CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, November 6, 1995

Inquiry No.: NQ-95-002

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

THE DUMPING IN CANADA OF REFINED SUGAR ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA, DENMARK, THE FEDERAL REPUBLIC OF GERMANY, THE NETHERLANDS, THE UNITED KINGDOM AND THE REPUBLIC OF KOREA, AND THE SUBSIDIZING OF REFINED SUGAR ORIGINATING IN OR EXPORTED FROM THE EUROPEAN UNION

FINDINGS

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 of a preliminary determination dated July 7, 1995, and of a final determination dated October 5, 1995, respecting the dumping in Canada of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the United States of America, Denmark, the Federal Republic of Germany, the Netherlands, the United Kingdom and the Republic of Korea, and respecting the subsidizing of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the European Union.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds:

a) that the dumping in Canada of the aforementioned goods originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands, the United Kingdom and the Republic of Korea has not caused material injury or retardation to the domestic industry;

b) that the subsidizing of the aforementioned goods originating in or exported from the European Union has not caused material injury or retardation to the domestic industry;

c) that the dumping in Canada of the aforementioned goods originating in or exported from the Republic of Korea is not threatening to cause material injury to the domestic industry;

d) that the dumping in Canada of the aforementioned goods originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom is threatening to cause material injury to the domestic industry, but it excludes from the finding the goods listed in Appendix A; and

e) that the subsidizing of the aforementioned goods originating in or exported from the European Union is threatening to cause material injury to the domestic industry, but it excludes from the finding the goods listed in Appendix A.

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In accordance with subsections 43(1) and 43(1.01) of the *Special Import Measures Act*, the Canadian International Trade Tribunal finds that the dumping in Canada of the aforementioned goods originating in or exported from the United States of America has not caused material injury or retardation to the domestic industry, but is threatening to cause material injury to the domestic industry. The Canadian International Trade Tribunal excludes from this finding the goods listed in Appendix A.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Lyle M. Russell
Lyle M. Russell
Member

Michel P. Granger
Michel P. Granger
Secretary

The Statement of Reasons will be issued within 15 days.

APPENDIX A

GOODS EXCLUDED FROM THE FINDINGS MADE BY THE CANADIAN INTERNATIONAL TRADE TRIBUNAL IN INQUIRY NO. NQ-95-002

1. *Co-crystallized products* – For greater clarity, these products are comprised of sugar syrups or liquid sucrose blends and one or more non-sucrose ingredients combined through a co-crystallization process to form a dry solid structure in granulated or powder form.
2. *Pearl sugar* – For greater clarity, pearl sugar is hard granulated sugar, pellet-formed by subjecting sugar syrup to intense heat. The pellet, which is the size of a pea, is shaped like a football. It is coarser than coarse sugar, i.e. confectioners' sugar.
3. *Bottler's floc-free beet sugar* – Imported by McNeil Consumer Products Company for use in pharmaceutical preparations.
4. *Lyle's Golden Syrup* – Produced by Tate & Lyle PLC.
5. *Lyle's Pouring Syrup* – Produced by Tate & Lyle PLC.
6. *Daddy brand wrapped sugar dominoes in 1-kg boxes* – For greater clarity, these are sugar cubes which are wrapped in illustrated paper wrappings, each of which contains two sugar cubes.
7. *Daddy brand wrapped sugar cubes in 5-kg boxes containing 960 portions* – For greater clarity, each portion contains two sugar cubes which are wrapped in illustrated paper wrappings.
8. *Saint Louis brand pre-cut brown cane sugar lumps in 1-kg boxes* – For greater clarity, these are rough-shaped sugar lumps comprised of brown cane sugar.
9. *Daddy brand shaped white sugar pieces in 500-g boxes* – For greater clarity, these sugar pieces are pre-cut into diamond, heart, spade and club shapes.
10. *Daddy brand brown or blonde "Vergeoise" sugar in 500-g cases*.
11. *Comptoir du Sud brand brown and white sugar pieces in 1-kg and 500-g boxes.*
12. *Daddy brand brown coffee sugar in 500-g box packets* – For greater clarity, this is large granule brown sugar.
13. *Demerara sugar cubes* – Produced by Tate & Lyle PLC.
14. *Amber sugar crystals* – Produced by Tate & Lyle PLC. For greater clarity, these are large sugar crystals in varying shades of brown.
15. Low-colour liquid sucrose with a colour no higher than 10 maximum ICUMSA (International Commission for Uniform Methods of Sugar Analysis) colour units and distiller's grade liquid sucrose imported by Gilbey Canada Inc. for use as ingredients in its production process.

Inquiry No.: NQ-95-002

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	October 2 to 6, 1995 October 10 to 13, 1995 October 16 and 17, 1995
Date of Findings:	November 6, 1995
Tribunal Members:	Arthur B. Trudeau, Presiding Member Anthony T. Eyton, Member Lyle M. Russell, Member
Director of Research:	Peter Welsh
Lead Researcher:	John O'Neill
Researcher:	Paul Berlinguette
Researcher and Statistical Officer:	Marcie Doran
Director of Economics:	Dennis Featherstone
Economist:	Simon Glance
Statistical Officers:	Margaret Saumweber Nynon Pelland
Counsel for the Tribunal:	John L. Syme Heather A. Grant
Registration and Distribution Officers:	Pierrette Hébert Joël Joyal
Participants:	J. Christopher Thomas P. John Landry Gregory A. Tereposky Kaz Fujihara Sarah Pike Kathleen Macmillan
for	Canadian Sugar Institute
	(Complainant)

Richard G. Dearden
for Canadian Sugar Beet Producers' Association Inc.

(Supporting the Complaint)

Terrance A. Sweeney
Craig J. Webster
for R.W. Patten Distributors Ltd.

(Importer)

Richard S. Gottlieb
Peter E. Kirby
Robert J. Bertrand, Q.C.
for Savannah Foods & Industries, Inc.

(Importer/Exporter)

C.J. Michael Flavell, Q.C.
Geoffrey C. Kubrick
Paul M. Lalonde
Christopher J. Kent
for United Sugars Corporation

(Importer/Exporter)

Chris Hines
Gordon W.R. LaFortune
Chandra Gibbs
for Canadian Blending & Processing, Inc.
E.D. & F. Man (Sugar) Ltd.

(Producer/Importer and Exporter)

Peter Clark
for Canadian Industrial Sweetener Users
National Dairy Council of Canada

(Purchasers)

Paul D. Burns
for Domino Sugar Corporation
Tate & Lyle Industries Limited

(Exporters)

G.P. (Patt) MacPherson
Naila Elfar
for Coca-Cola Beverages Ltd.

(Purchaser)

Michael A. Kelen
for Effem Foods Ltd.

(Purchaser)

Richard A. Wagner
for Bakery Council of Canada

(Purchaser)

Randall J. Hofley
for The Quaker Oats Company of Canada Limited
McNeil Consumer Products Company

(Purchasers)

Jean-Pierre Chapleau
Vice-President
Canadian Honey Council

(Purchaser)

Helen Beyers
Quality Assurance Manager
Gilbey Canada Inc.

(Purchaser)

James D. Sutton
for Director of Investigation and Research
Bureau of Competition Policy
Department of Industry

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, November 21, 1995

Inquiry No.: NQ-95-002

THE DUMPING IN CANADA OF REFINED SUGAR ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA, DENMARK, THE FEDERAL REPUBLIC OF GERMANY, THE NETHERLANDS, THE UNITED KINGDOM AND THE REPUBLIC OF KOREA, AND THE SUBSIDIZING OF REFINED SUGAR ORIGINATING IN OR EXPORTED FROM THE EUROPEAN UNION

Special Import Measures Act - Whether the dumping and subsidizing of the above-mentioned goods have caused material injury or retardation or are threatening to cause material injury to the domestic industry.

