputy Minister's investigation into dumping covered importations of the subject goods between July 1 and September 30, 1991.

The notices of preliminary and final determinations of dumping were published in Part I of the September 12 and December 19, 1992, editions of the Canada Gazette, respectively. The Tribunal's notice of commencement of inquiry issued on September 14, 1992, was published in Part I of the September 26, 1992, edition of the Canada Gazette. The Tribunal's notice concerning the time, location and change of date of the public hearing was issued on October 29, 1992, and was published in Part I of the November 7, 1992, edition of the Canada Gazette.

As part of the inquiry, the Tribunal sent detailed questionnaires to the B.C. Vegetable Marketing Commission (the Commission), the growers' co-operatives (co-ops) and major importers of the subject goods. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared a public pre-hearing staff report.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected 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 the parties. Protected exhibits were made available only to independent counsel who had given undertakings.

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

A public hearing was held in Vancouver, British Columbia, starting on December 10, 1992. The complainant, the Commission, was represented by counsel, submitted evidence and made arguments in support of an injury finding. Counsel for the Western Growers Association (the WGA) submitted evidence and made arguments in support of a finding of no injury. A Washington grower also participated at the hearing, and the Tribunal called as its witness a major B.C. importer/distributor.

On January 4, 1993, the Tribunal issued a finding that the dumping of the subject goods has not caused, is not causing and is not likely to cause material injury to the production in British Columbia of like goods.

PRODUCT

The product that is the subject of this inquiry is described in the Deputy Minister's preliminary determination of dumping as fresh cauliflower originating in or exported from the United States of America for use or consumption in the province of British Columbia. The subject cauliflower is a cole crop with a large, white flower head. Head broccoli (broccoflower), a closely related product, is not included in the definition of the subject goods.

Over 85 percent of the cauliflower grown in Canada is marketed as a fresh product. Cauliflower may also be frozen or used as an ingredient in pickles and other prepared foods. The Deputy Minister's definition of the goods subject to this inquiry excludes cauliflower grown for processing.

Cauliflower production requires very precise climatic conditions: cool temperatures, plenty of moisture and considerable humidity. These growing conditions restrict the season and regions in North America that are suitable for cauliflower production. In Canada, cauliflower is grown in commercial quantities mostly in British Columbia, Ontario and Quebec during the summer months.

California is the major producing area in the United States, supplying over 75 percent of the U.S.-grown cauliflower in the fresh market. In 1990, the Salinas/Watsonville and the Santa Maria districts of California together produced about 84 percent of California's total production. The Santa Maria district produces year-round. The Salinas/Watsonville district comes into production in March. Both of these districts supply the market during the B.C. marketing season.

Once the crop has reached maturity, the harvesting period for cauliflower is only 1 to 3 days. Harvested cauliflower must be cooled to remove accumulated heat. Without cooling, it will last only a few days. If pre-cooled, cauliflower has a shelf life of about 14 days in a refrigerated environment. In British Columbia, most of the cauliflower grown is cut and placed in bins in the field and then trucked to a co-op packing line where it is hydro cooled, graded and packed in cartons. A portion of B.C.-grown cauliflower is cut and then transferred to an on-farm packing line which has no pre-cooling facility. In the Cloverdale growing area, the farm packs are trucked to the Cloverdale Lettuce & Vegetable Co-operative for vacuum cooling prior to distribution. On Vancouver Island, cauliflower is farm packed and then either transferred directly to the customer or held in the Island Vegetable Co-operative Association's refrigerated warehouse for a very brief period prior to distribution. In California, cauliflower is cello

wrapped and packed into cartons in the field using a moving mechanical packing line. Cooling units are located adjacent to the fields.

Fresh cauliflower is generally packed and sold in a standard-size, cardboard carton according to the size of the cauliflower. There are four packaging units common to the North American market. The industry standard is the carton 12-cello (cello-12s), which is a carton containing 12 cello-wrapped heads, weighing roughly 23 lb. Other packaging units include cello-wrapped and naked carton 9s, carton 16s and carton 20s. Over 95 percent of the cauliflower sold in British Columbia is cello wrapped. All packaging units weigh roughly 23 lb.

The perishability of harvested fresh cauliflower makes the product susceptible to short-term surpluses and shortages, thereby causing significant price swings in the marketplace, sometimes over a matter of a few days.

IMPORTERS AND EXPORTERS

The importers of the subject goods are independent fresh produce wholesalers, the wholesale purchasing divisions of the major retail grocery chains and foodservices operations. The Department of National Revenue (Revenue Canada) identified 20 importers, most of which are members of the B.C. Fruit Wholesalers' Association. Independent wholesalers are the major suppliers to the hotel, restaurant, institutional and foodservices sectors.

California is the major exporting state to British Columbia. In its Statement of Reasons, Revenue Canada identified 70 U.S. exporters to the B.C. market, of which 67 are located in California and the balance, in Washington. Evidence adduced at the Tribunal's public hearing indicates that there is now only one cauliflower grower in Washington.