DECISION: The Canadian International Trade Tribunal hereby finds:

a) that the dumping in Canada of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands, the United Kingdom and the Republic of Korea, has not caused material injury or retardation to the domestic industry;

b) that the subsidizing of the aforementioned goods originating in or exported from the European Union has not caused material injury or retardation to the domestic industry;

c) that the dumping in Canada of the aforementioned goods originating in or exported from the Republic of Korea is not threatening to cause material injury to the domestic industry;

d) that the dumping in Canada of the aforementioned goods originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom is threatening to cause material injury to the domestic industry, but it excludes from the decision the goods listed in Appendix A to its findings; and

e) that the subsidizing of the aforementioned goods originating in or exported from the European Union is threatening to cause material injury to the domestic industry, but it excludes from the decision the goods listed in Appendix A to its findings.

The Tribunal also finds that the dumping in Canada of the aforementioned goods originating in or exported from the United States of America has not caused material injury or retardation to the domestic industry, but is threatening to cause material injury to the domestic industry. The Tribunal excludes from this decision the goods listed in Appendix A to its findings.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	October 2 to 5, 1995 October 10 to 13, 1995 October 16 and 17, 1995
Date of Findings:	November 6, 1995
Date of Reasons:	November 21, 1995

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Participants:	J. Christopher Thomas P. John Landry Gregory A. Tereposky Kaz Fujihara Sarah Pike Kathleen Macmillan for Canadian Sugar Institute **(Complainant)**
	Richard G. Dearden for Canadian Sugar Beet Producers' Association Inc. **(Supporting the Complaint)**
	Terrance A. Sweeney Craig J. Webster for R.W. Patten Distributors Ltd. **(Importer)**
	Richard S. Gottlieb Peter E. Kirby Robert J. Bertrand, Q.C. for Savannah Foods & Industries, Inc. **(Importer/Exporter)**

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Michael A. Kelen
for Effem Foods Ltd.

(Purchaser)

Richard A. Wagner
for Bakery Council of Canada

(Purchaser)

Randall J. Hofley
for The Quaker Oats Company of Canada Limited
McNeil Consumer Products Company

(Purchasers)

Jean-Pierre Chapleau
Vice-President
Canadian Honey Council

(Purchaser)

Helen Beyers
Quality Assurance Manager
Gilbey Canada Inc.

(Purchaser)

James D. Sutton
for Director of Investigation and Research
Bureau of Competition Policy
Department of Industry

Witnesses:

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President
Canadian Sugar Institute

Andrew A. Ferrier
President
Redpath Sugars, A Division of
Redpath Industries Ltd.

Dean J. Bergmame, CGA
Vice-President of Finance and Secretary
Redpath Sugars, A Division of
Redpath Industries Ltd.

Arnold Robichaud
Vice-President of Distribution
General Manager
Quebec Operations
Redpath Sugars, A Division of
Redpath Industries Ltd.

André O. Bergeron
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D. Lafrance
Vice-President of Finance
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Robert Beauchamp
Vice-President
Sales and Marketing
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William N. Tumlin III
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Lauren D. Sprague
Savannah Foods & Industries, Inc.

Robert G. Atwood
President
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Ottawa, Tuesday, November 21, 1995

Inquiry No.: NQ-95-002

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TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
ANTHONY T. EYTON, Member
LYLE M. RUSSELL, Member

STATEMENT OF REASONS

BACKGROUND

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 (the Deputy Minister) of a preliminary determination[2] dated July 7, 1995, and of a final determination[3] dated October 5, 1995, respecting the dumping in Canada of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the United States of America, Denmark, the Federal Republic of Germany, the Netherlands, the United Kingdom and the Republic of Korea, and respecting the subsidizing of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the European Union. The complainant was the Canadian Sugar Institute (CSI), acting on behalf of Rogers Sugar Ltd. (Rogers), Lantic Sugar Limited (Lantic) and Redpath Sugars, a division of Redpath Industries Limited (Redpath).

On July 7, 1995, the Tribunal issued a notice of commencement of inquiry.[4] In that notice, the Secretary of the Tribunal (the Secretary) invited persons to notify the Tribunal whether they intended to make representations on the question of public interest, if the Tribunal made a finding of injury or threat of injury. Several persons announced their intention to make representations.

As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian manufacturers, importers and corporate purchasers of refined sugar. Respondents provided production, financial, import, export and market information, as well as other information relating to refined sugar, for the period from January 1, 1991, to March 31, 1995. Facts gathered by the Tribunal include information on sweeteners other

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1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.
2. Canada Gazette Part I, Vol. 129, No. 29, July 22, 1995, at 2359.
3. *Ibid.*, No. 43, October 28, 1995, at 3692.
4. *Ibid.*, No. 28, July 15, 1995, at 2296.

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than refined sugar, such as high-fructose corn syrup (HFCS) and non-caloric, high-intensity sweeteners. From replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

In addition to the usual methods of economic analysis, the Tribunal's research staff prepared preliminary quantitative economic estimates of the effects of dumped and subsidized imports. The estimates were prepared using an economic model called the "Commercial Policy Analysis System" (COMPAS).[5] A first set of estimates was based on data developed in the Protected Staff Economics Report,[6] along with the dumping margins and subsidy amounts in the preliminary determination. A revised set of estimates was made using the dumping margins and subsidy amounts in the final determination.

The Tribunal's staff held a technical meeting on August 8, 1995, to answer questions regarding COMPAS and the staff economics report. On September 21, 1995, the Tribunal heard argument regarding a motion by United Sugars Corporation (United) for an order directing the Tribunal staff and members to make no further use of COMPAS. On September 22, 1995, the Tribunal advised parties that it had decided to deny United's request. The Tribunal issued written reasons for its decision on October 2, 1995.

The complainant, as well as the Canadian Sugar Beet Producers' Association Inc. (the Association), that supported the complaint, were represented by counsel, as were numerous importers, exporters and purchasers of refined sugar. The Director of Investigation and Research, Bureau of Competition Policy, Department of Industry (the Director), was also a party to the inquiry and was represented by counsel. The Tribunal held a pre-hearing conference on September 22, 1995. Public and *in camera* hearings were held in Ottawa, Ontario, between October 2 and 17, 1995.

During the hearing, the Tribunal heard a motion from the Attorney General of Canada requesting the Tribunal to quash four subpoenas which had been served by Savannah Foods & Industries, Inc. (Savannah) on certain senior public servants. The subpoenas would have required the public servants to bring numerous documents with them when they appeared to testify at the hearing. The Tribunal quashed two of the subpoenas in their entirety. The remaining two subpoenas were quashed insofar as they required the public servants to produce a large number of documents. In its ruling, the Tribunal did say, however, that it expected those officials to inform themselves about certain matters and to bring to the hearing such documents as were relevant to those matters.

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5. COMPAS was described in the staff economics report as a simple static economic model designed to estimate the effects of dumped and subsidized imports on domestic revenues, prices and output. The possible effects of all other factors, such as the exchange rate, the business cycle and strikes, on the domestic industry are not taken into account in or measured by the model since they are held constant in the analysis. To estimate the effects of dumping and subsidizing, COMPAS uses actual data to describe the state of the domestic market in the presence of dumped and subsidized imports. COMPAS then estimates the effects on the domestic price, quantity and revenue of raising the prices of the subject imports to undumped prices (i.e. normal value) or unsubsidized prices. The difference between the actual data and the estimates represents the decrease that would occur in domestic revenues, prices and output because of dumped and subsidized imports.

6. August 30, 1995, Tribunal Exhibit NQ-95-002-30 (Protected), Administrative Record, Vol. 2A at 2.

The Attorney General of Canada sought a stay of the Tribunal's order in the Federal Court of Appeal. In declining to grant a stay in respect of the subpoenas generally, the Court stated that it was "not persuaded that the applicant would suffer irreparable harm if [the two public servants] were required to testify as to matters within their personal knowledge and not involving any confidential material.[7]" The Court did grant a stay against that part of the Tribunal's order that would have required the public servants to inform themselves and to bring certain documents with them to the hearing. Savannah subsequently decided that it did not wish to have one of the two public servants appear as a witness. The remaining public servant appeared and gave evidence.