The WGA represents virtually all of the fresh produce growers, packers and shippers located in California and Arizona. The WGA was a party to this inquiry.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION

The investigation by the Deputy Minister covered imports of the subject goods for the period July 1 to September 30, 1991. This period is included in the B.C. crop year which extends from June 20 to October 31. In the preliminary determination of dumping dated September 3, 1992, the Deputy Minister found that 99.3 percent of the subject goods exported to British Columbia had been dumped. The Deputy Minister stated that "This percentage of dumped imports would also be valid for shipments to the rest of Canada, as the same export prices and normal values would apply to all Canadian shipments."²

In the final determination of dumping dated December 2, 1992, the Deputy Minister found that 99.6 percent of the subject goods exported to British Columbia had been dumped by a weighted average margin of 50 percent.

2. Statement of Reasons, preliminary determination of dumping regarding fresh cauliflower originating in or exported from the United States of America, Department of National Revenue, September 3, 1992, p. 7.

B.C. INDUSTRY

The B.C. cauliflower industry is comprised of some 23 growers located in the Lower Mainland and the Vernon area, and on Vancouver Island. These growers, which account for about 85 percent of the fresh market, sell through three authorized sales agencies - the Cloverdale Lettuce & Vegetable Co-operative (Cloverdale), the Island Vegetable Co-operative Association (Island) and the Interior Vegetable Marketing Agency Co-operative (Interior).

All of these growers are mixed farmers and generally grow cauliflower as a complement to other crops such as potatoes, carrots, lettuce, strawberries and raspberries. In most cases, the acreage devoted to cauliflower is quite small relative to other crops. Not all growers plant cauliflower at the beginning of the crop year. Cauliflower is, therefore, harvested and marketed by different growers at different times of the season. None of the larger growers supplies the product throughout the entire harvesting season. Consequently, at any given time during the harvesting season, there may be very few growers with product available for sale because of decisions by individuals to plant for harvest in early, mid or late summer. The Tribunal notes that there is very little B.C.-grown fresh cauliflower marketed before the beginning of July and that, for the time periods when there is no harvest in British Columbia, the market is entirely supplied by U.S. imports.

In addition to fresh market production, there are some 20 growers that produce a different variety of cauliflower under contractual arrangements with processors. As noted before, cauliflower grown for processing is not subject to this inquiry. The reasons for this are discussed under the heading "Like Goods."

The co-ops derive their authority from the Commission which, under the B.C. Vegetable Scheme enacted in 1980 under the *Natural Products Marketing (BC) Act*,³ is empowered to promote, control and regulate the production, transportation, packing, storage and marketing of vegetables in the province. The Commission delegates certain of its powers to the co-ops, which act as sales agents for growers in their respective regions. A quota system is applied to cauliflower for the purpose of regulating the flow of product to the marketplace, not its production.

The pricing of fresh cauliflower is determined by the Commission. It subscribes to "Pronet," an electronic information service which provides daily shipping point availability and prices for U.S. fruits and vegetables. The Commission also utilizes U.S. F.O.B. price information, which is available 24 hours a day by telephone from a United States Department of Agriculture office in Salinas, California. On the basis of these services, the Commission can determine price ranges and availability of U.S. cauliflower on a daily and weekly basis. By factoring in the appropriate duty, freight and other importing costs, as well as the exchange rate, it can estimate a landed Vancouver price at any given time. Once this import price is determined, the Commission and its authorized sales agencies discuss prevailing market conditions within the province and agree upon a final price for B.C. cauliflower, usually for the coming week. This price is primarily based upon the landed Vancouver price of U.S. imported cauliflower coming into British Columbia from the Salinas district of

3. R.S.B.C. 1979, c. 296.

California. This is the price reported to the trade in the co-op price lists. Actual selling prices may be below the list price for a variety of reasons, such as promotional activities in response to local supply conditions and marketing efforts by the sales agencies' customers.

The co-ops sell mostly to the wholesale produce trade that, in turn, supplies the retail grocery sector. The larger grocery chains, which account for a substantial portion of the market, can readily switch from local to imported cauliflower, depending on availability and price. The Tribunal heard evidence from the complainant that the varieties of cauliflower grown in British Columbia are the same as, or similar to, those cultivated in California and that there is no difference in the quality. The only grower of fresh cauliflower in Washington gave evidence that growing conditions in that state are virtually identical to those in British Columbia, particularly in respect of rainfall. That witness acknowledged that rains in October reduce the shelf life of both Washington- and B.C.-grown cauliflower compared to the California product available at that time of the harvesting season. A major wholesaler from British Columbia stated that certain customers perceive that California cauliflower is superior in quality to B.C. cauliflower and specify the California product when placing orders for fresh produce.

COMPLAINT

Counsel for the complainant argued that the Tribunal should find that the dumping of the subject fresh cauliflower has caused, is causing and is likely to cause material injury to the production of like goods in the province of British Columbia. Counsel submitted that injury from dumping has appeared in the form of price erosion and loss of profitability, decline in sales volume and value, decreased production, underutilization of capacity, loss of employment and loss of equipment.

Counsel stated that the case for injury for fresh cauliflower is no different from that heard by the Tribunal in previous cases involving potatoes, onions, apples and lettuce where the Tribunal found injury. Counsel submitted that imports from California have, and probably always will, set the prices for fresh cauliflower in British Columbia. The anti-dumping duties simply ensure a level playing field, leaving competitive market forces intact. The survival of the industry is at stake, it was alleged, and the imposition of anti-dumping duties cannot be harmful to U.S. growers.