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, the transcript of all proceedings and the Tribunal's reasons for its decisions relating to the motions on the use of COMPAS and on subpoenas to public servants. All public exhibits were made available to the parties. Protected exhibits were made available only to independent counsel who had filed a declaration and undertaking with the Tribunal.

The Tribunal issued its findings on November 6, 1995. On the same date, the Secretary informed parties, and those persons who had notified the Tribunal of their intention to make public interest representations, of the procedures for consideration of the public interest. The Secretary's letter invited persons wishing to make representations in support of a public interest investigation to file representations by December 4, 1995. Persons wishing to respond to these representations must do so by December 18, 1995. The Tribunal will advise persons on or before January 8, 1996, whether it considers that there is a public interest concern worthy of further investigation. If it decides to initiate an investigation, it will inform persons, on the same date, of the procedures to follow in that process.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION

The products that are the subject of this inquiry are described by the Deputy Minister in the final determination as refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form. Under the Harmonized Commodity Description and Coding System,[8] the subject sugar is classified in subheading Nos. 1701.91 and 1701.99 and under most tariff items of subheading No. 1702.90.[9]

Refined sugar is sold as white granulated, liquid and specialty sugars. Granulated sugar comes in a range of grain fractions (e.g. medium, fine and extra fine). Liquid sugar includes invert sugar. Specialty sugars include soft yellow sugar, brown sugar, icing sugar, demerara sugar and others. Specialty sugars may be in granulated, liquid or powdered form. Refined sugar is provided to customers in a broad range of shipping and packaging configurations. These include 2-, 4-, 10-, 20- and 40-kg bags, and in bulk by rail-car, truckload or one metric tonne intermediate bulk containers (tote bags). Liquid sugar is sold by rail-car, truckload, drum and pail.

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7. *The Attorney General of Canada v. Savannah Foods and Industries, Inc.*, unreported, Federal Court of Appeal, Court File No. A-627-95, October 10, 1995.

8. Customs Co-operation Council, 1st ed., Brussels, 1987.

9. For the full list of tariff items, see Department of National Revenue, Final Determinations of Dumping and Subsidizing, October 5, 1995, Statement of Reasons, Tribunal Exhibit NQ-95-002-4, Administrative Record, Vol. 1 at 239.

The period of investigation into dumping was from January 1, 1994, to February 28, 1995. The period of investigation into subsidizing was from January 1, 1993, to December 31, 1994.

In the final determination, the Deputy Minister identified 41 exporters and 185 importers of refined sugar into Canada. Four companies, namely, Domino Sugar Corporation (Domino), United, Savannah and Refined Sugars, Inc. (RSI), accounted for approximately 85 percent of the total shipments of the subject goods to Canada and approximately 95 percent of the goods exported to Canada from the United States. The investigation by the Department of National Revenue (Revenue Canada) of exports by United covered sales from its several sugar beet processing factories. In the case of Savannah, the investigation covered sales from both its cane sugar refineries and its sugar beet processing plants. Both United and Savannah acted as importers of record for sales to customers in Canada. Revenue Canada investigated exports from the sugar refineries of Domino and RSI. Some of their sales were to affiliated companies, Redpath in the case of Domino and Lantic in the case of RSI.

During the period of investigation, Revenue Canada reviewed 100 percent of Domino's and RSI's goods shipped to Canada, 99.7 percent of United's goods and 96.5 percent of Savannah's goods. In the case of Domino and United, 99.9 percent of the goods were found to have been dumped at weighted average margins of 45.9 and 40.7 percent, respectively. As for Savannah and RSI, 100 percent of the goods were found to have been dumped at weighted average margins of 43.8 and 46.0 percent, respectively. Since no information was requested from, or provided by, the remaining exporters in the United States, the weighted average margin of dumping was determined to be 44.3 percent.

Exports by E.D. & F. Man (Sugar) Ltd. (Man) represented a major portion of the subject goods shipped from the European Union to Canada during the period of investigation. Man is a broker with extensive international operations. It purchased refined sugar from all four EU countries included in the dumping investigation. These countries were Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom. Because Man did not provide a complete submission in response to Revenue Canada's request for information, the normal values were determined by ministerial specification under SIMA. On this basis, the weighted average margin of dumping was found to be 64.3 percent. Since no information was requested from, or provided by, the remaining exporters in the European Union, Revenue Canada determined that the weighted average margin of dumping was equal to 44.3 percent. Included among these exporters was Tate & Lyle PLC (Tate & Lyle), the owner of Redpath and Domino.

With respect to the Republic of Korea, four companies, which accounted for 95 percent of the subject goods shipped to Canada, did not provide complete responses to Revenue Canada's request for information. The normal values for those four companies were determined by ministerial specification under SIMA. The weighted average margin of dumping was found to be 64.3 percent. For the remaining Korean exporters from whom no information was requested or by whom none was provided, the weighted average margin of dumping was determined to be 44.3 percent.

The Deputy Minister determined that three subsidy programs (export refunds, a compensation system for storage costs and the U.K. refining aid) were available to European exporters during the period of investigation. He found these subsidies to be countervailable. Since Revenue Canada did not have the information necessary to determine the amount of subsidy for each exporter, the amount of subsidy was

determined by ministerial specification under SIMA. The total subsidy for exporters in the European Union was determined to be 50.79 ECUs/100 kg.[10]

According to Statistics Canada data, in 1994, 15 importers accounted for about 98 percent of all imports of the subject goods. Large importers were R.W. Patten Distributors Ltd. (Patten), Savannah, United and Canadian Blending & Processing, Inc. (CBP).[11]

Table 1 presents the results of the Deputy Minister's investigation. It shows the countries involved, companies investigated, the margins of dumping and the amount of subsidy for all EU exporters. The margins of dumping for Man apply to its exports from the four member states of the European Union from which it made sales to Canada.

Table 1

MARGINS OF DUMPING FOR REFINED SUGAR

Country	Company	Margin of Dumping Expressed as a Percentage of Normal Value
United States	Domino Sugar Corporation	46
	United Sugars Corporation	41
	Savannah Foods & Industries, Inc.	44
	Refined Sugars, Inc.	46
	All Other U.S. Exporters	44
European Union	E.D. & F. Man (Sugar) Ltd.	64
	Tate & Lyle Industries Limited	44
	August Topfer Co. GmbH	44
	VAN TOL B.V.	44
Republic of Korea	Cheil Foods & Chemicals Inc.	64
	Samsung Co. Ltd.	64
	Sam Yang Co. Ltd.	64
	Taihan Sugar Industrial Co. Ltd.	64
	Other Korean Exporters	44

AMOUNT OF SUBSIDY FOR REFINED SUGAR

All EU Members: 50.79 ECUs/100 kg

Source: Department of National Revenue, Final Determinations of Dumping and Subsidizing, October 5, 1995, Statement of Reasons, Tribunal Exhibit NQ-95-002-4, Administrative Record, Vol. 1 at 218.

[10]. On October 5, 1995, the date of the final determination, the amount of the subsidy (50.79 ECUs/100kg) was equal to $87.46/100 kg. The Deputy Minister found that, on average, during 1994, the amount of the subsidy was equivalent to 133 percent of the export price for subsidized sales to Canada. Department of National Revenue, Final Determinations of Dumping and Subsidizing, October 5, 1995, Statement of Reasons, Tribunal Exhibit NQ-95-002-4, Administrative Record, Vol. 1 at 218.

[11]. CBP is the importer of record, although Man retained title for sales of CBP-produced refined sugar in Canada.

PARTIES SUPPORTING THE COMPLAINT

Canadian Sugar Institute

The CSI is a trade association whose members are Rogers, Redpath and Lantic. Rogers has a cane sugar refinery in Vancouver, British Columbia, and two sugar beet processing plants in Winnipeg, Manitoba, and Taber, Alberta. Lantic has two cane sugar refineries in Montréal, Quebec, and Saint John, New Brunswick. Redpath has a cane sugar refinery in Toronto, Ontario.