Counsel argued that British Columbia is a regional market for purposes of subsection 42(3) of SIMA and that all the conditions of Article 4 of the GATT Anti-Dumping Code⁴ (the Code) have been met. Also, counsel contended that B.C. and U.S. cauliflower are like goods within the meaning of subsection 2(1) of SIMA, as they have the same characteristics and qualities, have the same end use and can be substituted for one another.

On the question of like goods, counsel directed the Tribunal to the evidence of witnesses regarding the sourcing of transplants from California by B.C. growers for cultivation in British Columbia, the similarities in varieties, characteristics, qualities and

4. *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*, signed in Geneva on April 12, 1979.

the substitutability of U.S.- and B.C.-grown cauliflower. Counsel also contended that cauliflower grown for processing is not a like product, as it is not suitable for diversion to the fresh market, and pointed to the evidence of witnesses who described the varietal differences between fresh cauliflower and cauliflower grown for processing, distinguishing characteristics, end use and methods of marketing and pricing.

Counsel submitted that during the B.C. crop year, between 1988 and 1992, U.S. F.O.B. prices were often below the normal value of US\$11.11 per carton determined by Revenue Canada. Concerning price levels, counsel referred to the evidence of one industry witness who described the periods of low pricing during each crop year from 1988 to 1992, particularly emphasizing 1991 when, during the last week in June and from the last week in July to mid-August, prices ranged from US\$3.00 to US\$4.00 per carton and, following a partial recovery during the week of August 17, 1991, remained in the range of US\$4.00 to US\$6.50 for the balance of the B.C. harvesting season. Counsel noted that this same witness testified that there was a trend toward lengthy periods of depressed pricing in the U.S. market during the B.C. harvesting season over the period 1988-92 and that the practice of selling below cost of production (COP) was evidence of overproduction by U.S. cauliflower growers.

Counsel submitted that average U.S. F.O.B. selling prices declined from US\$6.47 per carton in 1990 to US\$4.94 per carton in 1991, while average selling prices for B.C.-grown cauliflower declined from \$10.85 to \$8.04 per carton, from 1990 to 1991, in response to dumped imports.

Counsel noted that the 1991 selling price of \$8.04 per carton was below the B.C. growers' COP which was estimated at \$9.92 per carton by the Ministry of Agriculture, Fisheries and Food, Province of British Columbia (the Ministry).

At an F.O.B. price of US\$4.94 a carton, California cauliflower lands in British Columbia at about \$8.51. Counsel submitted that, at this price, growers incur a substantial loss per carton.

In 1989 and 1990, according to counsel, B.C. growers were marginally profitable. In 1991, the industry incurred losses that offset the profits from the two previous years.

Counsel argued that the losses incurred in 1991 were the result of B.C. growers having to compete with dumped U.S. imports. According to counsel, B.C. average selling prices declined by \$2.81 per carton, or 25 percent, resulting in a loss of \$1.81 per carton in 1991. Counsel also presented evidence of individual grower losses in 1991. Counsel contended that, without the imposition of provisional anti-dumping duties in September 1992, B.C. growers that harvested in the fall would have suffered losses.

Counsel submitted that production and sales volumes declined from over 189,000 cartons in 1985 to 116,000 cartons in 1992. Total sales value declined from over \$1.4 million in 1989 to just over \$1.0 million in 1991. In addition, counsel pointed to the evidence of individual growers that the acreage devoted to cauliflower has decreased over the last decade. Counsel pointed to the evidence of industry witnesses that these reductions were a function of price erosion in the B.C. market and the consequence of low-priced U.S. imports. Counsel submitted that these growers are prepared to increase their production of cauliflower if anti-dumping duties are imposed on imports of

U.S. cauliflower. According to counsel, the evidence of underutilization of capacity dovetails to a certain extent with the concept of retardation.

On the question of future injury, counsel submitted that California cauliflower production is controlled by large corporations that, according to the evidence of one industry witness, are engaged in an internal price war for increased market share in both the United States and Canada, which has led to overproduction. According to counsel, the dumping experienced in 1991 was part of an entrenched historical pattern which was bound to continue in the absence of anti-dumping duties, thereby causing injury.

RESPONSE

In its submission and at the hearing, the WGA took the position that it was not the importation of the subject goods that was causing injury to B.C. growers. Rather, other factors affected the production and marketing of B.C.-grown fresh cauliflower.

Counsel for the WGA argued that the unprofitable result experienced by B.C. growers in the 1991 crop year was unusual compared to the trend over the period 1988-92. Counsel noted that, in the years prior to 1991, B.C. growers were profitable and that profitability returned in 1992.

According to counsel, B.C. growers overproduced in 1991. Counsel pointed to the evidence of a grower from Washington who stated that weather conditions in the spring of 1991 disrupted the planting schedule, resulting in bunched plantings and periodic gluts of B.C. cauliflower coming to market in particular weeks.

Counsel submitted that there was no evidence in support of the complainant's claim that imports of California cauliflower were from large corporate farms. Counsel contended that the evidence shows only that imports originate in California.

Counsel contended that, while California cauliflower production is substantially greater than that of British Columbia, California growers did not overproduce in 1991.

Counsel suggested that the Ministry's COP was overstated and that the landed price of imports calculated by industry witnesses was understated.

Respecting the COP, counsel argued that certain cost elements, such as rent, were overstated in view of the fact that many growers own the land that they farm. Counsel submitted that the COP does not account for the proportion of naked cauliflower grown in British Columbia, which has a COP of \$1.00 less than the Ministry's COP, which is based on cello-wrapped cauliflower. In addition, counsel contended that 30 percent of the B.C. cauliflower grown and marketed is not represented in the Ministry's COP, as there is no COP information for Island nor Interior. Counsel pointed to the evidence of an industry witness who confirmed that the COP was based on the operating costs of his farm, which is a Cloverdale member.

Respecting the landed price of imports, counsel pointed to the evidence of a wholesaler who gave higher estimates of the cost of freight, palletizing and cooling, and brokerage than those provided by industry witnesses.

According to counsel, low B.C. selling prices are largely self-imposed. Counsel rejected the argument of B.C. growers that the industry is a price taker. Counsel submitted that B.C. selling prices are set well before the actual U.S. F.O.B. market price and held that there is apparently little marketing of B.C. cauliflower. For example, the industry does not use the concept of B.C. freshness as a promotional tool. Counsel submitted that B.C. growers choose to price below the landed price of California imports when they should be able to extract a premium for locally grown produce. In addition, counsel argued that low prices, such as those that occurred in 1991, reflect the ups and downs of the fresh produce market and pointed to the evidence of an industry witness who acknowledged that there are good and bad years, 1991 being bad for everyone while the following year, 1992, was profitable. Counsel argued that the low prices in 1991 were unusual compared to the trend over the five-year period 1988-92.

Counsel argued that the financial losses experienced by B.C. growers in 1991 were the result of overproduction and self-imposed pricing practices, such as selling below the landed price of U.S. imports.

In 1992, certain growers reduced their acreage planted in cauliflower. According to counsel, that was a choice made by those growers to take themselves out of the cauliflower market. Counsel noted that the largest grower in British Columbia increased its acreage planted and was very successful in 1992. In addition, counsel submitted that the reduced number of cauliflower growers is not solely the result of low prices in 1991 and could be attributed to a number of other factors.

On the question of future injury, counsel submitted that it is necessary to examine the industry's performance over the Tribunal's five-year period of inquiry. According to counsel, the evidence shows that 1991 was the only unprofitable year and that, if there was injury in that year, it did not extend into 1992, and there is no reason to believe that it would recur in 1993.

Finally, counsel took issue with the industry's view that it is a regional industry. Counsel submitted that the concentration figures are deceiving because they include imports during the month of June which, according to counsel, should be excluded, as California supplies a very large percentage of the B.C. market in that month while B.C. growers have a limited volume of cauliflower for sale. In addition, counsel argued that, historically, sales to other provinces by B.C. growers have been as high as 22 percent of the industry's total sales and could return to that level in the future. Counsel also noted that there is evidence that cauliflower from other provinces has been sold in the B.C. market.

ECONOMIC INDICATORS

The principal industry performance indicators for the B.C. fresh cauliflower industry are summarized in the following table.

B.C. FRESH CAULIFLOWER INDUSTRY ECONOMIC INDICATORS						
Crop Year¹	1988	1989	1990	1991	June/July 1991	June/July 1992
Total Apparent Market (000 cartons)	343	365	396	366	162	147
B.C. Growers						
Volume (000 cartons)	119	114	114	118	43	44
Market Share (%)	34.8	31.3	28.7	32.2	26.7	30.0
U.S. Imports						
Volume (000 cartons)	224	251	282	248	119	103
Market Share (%)	65.2	68.7	71.3	67.8	73.3	70.0
B.C. Average Selling Price (\$ per carton)						
B.C. Growers	10.52	10.43	10.85	8.04	N/A	12.49 ²
U.S. Imports (CAN\$ landed)	9.79	10.50	10.16	8.51	N/A	14.50 ²
B.C. Growers						
Acreage Planted	445	421	337	411	N/A	392 ²
Total Production (000 cartons)	150	142	129	127	N/A	116 ²
Cost of Production (\$ per carton)	9.92	9.92	9.92	9.92	9.92	9.92 ²
Profit or (Loss) (\$ per carton)	0.60	0.50	0.93	(1.88)	N/A	2.57 ²
N/A = Not applicable.						
1. The B.C. producers' crop year is the period from June 20 to October 31 of each year. Imports, however, are reported for the full months from June to October.						
2. Data are for full crop year 1992.						
Source: Pre-hearing staff report and evidence adduced at the public hearing.						

Since 1988, the total apparent market for cauliflower in British Columbia has fluctuated from a low of 343,000 cartons in 1988 to a high of 396,000 cartons in 1990. B.C. growers' shipments have remained in the range of 114,000 to 119,000 cartons.

U.S. imports, mostly from California, supply the market demand not met by B.C. production. These imports have fluctuated from a low of 224,000 cartons in 1988 to a high of 282,000 cartons in 1990.

Over the period of inquiry, B.C. growers have maintained about 27 to 35 percent of the market, while U.S. imports peaked with over 70 percent of the market in 1990. In fact, imports lost over 3 percentage points of market share in 1991, and this trend appears to be continuing in 1992.

During the period of inquiry, average U.S. F.O.B. selling prices per carton, in U.S. funds, were \$5.68 in 1988, \$6.52 in 1989, \$6.47 in 1990, \$4.94 in 1991 and \$7.17 in 1992.