Counsel for the CSI argued that the evidence showed overwhelmingly that dumped imports from the United States and the Republic of Korea, as well as dumped and subsidized imports from the European Union, had injured the Canadian industry. Counsel claimed that trade distortions in the United States and the European Union have created refined sugar surpluses. Exporters had targeted Canada, one of the few countries with no major trade barriers to imports of refined sugar. Counsel suggested that the Tribunal has the discretion to cumulate dumped imports from all sources. The margins of dumping are very high, and the country of origin is of no significance for the subject goods, according to counsel.

Counsel for the CSI submitted that the subject goods had caused substantial declines in net margins. Buyers had used import price quotations to leverage down prices from the domestic refiners. These quotations had direct and indirect price transmission effects in the retail and industrial markets. Margin depression had culminated in disastrous net margins and sharply reduced profits in early 1995 for Lantic and Redpath. Rogers faced dumped import competition in the profitable retail market, not only from the United States but also from the Republic of Korea, forcing a shift to lower-margin business and, subsequently, unacceptable shareholder returns. Counsel also argued that the COMPAS estimates reinforced the domestic industry's evidence that the subject goods had a significant negative effect on industry prices and revenues.

Counsel for the CSI argued that refiners' sales to the HFCS-substitutable segment of the market had allowed the refiners to maintain production volumes and, thus, lower unit costs, which helped to withstand the injury from dumped and subsidized imports. There were numerous examples of lost sales or margin depression due to liquid sugar sourced from Man. Counsel pointed out that this liquid sugar is liquefied from dumped or subsidized refined sugar.

Counsel for the CSI submitted that there was a threat of injury from U.S. imports. In the absence of a finding of material injury to the domestic industry, the conditions caused by dumped and subsidized imports that existed in 1994 and 1995 would intensify. Imports of U.S. sugar were increasing, and there was growth in sugar beet and sugar cane production in the United States. Counsel also contended that there was significant idle refining capacity in the cane sugar sector. Counsel argued that limited imports of liquid sugar had caused injury and created a threat of injury. Liquid sugar could be moved long distances, and there was a likelihood of the establishment of blending facilities at the United States-Canada border.

Counsel for the CSI also noted that the European Union is now the world's largest refined sugar producer and that the capacity available for subsidized EU exports posed a threat. The WTO subsidy

agreement[12] will bring little change in the volume of subsidized exports by the European Union and the amounts of subsidies on those exports for the next five years. They submitted that huge inventories will continue to threaten the Canadian market for refined sugar.

Canadian Sugar Beet Producers' Association Inc.

The Association is an organization which represents Canadian sugar beet growers in Alberta and Manitoba. The growers sell their entire crops to Rogers, which processes the beets in plants in Taber and Winnipeg.

Counsel for the Association stated that there was overwhelming evidence to support the Canadian refiners' position that the subject goods had depressed and suppressed prices in Canada and had been responsible for lost sales. Rogers' shift to lower-margin business had led to losses to the growers and to delays in investments. If Rogers could not continue to buy the crops, there would be nowhere to sell it. Without anti-dumping duties, counsel submitted, both processing plants would close. Counsel cited, as a major threat, United's plant in Drayton, North Dakota, 40 miles from the Canadian border, with a capacity far greater than that of the Canadian processors.

PARTIES OPPOSING THE COMPLAINT

R.W. Patten Distributors Ltd.

Patten is an importer and supplier/packager of refined granulated sugar in Ontario. Patten also manufactures certain sugar-containing products. It imports refined sugar from Domino in the United States.

Counsel for Patten claimed that there was no causal connection between imports and the alleged decline in the domestic industry's profits. Counsel argued that liquid sugar margins were relatively low to meet the HFCS threat which went beyond the "bottler" segment. They suggested that the Tribunal consider other factors in addressing the domestic industry's profitability, for example, raw sugar trading results and the debt charges of Redpath and Lantic to their parent firms. Counsel suggested that U.S. border measures[13] affecting Canadian exports had also hurt Rogers and beet growers. In addition, counsel suggested that, although claiming to counter U.S. imports, Lantic and Redpath could have shipped goods west of Ontario, but did not do so. Counsel submitted that there were no major sales lost to dumped imports.

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[12]. WTO members have made commitments regarding reductions both in the volume of subsidized exports of refined sugar and in the amounts of subsidy for those exports. Public Pre-Hearing Staff Report, August 31, 1995, Tribunal Exhibit NQ-95-002-6, Administrative Record, Vol. 1A at 67.

[13]. Between October 1, 1990, and December 31, 1994, Canada faced no prohibitive duties for its exports of refined sugar to the United States. However, since January 1, 1995, Canadian exports of refined sugar have become subject to U.S. import quotas on sugar and sugar-containing products. As a consequence, Canadian exports of refined sugar are restricted to levels well below those of previous years.

Savannah Foods & Industries, Inc.

Savannah exports refined sugar to Canada under the U.S. Sugar Re-Export Program[14] and is the importer of record for all sales. Savannah has sold directly to Man and through brokers to other Canadian buyers.

Counsel for Savannah submitted that it had not caused or contributed to material injury to the domestic industry. Any injury was caused by the only new element in the Canadian market, the entry of sales of beet sugar from United. Counsel requested that imports from Savannah be excluded because, based on Savannah's past conduct, there was no threat of injury. They argued that the domestic refiners earned good returns, despite the fact that they considered dumping to have been occurring for many years. Counsel submitted that, for long-term contracts, the Tribunal should take into account the actual date of sale of the imports, as opposed to the date of actual delivery, when assessing injury. They also suggested that the Tribunal take into account the association between companies found to be dumping and the domestic refiners in determining the "domestic industry."

Counsel for Savannah argued that the pricing of imports in the domestic market did not reflect the dumping margin. Thus, the dumping margin should not be used as the measure of the decline in import prices in COMPAS.

United Sugars Corporation

United is a co-operative of sugar beet processors owned by sugar beet growers. The processing plants are located in several central and northern U.S. states. United sells refined sugar directly to buyers in Canada and is the importer of record for these sales.

Counsel for United submitted that imports from related U.S. companies were harming the Canadian refiners and suggested that the Tribunal examine the impact of these sales on the domestic industry's performance. They also suggested that the Canadian refiners filed their complaint to retaliate against the closure of the U.S. border. Counsel rejected claims of differences between refined sugar made from sugar cane and sugar beets and opposed the exclusion for cane refined sugar. Given recent successful beet crops, particularly in 1994, counsel claimed that it was unlikely that the Canadian beet processing plants would close. It was also unlikely that a refiner with a monopoly position like Rogers would close. Counsel argued that the evidence suggested some degree of tacit market sharing among the domestic producers. Import competition kept the industry honest. The domestic industry's profit margins showed that the refiners are doing well. The Tribunal should look at the financial relationships between the refiners and affiliated companies. Counsel also argued that it did not take a model like COMPAS to show that there will be injury when there is a high, but meaningless, margin of dumping.

Counsel for United argued that its good profits were not unseemly. United had no plans to take over the Canadian market and only sought a market share of 3 to 5 percent, and its sales in Canada were made at a profit. In counsel's view, United took sales because it was competitive and offered a good product.

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[14]. Under this program, U.S. cane sugar refiners can buy raw sugar offshore at world market prices and export the equivalent amount of refined sugar. Public Pre-Hearing Staff Report, August 31, 1995, Tribunal Exhibit NQ-95-002-6, Administrative Record, Vol. 1A at 71.

Counsel suggested that the CSI's evidence was not well-founded. It was difficult to determine the Canadian price, particularly for contracts with up-front rebates. An examination of allegations of lost sales and price suppression relating to United showed that the Canadian refiners had relied far too much on "scuttlebutt and verbal information" in pricing refined sugar. Counsel also remarked on the difficulty of rebutting confidential allegations.