B.C. growers' average selling prices declined substantially in 1991, following a decline in the price of imports, but recovered to a five-year high of \$12.49 per carton in 1992.

The average COP for a standard 23-lb. cello-wrapped carton of cauliflower was estimated by the Ministry, for the 1991 crop year, to be \$9.92, based on a target yield of 700 cartons per acre. This includes cultivation and harvesting costs of \$5.51, co-op charges (including pre-cooling) and carton costs of \$3.18, and packing line labour costs of \$1.23 per carton. This model was based mostly on data supplied by one grower and includes estimates for depreciation, rent, interest, labour and other charges, which may or may not apply to all growers, or may vary from grower to grower depending on the particular circumstances of each.

The B.C. cauliflower industry made a profit in four of the five years between 1988 and 1992, based on the Ministry's estimated COP.

In 1991, the United States produced 617 million pounds of cauliflower for the fresh market, of which over 80 percent was grown in California. Over the 1989-91 period, area harvested in California declined by almost 5 percent, while actual production dropped by 7 percent. During the same period, the farm value of cauliflower in California went from almost US\$150 million to US\$127 million, a decline of over 15 percent. The same trend appears in other growing areas.

REASONS FOR DECISION

Under section 42 of SIMA, the Tribunal is required to determine whether the dumping of fresh cauliflower, as found by the Deputy Minister, has caused, is causing or is likely to cause material injury to the production in British Columbia of like goods.

The Tribunal must consider three main issues in this inquiry. First, the Tribunal must determine whether cauliflower grown for the fresh market and cauliflower grown for processing are like goods. Second, the Tribunal must determine whether B.C. growers of cauliflower represent a separate regional industry, and, if so, whether the two requirements of paragraph (1)(ii) of Article 4 of the Code relating to injury are satisfied. Third, the Tribunal must determine whether the dumping of the subject

imports has caused, is causing or is likely to cause material injury to the domestic production of like goods.

LIKE GOODS

Under subsection 42(1) of SIMA, the Tribunal must inquire into whether the dumping of goods is causing material injury to the "production in Canada of like goods." Therefore, as part of its task in determining material injury to production in Canada, the Tribunal must determine what like goods are, within the meaning of subsection 42(1) of SIMA.

Prior to the hearing, the Tribunal requested that the parties address the issue as to whether cauliflower grown for the fresh market and cauliflower grown for processing are "like goods."

Counsel for the complainant submitted that the cauliflower grown for these two markets are not "like goods." Evidence in support of this submission focussed on the following differences between the goods and the markets in which they are sold. First, cauliflower processors are required by law to buy only cauliflower that has been contracted for in accordance with regulations governing their relationship with growers. These regulations include the requirement that the processors buy product only at, or above, the contracted price negotiated with growers of cauliflower for processing prior to planting. Second, due to differences such as varietal factors, labour needs, plant utilization schedules and harvesting techniques, fresh cauliflower is diverted for processing only in exceptional circumstances. And third, the characteristics of the varieties grown for the two markets are such that they should not be seen as substitutes. This evidence suggests that the "Matra" strain, the main variety used in the processing industry, is desirable for processing because it is dense and resists crumbling. This variety is not suited to the fresh market because of its "fuzziness" and because leaves grow in the cauliflower head. On the other hand, the "White Rock" strain, the main variety grown for the fresh market, is not suited to processing because it tends to crumble when cut into florets prior to processing.

The Tribunal notes that a witness testified that cauliflower grown for processing can be, and sometimes is, sold in the fresh market. However, this witness did not support this testimony with statistical data. Further, the complainant's evidence summarized above was not challenged by counsel for the WGA in any significant way.

Subsection 2(1) of SIMA defines "like goods" in relation to 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.*

In the opinion of the Tribunal, cauliflower grown for processing is not identical in all respects to cauliflower grown for the fresh market within the meaning of the definition of "like goods" under paragraph (a) of subsection 2(1) of SIMA. Consideration must therefore be given to whether the uses and other characteristics of cauliflower grown for the fresh market and cauliflower grown for processing closely resemble one another, including the degree of substitutability between both.

In the view of the Tribunal, the different varieties used in the two markets do not share similar physical characteristics, the purchasers of these products distinguish between them in that buyers in the two markets prefer different varieties, and these varieties only compete with each other in limited circumstances. Therefore, the Tribunal is of the view that the uses and characteristics of cauliflower grown for the fresh market and cauliflower grown for processing do not closely resemble each other and are not "like goods" within the meaning of subsection 2(1) of SIMA.

DOMESTIC INDUSTRY

Before considering the issue of material injury to production in Canada, the Tribunal must decide whether the production of fresh cauliflower in British Columbia meets the regional industry requirements of Article 4 of the Code, which the Tribunal must consider pursuant to paragraph 42(3)(a) of SIMA. Paragraph 1(ii) of Article 4 of the Code provides:

[I]n 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.

In the view of the Tribunal, paragraph 1(ii) of Article 4 of the Code involves a two-part analysis. First, growers 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 growers outside the market. In other words, a separate regional industry may be found to exist provided there is an isolated market. Second, where an isolated market is determined to exist, injury may be found only if, in addition to material injury, it is determined that: (i) there is a concentration of dumped imports into the isolated market; and (ii) the dumped imports are causing injury to growers of all, or almost all, of the production within that market.

With respect to the determination of whether an isolated market exists, the following table shows that, since 1988, B.C. growers have sold in excess of 80 percent of their fresh cauliflower production in British Columbia. In crop year 1991, this amount was 92 percent of total sales. As regards the second requirement for an isolated market, the evidence shows that, except for a small amount of cauliflower grown in Manitoba in 1992, no fresh cauliflower grown in the rest of Canada was shipped to British Columbia during the period of inquiry. Therefore, these two requirements have been met, and B.C. growers of fresh cauliflower are considered a separate industry for purposes of this inquiry.

ISOLATED MARKET FACTORS					
Crop Year	1988	1989	1990	1991	1992
Total Sales from B.C. Production					
Volume (cartons)	152,780	142,256	128,702	127,256	116,000
Percent of Total Sales	100	100	100	100	100
Sales to B.C. Market					
Volume (cartons)	119,436	114,417	113,770	117,720	109,040 ¹
Percent of Total Sales	78	80	88	92	94 ¹
Sales to Other Provinces					
Volume (cartons)	33,344	27,799	14,932	8,612	5800 ¹
Percent of Total Sales	22	19	12	7	5 ¹
Exports					
Volume (cartons)	nil	40	nil	924	1160 ¹
Percent of Total Sales	nil	1	nil	1	1 ¹
Sales to British Columbia from Other Provinces					
Volume (cartons)	nil ²	nil ²	nil ²	nil ²	nominal ³

1. Estimate based on percentage breakdown in the Commission's questionnaire response and applied to the complainant's estimated total sales for 1992.
 2. Based on Agriculture Canada annual unload figures.
 3. Importers' questionnaire responses and testimony at the public hearing.

Source: Pre-hearing staff report, questionnaire responses and evidence adduced at the public hearing.

The Tribunal now turns to the two requirements or conditions in paragraph (1)(ii) of Article 4 of the Code, relating to injury, that must be satisfied if an injury finding is to be made.

The first of the two conditions in the second part of a regional industry analysis is whether there is a concentration of dumped imports. In the past, the Tribunal and its predecessor, the Canadian Import Tribunal, have used several tests in determining whether or not there is concentration. These have been identified as the "density" test, the "distribution" test and the "ratio" test, which is a variant of the distribution test.

The density test compares the volume of dumped imports within the regional market to the total regional market volume. The distribution test compares the volume of the subject imports into the regional market to the volume of the subject imports into the national territory. The ratio test compares B.C.'s share of the subject imports into Canada to its share of total fresh cauliflower consumption in Canada.

In this case, the application of these three tests reveals that, during the 1991 crop year, 68 percent of the cauliflower consumed in British Columbia was dumped (density test), that 30 percent of the total subject imports into Canada were consumed in British Columbia (distribution test) and that the share of the subject imports into British Columbia was 3.6 times greater than B.C.'s share of Canadian consumption (ratio test).

In light of previous decisions, it is the opinion of the Tribunal that a concentration of dumped imports of fresh cauliflower into the regional market exists under any of these tests.

As regards the final requirement in paragraph (1)(ii) of Article 4 of the Code, the Tribunal is satisfied that the complainant represents "all or almost all of the production" within British Columbia. The growers represented by the complainant account for 100 percent of the domestic production of like goods in British Columbia. Whether all, or almost all, of these growers have been injured by the dumped imports is a question that the Tribunal considers, below, in its analysis of material injury.

MATERIAL INJURY

Having found an isolated market, determined that there is a concentration of dumped imports into that market and determined that the complainant represents all, or almost all, of the production within that market, the next step is to consider whether that industry has suffered material injury caused by the dumped imports. The Tribunal proposes to address the issues of material injury and causality by reviewing the events that have occurred in the B.C. marketplace since 1988. Such a review is necessary to discern the movements and trends in the marketplace respecting market shares, prices and profitability. A number of other issues come into play in this case and will be discussed in the following pages.

In addressing the issues, the Tribunal has looked at events during the period from June to October of each year, which incorporates the B.C. crop year from June 20 to October 31. The Tribunal measured industry profitability on the basis of a COP model, created by the Ministry for crop year 1991, and applied it to each of the five crop years covered by the inquiry. Market data for the industry were based on the sales volume reported by the Commission and Cloverdale. The 1992 market share information was determined for only June and July of that year due to available import data being limited to those two months. Market data were presented in 23-lb. cartons, as this is the industry's standard marketing unit, and accounts for the vast majority of sales by the three sales agencies authorized by the Commission to market the subject cauliflower in British Columbia.

The Tribunal recognizes that California is the price setter for fresh cauliflower throughout North America, as it is by far the major growing region on the continent. In British Columbia, as elsewhere, the price for the local product is generally established on the basis of landed prices of imports from California, adjusted to take into consideration local market conditions. The Tribunal also notes that California prices are subject to free market supply and demand conditions and may fluctuate widely within very short periods of time, reflecting changes in growing, harvesting and market conditions.

In 1988, B.C. cauliflower growers produced and marketed over 152,000 cartons of fresh cauliflower, of which 78 percent was sold on the B.C. market. The industry's market share was approximately 35 percent. The balance of the market was supplied by imports from the United States, of which over 70 percent came from California. The average selling price for B.C.-grown cauliflower was \$10.52 per carton in 1988. U.S. prices ranged from US\$4.00 to US\$6.00, averaging around US\$5.68 per carton in that year. On sales revenue of over \$1.6 million, the B.C. industry recorded a profit of about \$0.60 per carton.