Canadian Blending & Processing, Inc./E.D. & F. Man (Sugar) Ltd.

CBP produces liquid sugar and other sugar products from imported granulated white sugar. Its plant is located in Windsor, Ontario. Man is an importer which sells refined sugar and other sugar products to customers in Canada. It buys granulated white sugar in Europe and the United States. CBP processes refined sugar on a toll basis for Man to produce liquid sugar and other sugar products which Man sells in Canada. CBP also exports sugar products made from refined sugar purchased from Man.

Counsel for CBP and Man submitted that there was no evidence of injury or threat of injury. Any margin reduction was due to other factors, such as interest paid by the refiners to their parent companies and the cost of shipping sugar from Vancouver, British Columbia, to the Prairies in 1992 and 1993. Counsel argued that alternative sweeteners had forced the Canadian refiners to maintain competitive prices. They suggested that they had reduced margins on liquid sugar to be more competitive with HFCS. Counsel submitted that Man and CBP had refuted the allegations of lost sales and margin suppression. Counsel submitted that much of the sugar sold by Man in the early 1990s was from Finland, not a member of the European Union at that time, and that the liquid sugar sold by Man was produced by CBP, a domestic producer. Counsel argued that, despite high production in the European Union for many years, very little EU sugar had been sold in Canada. Had the European Union intended to swamp the Canadian market, it would already have done so.

Counsel for CBP and Man argued that an injury finding would put CBP out of business. They indicated that the domestic refiners had offered sugar to CBP at no discount. Consequently, the company had no other source of supply of refined sugar. Counsel requested three exclusions. The first is for granulated refined sugar imported by CBP for the production of liquid sucrose and liquid invert sugar. The second is for refined sugar imported from Denmark, the Netherlands, the Federal Republic of Germany and the United Kingdom. The third is for subsidized imports of refined sugar from the EU member states. Counsel submitted that the Tribunal does not have the discretion to interpret the word "negligible[15]" in SIMA and should use Tribunal statistics for determining thresholds.

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[15]. Subsection 2(1) of SIMA provides, in part, as follows:

> *"negligible" means, in respect of the volume of dumped goods of a country,*
>
> *(a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods,*
>
> *except that*
>
> *(b) where the total volume of dumped goods of three or more countries, each of whose exports of dumped goods into Canada is less than three per cent of the total volume of goods referred to in paragraph (a), is more than seven per cent of the total volume of goods referred to in paragraph (a),*
>
> *the volume of dumped goods of any of those countries is not negligible.*

Bakery Council of Canada

The Bakery Council of Canada is a trade association representing firms in the Canadian baking industry which use sugar in their production processes. Counsel for the Bakery Council of Canada submitted that the dumped imports had not caused material injury to the domestic industry. He argued that the traditional indicators, namely, production, the market, market share, capacity, capacity utilization, inventories, employment and profitability, showed no injury. If there is any injury, it is not from dumped or subsidized imports. Counsel pointed out that, in the 1990s, margins were being squeezed for everyone. He suggested that other factors, such as the financing costs that Redpath and Lantic pay to their parent firms, the closure of the U.S. market, the influence of HFCS and the domestic industry's forays into liquid sugar, were injurious to the refiners. Counsel argued that, if there was any injury, it was only in the retail sector. Witnesses had provided evidence rebutting the two claims of injury in the industrial sector. Accordingly, imports for the industrial sector, a market which is dominated by purchases from the domestic refiners, should be excluded.

Effem Foods Ltd.

Effem Foods Ltd. (Effem) uses refined sugar products in the manufacture of food products, including several brand-name chocolate bars. Counsel for Effem submitted that there was no evidence of material injury to the domestic industry and requested an exclusion for refined cane sugar imported from the United States by industrial users. Counsel claimed that the domestic refiners' performance indicators were enviable and did not reveal material injury. In this connection, he submitted that Canadian refiners' margins had been unreasonably high in the past and were still profitable at present. Imports were needed to keep the Canadian market competitive. Counsel also stated that the Canadian refiners were closely related to two major exporters and should not be allowed to profit from their own dumping. Counsel suggested that the dumping action might be retaliatory to recent U.S. measures against Canadian sugar products.

Moreover, counsel for Effem submitted that, if there was any injury, it was caused by beet sugar. He pointed out that the U.S. cane refining industry had suffered because of a large sugar beet crop. Counsel argued that, since sugar sold under the U.S. Sugar Re-Export Program had been at prevailing market prices, it could not have caused injury.

Canadian Industrial Sweetener Users and National Dairy Council of Canada

The Canadian Industrial Sweetener Users (CISU) is a coalition of Canadian food and beverage producers that use refined sugar as a production input. Members of the National Dairy Council of Canada (Dairy Council) use refined sugar in the manufacture of dairy products.

Counsel for the CISU and the Dairy Council requested an exclusion for refined sugar for sales to the industrial market. He submitted that there was no injury and that, in particular, there was no injury in the industrial sector because of the absence of valid claims concerning industrial users. Counsel also disputed claims that, once closed, sugar beet processing plants do not reopen. He pointed out that the plant in Taber, which closed in 1985, had indeed reopened one year later. In counsel's view, beet growers are in a difficult position because Rogers is their only customer.

Counsel for the CISU and the Dairy Council maintained that COMPAS does not address price undercutting. He argued that COMPAS can only find injury. In addition, he argued that COMPAS estimates

a greater amount of injury in uncompetitive markets. In his view, the Canadian sugar market was uncompetitive. Counsel suggested that it was not the purpose of the Tribunal to maintain oligopoly profits. It should consider other factors affecting the domestic industry, such as the closure of the U.S. market, higher profits because of an absence of competition, the industry's market structure and a changed post-NAFTA selling environment. Counsel argued that domestic rather than foreign competition had caused a change in margins and that domestic refiners had no interest in the smaller accounts. Counsel suggested that liquid sucrose and liquid invert sugar compete with HFCS.

In addition, counsel for the CISU and the Dairy Council argued that the Tribunal had the discretion to cumulate, including to cumulate dumped imports and subsidized imports. He submitted that issues contained in submissions to the Department of Finance regarding making raw sugar eligible for duty-free entry under the General Preferential Tariff deserved further study. Counsel also argued that the threat of European sugar was diminished due to the European Union's commitment under the World Trade Organization to reduce subsidies.

Coca-Cola Beverages Ltd.

Coca-Cola Beverages Ltd. (Coca-Cola) uses liquid caloric sweeteners[16] in the production of beverages in several plants throughout Canada. Coca-Cola purchases both liquid sugar and HFCS, and all its plants can use them interchangeably.

Counsel for Coca-Cola requested that the Tribunal consider liquid sugar as a separate class of goods. Counsel argued that liquid sugar differs greatly from granulated and specialty sugars because of, among other things, different physical characteristics, different patterns of use and lower margins. It also competes with HFCS, has different freight intensity, greater susceptibility to spoilage and different marketing channels. Counsel submitted that only in the non-HFCS-substitutable segment were there allegations that imports had affected domestic liquid sugar sales. No case for injury could be made for imported liquid sugar, as many allegations concerned domestic liquid sugar blended from imported granulated sugar.

Counsel claimed that a run of the COMPAS model for only liquid sugar showed no evidence of injury. They requested that the Tribunal exclude liquid sugar containing not less than 30 percent by weight of water, manufactured in the same facility as the refined sugar to the user's final specifications, or alternatively for use in the manufacture of beverages.

Director of Investigation and Research

The Director participated in the inquiry on behalf of the Bureau of Competition Policy. Counsel for the Director suggested that the Tribunal give little, if any, weight to the COMPAS results. He argued that COMPAS would give more accurate estimates if run with an oligopolistic market structure, both before and after the application of anti-dumping and countervailing duties, thus reflecting the refined sugar market in Canada. Without this change in the model, COMPAS overestimates the injury, according to counsel.

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16. Liquid caloric sweeteners include, among others, refined sugar and HFCS.

PARTIES REQUESTING SPECIFIC PRODUCT EXCLUSIONS[17]

Exclusions were requested by Domino and Tate & Lyle, exporters of refined sugar, and by The Quaker Oats Company of Canada Limited and McNeil Consumer Products Company, users of refined sugar products. Their counsel argued that the Canadian refiners do not, and do not intend to, manufacture the products in question or any directly substitutable products. Several other parties not represented by counsel also requested specific product exclusions. They were the Canadian Honey Council, Gilbey Canada Inc., Aliments Tousain Inc. and Belgica Waffles Inc.

PRELIMINARY MATTERS

Pursuant to section 42 of SIMA, as amended by the *World Trade Organization Agreement Implementation Act*[18] (the WTO Implementation Act), the Tribunal is required to "make inquiry ... as to whether the dumping or subsidizing of the goods [to which the preliminary determination applies] ... has caused injury or retardation or is threatening to cause injury." (Emphasis added)

In its decision in Inquiry No. NQ-95-001,[19] the Tribunal discussed, in detail, its views as to the impact of the amendments to SIMA on the manner in which the Tribunal makes findings under subsection 43(1) of SIMA in respect of its inquiries under section 42. The Tribunal concluded that it is no longer directed to consider "past, present and future" injury, but rather is directed to consider whether the domestic industry either has suffered material injury or is threatened with material injury. In other words, injury and threat of injury are distinct findings, and the Tribunal does not need to make a finding relating to both under subsection 43(1) of SIMA.[20] The Tribunal, in this case, agrees with these views. Furthermore, the Tribunal agrees that it should first consider and make a finding regarding injury. If it made a finding of no injury, it would then go on to consider the evidence relating to threat of injury and make a finding in respect of that question.

"Injury" is defined in section 2 of SIMA as "material injury to a domestic industry." "Domestic industry" is defined, subject to certain exceptions, as "the domestic producers as a whole of the like goods or those ... whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods." Accordingly, the Tribunal will first determine the "like goods" for the purposes of this inquiry and, subsequently, the domestic producers that constitute the "domestic industry." The Tribunal will then go on to consider whether it may exercise its discretion under subsection 42(3) of SIMA to make a cumulative assessment of the dumping or subsidizing of the subject goods on the domestic industry.

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17. See section on "Requests for Exclusions."
18. S.C. 1994, c. 47.
19. *Caps, Lids and Jars Suitable for Home Canning, Whether Imported Separately or Packaged Together, Originating In or Exported from the United States of America*, Finding, October 20, 1995, Statement of Reasons, November 6, 1995.
20. *Ibid*. at 8-10.

Like Goods

The Tribunal must address two issues with respect to like goods in this case. First, it must determine what domestically produced goods are like the subject goods. Second, the Tribunal must determine whether those like goods should be divided into two or more classes.

Subsection 2(1) of SIMA defines "like goods," in relation to any other goods, as:

> *(a) goods that are identical in all respects to the other goods, or*
> *(b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.*

Counsel and parties to the inquiry were unanimous in asserting that refined sugar from the subject countries, whether in granulated, liquid or powdered form, is fungible with domestically produced sugar. As such, refined sugar produced by the domestic industry and the subject goods have the same end uses and compete with and, in many applications, can be substituted for one another.[21] Therefore, the Tribunal is of the view that domestically produced refined sugar is like the subject goods.

The second issue is whether the like goods should be divided into two or more classes. Counsel for Savannah and counsel for Effem submitted that refined sugar should be divided into two classes: refined sugar produced from sugar cane and refined sugar produced from sugar beets.

Counsel for Coca-Cola argued that refined sugar should be divided into three classes: granulated, liquid and specialty sugars.[22] Counsel indicated that Coca-Cola's interest was confined solely to liquid sugar. Counsel concluded their argument by requesting that the Tribunal make an independent finding with respect to liquid sugar. In support of this request, counsel referred the Tribunal to several bases upon which liquid sugar could be distinguished from other forms of refined sugar.[23] None of the other parties to the inquiry supported Coca-Cola's request or, except for the proposed cane/beet division, argued that refined sugar should be divided into separate classes.

In *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd.*,[24] the Federal Court of Appeal reviewed a material injury finding of the Anti-dumping Tribunal (the ADT). In making that finding, notwithstanding the fact that the Deputy Minister's preliminary determination of dumping had identified four separate classes of goods and provided margins of dumping for each class, the ADT considered the aggregate impact of the four classes of subject goods on all like goods produced in Canada. In overturning the ADT's finding, the Court stated that the ADT had a duty to inquire into whether the dumping of each class of goods, for which separate margins of dumping had been provided, had caused,

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[21]. Transcript of Public Hearing, Vol. 1, October 2, 1995, at 107, Vol. 4, October 5, 1995, at 619, Vol. 7, October 11, 1995, at 1473, and Vol. 9, October 13, 1995, at 1804, 1808 and 1930.

[22]. In its preliminary submission in this inquiry, Coca-Cola requested that the Tribunal direct its staff to distinguish between liquid and all other forms of refined sugar in developing its staff report.

[23]. Transcript of Argument, Vol. 2, October 17, 1995, at 317-23.

[24]. [1982] 2 F.C. 283.

was causing or was likely to cause material injury to the production in Canada of goods that could be considered like goods in relation to each class.[25]

In *Sarco Canada Limited v. The Anti-dumping Tribunal*,[26] the Federal Court of Appeal accepted the ADT's approach to the analysis of like goods, where the ADT stated that,

> *the question of whether goods are "like" is to be determined by market considerations. Do they compete directly with one another? Are the same consumers being sought? Do they have the same end use functionally? Do they fulfill the same need? Can they be substituted one for the other?*[27]

The Federal Court of Appeal also noted that it was important that the ADT consider all of the characteristics or qualities of the goods, including their physical characteristics.[28]

Unlike the situation in *Noury Chemical*, where the Deputy Minister identified four classes of subject goods, the Deputy Minister, in this case, has identified only a single class of subject goods, refined sugar, whether produced from sugar cane or sugar beets and whether in granulated, liquid or powdered form. In determining whether the various types of Canadian-produced refined sugar represent separate classes of like goods, the Tribunal must take market considerations into account, as well as the physical characteristics of the goods.

Turning first to the issue of whether cane sugar and beet sugar should be considered separate classes of like goods, the Tribunal is of the view that the preponderance of evidence indicates that, in the vast majority of uses, cane sugar and beet sugar are substitutable.[29] One witness indicated that there is no "practical difference" in the marketplace between refined sugar produced from sugar beets and refined sugar produced from sugar cane.[30]

Moreover, it is clear from the record that cane sugar and beet sugar regularly compete with one another for the same end users in the marketplace and have the same end use functionally as sweeteners.[31] Finally, there are no physical differences which warrant the division of cane sugar and beet sugar into separate classes. In light of the foregoing, the Tribunal sees no basis for treating cane sugar and beet sugar as separate classes of like goods.