In 1989, B.C. marketed production declined by over 10,000 cartons, or about 7 percent, to just over 142,000 cartons. B.C. growers sold about 114,000 cartons to the local market, a slight drop from the previous year. U.S. imports from states other than California increased by over 50 percent, while California imports declined marginally. The total market grew by about 6 percent, rising to about 365,000 cartons. In these circumstances, B.C. growers' market share declined slightly to just over 31 percent. U.S. prices firmed in 1989, particularly from mid-August to October. Prices ranged from US\$4.00 to over US\$9.00, averaging around US\$6.50 for the period. Although U.S. prices and the landed price of imports into the B.C. market increased, average B.C. selling prices declined about \$0.10, to \$10.43 per carton. B.C. sales revenue, in 1989, declined to just under \$1.5 million, which resulted in an industry profit of \$0.50 per carton.

In 1990, the industry reduced production, marketing some 13,000 fewer cartons than in the previous year. The sales reduction was primarily to out-of-province markets, as sales to the B.C. market remained unchanged from those in 1989. California imports increased over 40 percent in 1990, while imports from other U.S. sources declined. The B.C. market increased about 8 percent, with the result that the B.C. industry's market share declined by two percentage points to about 29 percent. U.S. selling prices in 1990 were lower than in 1989 during June and July, but recovered from August to October, resulting in a marginal decline in the average U.S. F.O.B. price to just under US\$6.50 per carton. The average landed import price in the B.C. market declined to \$10.16 per carton. B.C. growers' average selling prices increased to \$10.85 per carton in 1990. Although total sales revenue declined almost 6 percent, to just under \$1.4 million, the industry's total profit on sales grew from approximately \$72,000 to almost \$120,000, an increase of 66 percent, and the industry increased its profit per carton by over 85 percent, rising from \$0.50 in 1989 to \$0.93 per carton in 1990.

In 1991, B.C. production declined nominally to just over 127,000 cartons. As in 1990, the sales reduction was primarily to out-of-province markets. These fell by over 40 percent compared to the previous year. Sales to the B.C. market actually increased in 1991, rising to about 118,000 cartons. California imports declined by about 13 percent, and the total B.C. market dropped by just under 8 percent. The result was an increase in the B.C. growers' market share in 1991, which rose from about 29 percent to just over 32 percent.

In June 1991, U.S. prices were considerably higher than those experienced during the same period in the previous three years. In July, however, U.S. F.O.B. prices declined dramatically to a range of US\$3.00 to US\$4.00 per carton and remained in that range until about the last week of August, when they increased to over US\$8.00 per carton. This partial recovery was short-lived, as prices declined in September to a range of US\$4.00 to US\$6.00 and remained at that level for the balance of the 1991 crop year. These low prices had a disastrous effect on the price of B.C.-grown cauliflower, which

follows U.S. prices. The average landed price of U.S. imports into the B.C. market declined to about \$8.50 per carton. The average selling price of B.C. cauliflower dropped by more than \$2.00 per carton in 1991, to \$8.04 per carton. This price erosion led to a financial loss of over \$239,000, or \$1.88 per carton, based on the Ministry's COP of \$9.92 per carton.

In 1992, B.C. growers reduced total marketed production for the crop year by about 8 percent, to approximately 116,600 cartons. The market data available for June and July 1992 indicate that industry sales volume remained virtually unchanged from the same period in 1991. However, imports declined in that two-month period of 1992, shrinking the market by just over 9 percent. The market share held by B.C. growers in that period of 1992 increased from about 28 percent to 30 percent.

U.S. F.O.B. prices increased dramatically in 1992, reaching a range of US\$10.00 to US\$13.00 per carton in June and early July, but then fell to a range of US\$4.50 to US\$6.50 per carton until the end of the first week of August. In mid-August, U.S. prices increased steeply to a range of US\$11.00 to US\$12.00 per carton, falling again to around US\$7.00 per carton at the beginning of September. Provisional anti-dumping duties were imposed on September 3, 1992. The average U.S. F.O.B. price over the 1992 crop year was US\$7.17 per carton. At that price, the average landed price of U.S. imports into British Columbia was over \$14.00 per carton. The Tribunal notes that the average landed price for the three months prior to the imposition of anti-dumping duties was over \$12.00 per carton. B.C. selling prices increased in 1992 in response to these U.S. prices, rising to a range of \$12.00 to \$14.00 per carton in June and remaining in the range of \$11.00 to \$12.00 per carton throughout the period preceding the imposition of provisional anti-dumping duties. The Tribunal heard evidence that B.C. selling prices were so high that total demand for cauliflower declined, making it impossible for B.C. growers to take advantage of the anti-dumping duties by way of a further price increase. The average B.C. selling price for the 1992 crop year was \$12.49 per carton, which yielded an average profit of \$2.57 per carton.

The complainant submitted evidence of reduced acreage planted in cauliflower in 1992. The Tribunal heard evidence that the reductions by certain growers were in response to severe financial losses incurred in 1991, allegedly due to dumped imports. However, the Tribunal notes that the largest grower in British Columbia, that had increased its area planted in 1991 to some 50 acres, replanted that same area in 1992 based on its assessment that cauliflower prices would improve. In fact, prices did improve in 1992, which supports the evidence of that grower to the effect that there are good and bad years in the horticultural product industry.