Coca-Cola asked the Tribunal to make a separate finding with respect to liquid sugar. In order to proceed in this manner, the Tribunal would have to be prepared to conclude that liquid sugar constitutes a separate class of like goods. Turning first to market considerations, in the Tribunal's view, liquid sugar and other forms of the subject goods have the same end use functionally and compete with and, in many

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25. *Ibid*. at 285-86.
26. [1979] 1 F.C. 247.
27. *Ibid.* at 250.
28. *Ibid.* at 253.
29. Transcript of Public Hearing, Vol. 1, October 2, 1995, at 184, Vol. 2, October 3, 1995, at 530, Vol. 6, October 10, 1995, at 1178-9, Vol. 7, October 11, 1995, at 1474, and Vol. 8, October 12, 1995, at 1689.
30. Transcript of Public Hearing, Vol. 3, October 4, 1995, at 595-96.
31. For example, see Transcript of Public Hearing, Vol. 8, October 12, 1995, at 1701-2.

applications, are substitutable for one another. The Tribunal heard evidence that, over the last few years, there has been a shift to liquid sugar from granulated sugar.[32] In its public questionnaire response, Coca-Cola indicated that it had phased out its use of granulated sugar and now uses liquid sweeteners exclusively.[33]

The statistics relating to domestic production of, and the apparent market for, refined sugar generally support this view. During the Tribunal's inquiry period, while production of white granulated sugar in Canada grew in absolute terms, it declined in terms of its share of total production of refined sugar. Over the same period, domestic production of liquid sugar grew at a more substantial rate and, in 1994, represented a significantly greater share of total refined sugar production than it had in 1990.[34] Further, the Tribunal notes that, with the exception of the first quarter of 1995, over its inquiry period, the apparent market for liquid sugar grew at a greater rate than the apparent market for refined sugar as a whole.[35]

The Tribunal notes that most liquid sugar produced in Canada is simply granulated sugar with water added. In light of this fact, it would seem self-evident that liquid sugar could be used in the production of many of the same products as granulated sugar and vice versa. It is clear that Coca-Cola, for example, has substituted liquid sugar for granulated sugar in the production of its various beverages. The Tribunal notes that the reason that purchasers buy liquid sugar is, in most instances, because of the internal savings and handling benefits which stem from the fact that they do not have to liquefy the sugar themselves.[36] In other words, purchasers' decisions to buy liquid sugar do not typically flow from any qualitative or functional differences offered by liquid sugar.

The Tribunal notes that most domestically produced liquid sugar and granulated sugar have the same chemical composition. In terms of the liquid versus the solid distinction, the Tribunal is of the view that it is of marginal significance, in and of itself. The Tribunal also notes that this distinction does not translate into significant functional differences. As noted, liquid sugar could be used interchangeably in many applications with other forms of refined sugar.

In conclusion, the Tribunal is not persuaded that the market considerations or the physical differences between liquid sugar and the other forms of refined sugar are such as would justify making liquid sugar a separate class of like goods.

Domestic Industry

Rogers, Redpath and Lantic produce refined sugar in all of the various forms provided for in the Deputy Minister's description of the subject goods. These include refined sugar, refined from sugar cane and, in the case of Rogers, from both sugar cane and sugar beets, in granulated, liquid and powdered form. CBP produces liquid sugar and other sugar products using imported granulated refined sugar as an input.

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32. Transcript of Public Hearing, Vol. 1, October 2, 1995, at 64-65.
33. Tribunal Exhibit NQ-95-002-21.9, Administrative Record, Vol. 5.2 at 175.
34. Protected Pre-Hearing Staff Report, August 31, 1995, Tribunal Exhibit NQ-95-002-7 (protected), Administrative Record, Vol. 2 at 75.
35. Protected Pre-Hearing Staff Report, revised September 20, 1995, Tribunal Exhibit NQ-95-002-7A (protected), Administrative Record, Vol. 2 at 208 and 227.
36. Transcript of *In Camera* Hearing, Vol. 2, October 4, 1995, at 339.

Three exporters of refined sugar to Canada are affiliated either directly or indirectly with the complainants. RSI is a wholly-owned subsidiary of Lantic, which in turn is owned by Rogers. Domino is owned by Tate & Lyle, which also owns Redpath. Both Domino and Tate & Lyle export refined sugar to Canada. In addition, a fourth exporter, Man, owns 85 percent of CBP.

Rogers, Redpath and Lantic are also importers of the subject goods. During the period of inquiry, Redpath imported specialty sugar from Domino and Tate & Lyle,[37] while Lantic imported refined sugar from RSI for resale in Canada.[38] Rogers imported the subject goods from unspecified sources.[39]

As indicated earlier, section 42 of SIMA requires the Tribunal to determine whether the dumping or subsidizing of the subject goods has caused material injury or retardation or is threatening to cause material injury to the domestic industry. The "domestic industry" is defined in subsection 2(1) of SIMA as:

> *the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers.*

There are three issues that must be addressed in defining "domestic industry" in this inquiry. The first issue is whether Rogers, Lantic and Redpath ought to be excluded from the domestic industry on the basis that they are either "related" to exporters or because they are themselves importers of the subject goods.[40] The second issue is whether CBP constitutes a "domestic producer" for the purposes of defining "domestic industry." The third issue is whether CBP ought to be excluded from the domestic industry on the basis that it is "related" to an exporter or importer.

Pursuant to subsection 2(1.2) of SIMA, a domestic producer is considered to be related to an exporter or importer where

> *(a) the producer either directly or indirectly controls, or is controlled by, the exporter or importer,*
> *(b)the producer and the exporter or the importer, as the case may be, are directly or indirectly controlled by a third person, or*
> *(c)the producer and the exporter or the importer, as the case may be, directly or indirectly control a third person,*
>
> *and there are grounds to believe that the producer behaves differently towards the exporter or importer than does a non-related producer.*

Subsection 2(1.3) of SIMA provides that a person is deemed to control another "where the first person is legally or operationally in a position to exercise restraint or direction over the other person."

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37. Tribunal Exhibit NQ-95-002-10.2 (protected), Administrative Record, Vol. 4B at 171-72.
38. Tribunal Exhibit NQ-95-002-10.1 (protected), Administrative Record, Vol. 4 at 256.
39. Tribunal Exhibit NQ-95-002-10.3 (protected), Administrative Record, Vol. 4C at 282.
40. The issue of excluding domestic producers from the definition of "domestic industry" was specifically raised by certain counsel in respect of Redpath and Lantic.

Given that RSI is a wholly-owned subsidiary of Lantic, which in turn is owned by Rogers, the Tribunal is of the view that Rogers and Lantic control RSI for the purposes of paragraph 2(1.2)*(a)* of SIMA. In order for Rogers and Lantic to be considered to be "related" to RSI for the purposes of the definition of "domestic industry," subsection 2(1.2) of SIMA further requires that there exist grounds to believe that Rogers and Lantic behave differently towards RSI than do unrelated producers. In the Tribunal's view, this further requirement is met by both Rogers and Lantic, given their regular participation with RSI in joint meetings with B.C. Sugar.[41] In the Tribunal's view, it is unlikely that an unrelated producer would participate in similar discussions with RSI.

The Tribunal is also of the view that, pursuant to paragraph 2(1.2)*(b)* of SIMA, Redpath and Domino are controlled by Tate & Lyle. Moreover, it considers Redpath and Domino to be "related," as they, like Rogers, Lantic and RSI, communicate with one another on an ongoing basis.[42] For example, Redpath's and Domino's representatives have engaged in discussions regarding possible joint efforts with respect to customers.[43] In the Tribunal's view, these communications provide adequate grounds for believing that Redpath behaves differently towards Domino than does an unrelated producer.

The Tribunal notes that the wording of the definition of "domestic industry" in subsection 2(1) of SIMA is almost identical to paragraph 1 of Article 4 of the GATT Anti-Dumping Code,[44] which the Tribunal was required to consider in defining the domestic industry for the purposes of an inquiry prior to the amendments to SIMA resulting from the WTO Implementation Act.[45]

The Tribunal notes that the wording of the definition of "domestic industry" in SIMA uses the word "may," thereby indicating that it is within the Tribunal's discretion to exclude, or not to exclude, those producers that are related to exporters or importers, or that are themselves importers of the dumped or subsidized goods. The Tribunal further notes that its predecessors, as well as itself, have not exercised this

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41. Transcript of Public Hearing, Vol. 4, October 5, 1995, at 695.
42. Manufacturer's Exhibit A-27 at 2, Administrative Record, Vol. 9A.
43. Transcript of Public Hearing, Vol. 1, October 2, 1995, at 242.
44. *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*, signed in Geneva on April 12, 1979.
45. See former subsection 42(3) of SIMA.

discretion in favour of such exclusions, when to do so would effectively deny the existence of a domestic industry,[46] such as would result if the complainants were excluded from the domestic industry in this inquiry.