It appears to the Tribunal that the risk involved in cauliflower production requires growers to be in a position to withstand the temporary negative financial impact of price swings which inevitably occur from time to time. In the Tribunal's view, cauliflower production in British Columbia is engaged in by growers that have a range of commitments to that particular product. Indeed, the Tribunal heard evidence concerning the mix of horticultural products grown by individual producers, which suggests that most growers place considerably more emphasis on crops other than cauliflower. The fact that a major grower remained committed to the cauliflower market after the low prices of 1991 leads the Tribunal to the view that the recovery of prices in 1992 was not entirely unexpected and that the severe decline in 1991 was regarded as an unusual event, given the trend in prices over the period 1988-90. In light of the evidence, it is the

view of the Tribunal that 1991 was an unusual year in terms of price levels and should not be regarded as indicative of the longer term price trends for cauliflower.

In assessing the B.C. industry's profitability over the period of inquiry, the Tribunal has relied on the Ministry's COP model, which estimates the average COP, in 1991, to be \$9.92 per carton. The model essentially reflects the costs of a single B.C. grower located in the Cloverdale growing area. In the Tribunal's view, certain costs may differ from one co-op grower group to another, for example, co-op charges, overhead and land rent expenses. The Tribunal notes that no growers from the Island or Interior co-operatives appeared. Furthermore, the sole farm-pack producer did not appear at the public hearing to assist in establishing the actual COP for that product. In addition, the COP of naked packs is about \$1.00 per carton lower than that for cello-wrapped packs, which formed the basis for the model. As well, a Washington grower testified that its COP was lower than the Ministry's estimate for B.C. growers, even though growing conditions in Washington and British Columbia are very similar. Although the Ministry's model has been adopted for analytical purposes, the Tribunal notes that the evidence presented during the public hearing suggests that the Ministry's COP is not applicable to all B.C. growers.

In the course of presenting evidence, a witness for the complainant alleged that California cauliflower growers overproduced in 1991, contributing to low U.S. F.O.B. prices. However, the record shows that, for the full crop year in 1991, total area harvested in California declined by 1,300 acres, or over 2 percent, average yields were down by 8 percent and total fresh market production declined by over 50 million pounds, or about 9 percent, compared to 1990. Furthermore, the acreage harvested in California during the July-September period in 1991, which coincides with about 75 percent of the B.C. crop year, declined by 20 percent compared to the same period in 1990. The witness further alleged that U.S. F.O.B. prices were periodically below the U.S. COP determined by the Deputy Minister because supply exceeded demand for California-grown cauliflower. However, no evidence was provided to substantiate the claimed differential between U.S. demand and supply for California-grown fresh cauliflower.

In summary, between 1988 and July 1992, the B.C. cauliflower industry lost two percentage points of market share to U.S. imports. This, in itself, is not sufficient to be a cause of material injury, given that the market remained relatively steady over the period of inquiry. Prices in the marketplace were above the B.C. growers' COP in each crop year from 1988 to 1990, and the industry was profitable in each year. In 1991, U.S. F.O.B. prices dropped significantly, leading to the erosion of B.C. selling prices and rendering the industry unprofitable. U.S. and B.C. selling prices recovered in 1992, even prior to the imposition of anti-dumping duties and returned the industry to a very profitable position.

Based on an average B.C. selling price of \$12.49 per carton and the Ministry's COP of \$9.92, the industry achieved a 20-percent profit on sales in 1992.

The complainant submitted that B.C. growers have suffered injury through reduced sales volume and value over the period of inquiry. However, the record shows that, in 1991, industry sales volume into British Columbia increased almost to the 1988 level, and B.C. producers' market share increased from just over 28 percent, in 1990, to over 32 percent. Only in 1988 was the industry's market share higher than that of

1991, at almost 35 percent. It is notable that the industry's improved market share in 1991 occurred at the same time as the market declined by almost 8 percent.

In light of the foregoing, the Tribunal is persuaded that the dumping of the subject imports has not caused and is not causing material injury to the production in British Columbia of like goods.

With regard to the future, the evidence on pricing persuades the Tribunal that material injury is not likely to occur. The record shows that, during every crop year since 1988, with the exception of 1991, B.C. selling prices have been above the estimated COP. The Tribunal is not convinced that the interruption of this trend during one crop year in five is sufficient evidence of imminent injurious dumping, particularly in view of the strong recovery of selling prices in 1992. The Tribunal notes that the imposition of provisional anti-dumping duties in 1992 did not confer a benefit upon the B.C. industry, as prices had already increased to a level where the market could not bear the additional cost that would result from the growers pricing up to the full landed price of imports, including the anti-dumping duties. The Tribunal is of the opinion that, in the absence of anti-dumping duties, injurious dumping by U.S. exporters is neither imminent nor likely in the foreseeable future. Accordingly, the Tribunal finds that the dumping of the subject goods is not likely to cause material injury to the production in British Columbia of like goods.

CONCLUSION

In light of all of the foregoing, the Tribunal finds that the dumping of fresh cauliflower originating in or exported from the United States of America, for use or consumption in the province of British Columbia, has not caused, is not causing and is not likely to cause material injury to the production in British Columbia of like goods.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member