The Tribunal finds no compelling reason in this case for excluding the complainants from the domestic industry, either on the basis that they are related to exporters or because they are themselves importers of the subject goods. While Rogers, Redpath and Lantic may have regular contact with their respective "related" exporters, the Tribunal notes that each producer manages its business in a manner which is independent of the related exporter.[47] In fact, the Tribunal is of the view that these producers compete with their related exporters within the Canadian market. If the dumping of the subject goods by the related exporters is contributing to injury, in the Tribunal's view, this would not flow from the relationship between these producers and their respective related exporters.

With respect to the imports of the subject goods by these domestic producers, the Tribunal is of the view that, in the case of Lantic, the large volume of imports from RSI in 1993 was a result of special circumstances and does not reflect a practice of regular importations of significant quantities of the subject goods.[48] With respect to Redpath, the Tribunal notes that its importations are primarily for specialty goods, which the domestic industry does not manufacture and has no intention of manufacturing. Moreover, Redpath's imports from Domino and Rogers' imports of the subject goods constitute, in the Tribunal's view, insignificant volumes.[49] The Tribunal further notes that it is primarily Patten which imports the subject goods from Domino,[50] which goods compete with Redpath's production of refined sugar in the Canadian market.

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46. For example, see *Certain Solder Joint Pressure Pipe Fittings and Solder Joint Drainage, Waste and Vent Pipe Fittings, Made of Cast Copper Alloy, Wrought Copper Alloy or Wrought Copper, Originating in or Exported from the United States of America and Produced by or on Behalf of Elkhart Products Corporation, Elkhart, Indiana, Nibco Inc., Elkhart, Indiana, and Mueller Industries, Inc., Wichita, Kansas, their Successors and Assigns*, Canadian International Trade Tribunal, Inquiry No. NQ-93-001, Finding and Statement of Reasons, October 18, 1993; *Gasoline Powered Chain Saws Originating in or Exported from the Federal Republic of Germany, Sweden and the United States of America*, Canadian Import Tribunal, Inquiry No. CIT-2-87, Finding, July 3, 1987, Statement of Reasons, July 17, 1987; and *Bottoming Materials or Natural and/or Synthetic Rubber Composition Produced or Exported by or on Behalf of Goodyear Tire and Rubber Company, Windsor, Vermont and American Biltrite Incorporated, Chelsea, Massachusetts for Use in the Footwear Repair Industry, Including but not Limited to Heels, Half Soles, Full Soles, Sports Soles, Soling Sheets (Commonly Referred to as Solid Slabs and Printed Slabs) and Toplifting*, Anti-dumping Tribunal, Inquiry No. ADT-7-82, Finding, September 27, 1982, Statement of Reasons, October 29, 1982.

47. Manufacturer's Exhibit A-27 at 2, Administrative Record, Vol. 9A; and Manufacturer's Exhibit A-16 at 1, Administrative Record, Vol. 9A.

48. Tribunal Exhibit NQ-95-002-10.1 (protected), Administrative Record, Vol. 4 at 257; Transcript of *In Camera* Hearing, Vol. 4, October 6, 1995, at 701-3; and Manufacturer's Exhibit A-11 (protected) at 4, Administrative Record, Vol. 10A.

49. Tribunal Exhibit NQ-95-002-10.2 (protected), Administrative Record, Vol. 4B at 171; and Tribunal Exhibit NQ-95-002-10.3 (protected), Administrative Record, Vol. 4C at 282.

50. Tribunal Exhibit NQ-95-002-5 (protected), Administrative Record, Vol. 2 at 57.108-57.130.

The Tribunal also notes that the relationship between Domino and Patten predated Tate & Lyle's purchase of Domino and that Domino continues to sell significant quantities of the subject goods to Patten.[51]

The second issue to be addressed is whether CBP constitutes a domestic producer for the purposes of this inquiry. Counsel for CBP argued that their client is a domestic producer, given that it makes liquid sugar from imported refined granulated sugar. In light of the fact that CBP is producing liquid sugar, which is considered to be like goods for the purposes of this inquiry, the Tribunal agrees with counsel that CBP is a domestic producer for the purposes of defining "domestic industry."

The third issue to be addressed is whether CBP ought to be excluded from the domestic industry on the basis that it is "related" to Man. In the Tribunal's view, pursuant to paragraph 2(1.2)(*a*) of SIMA, CBP is controlled by Man by virtue of the fact that Man owns 85 percent of CBP. The Tribunal is also of the view that CBP behaves differently towards Man than does an unrelated producer. This conclusion is supported by the fact that all of the sugar used by CBP to produce liquid sugar and other sugar-containing products is imported by, or for, Man.[52] The Tribunal, therefore, considers CBP to be "related" to Man for the purposes of defining "domestic industry."

The Tribunal is of the view that CBP ought to be excluded from the domestic industry because of this relationship. The basis for this conclusion is that CBP uses only dumped or subsidized goods imported by, or for, Man. Man subsequently sells the refined sugar products produced by CBP from these imports to Man's customers in the Canadian market. As a result, in the Tribunal's view, CBP is acting jointly with Man in selling sugar products in the Canadian market at low prices made possible by dumped or dumped and subsidized inputs. As such, in the Tribunal's view, CBP is contributing to the downward pressure on net margins experienced in the Canadian market and, consequently, ought to be excluded from the domestic industry.

In the Tribunal's view, Rogers, Redpath and Lantic clearly constitute a major proportion of the total domestic production of the like goods for the purposes of defining "domestic industry."

Cumulation

The Deputy Minister made a preliminary determination that refined sugar originating in and exported from the United States, Denmark, the Federal Republic of Germany, the Netherlands, the United Kingdom and the Republic of Korea had been dumped in Canada and that subsidized refined sugar from the European Union had been exported to Canada. Subsection 42(1) of SIMA provides that the Tribunal shall make inquiry "as to whether the dumping or subsidizing of the goods [to which a preliminary determination applies] has caused injury or retardation or is threatening to cause injury."

One of the amendments made to SIMA by the WTO Implementation Act was the addition of subsection 42(3), which provides the Tribunal with the discretion to make an assessment of the cumulative

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51. Tribunal Exhibit NQ-95-002-5 (protected), Administrative Record, Vol. 2 at 57.110-57.130.
52. Importer's Exhibit F-2 at 1-2, Administrative Record, Vol. 11B.

effect of the dumping or subsidizing of goods to which a preliminary determination applies. Subsection 42(3) of SIMA provides as follows:

> *(3) In making or resuming its inquiry under subsection (1), the Tribunal may make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the preliminary determination applies that are imported into Canada from more than one country if*
>
> *(a) the margin of dumping or the amount of the subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and*
>
> *(b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and*
>
> *(i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or*
>
> *(ii) like goods of domestic producers.*

Prior to the addition of subsection 42(3), SIMA did not provide the Tribunal with express statutory authority to make cumulative assessments of the effects of the importation of dumped or subsidized goods. Notwithstanding this fact, it has been the Tribunal's practice, in inquiries which included goods from more than one source, to make a cumulative assessment of the effects of imports of all the subject goods on the domestic industry.[53]

In the present inquiry, the Deputy Minister's preliminary and final determinations indicate that goods exported from the United States and the Republic of Korea were dumped in Canada. The situation is different with respect to the European Union, in that virtually all of the exports originating in the European Union were both subsidized and dumped.

The geographic entity within which the subsidy originates is the European Union, not the individual countries that, during the Deputy Minister's period of investigation in this particular case, were exporting the subject goods from within the European Union. The Deputy Minister's preliminary and final determinations, with regard to subsidizing, are in respect of "refined sugar ... originating in or exported from the European Union." In the Tribunal's view, it is the effect of the subsidized goods originating in or exported from the European Union which the Tribunal is required to consider under subsection 42(1) of SIMA, even where those goods are also dumped. The Tribunal is of the view that the volume of subsidized exports from the European Union, at 7.4 percent of the total volume of imports of refined sugar into Canada from all countries during 1994,[54] is not negligible.

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[53]. For example, see *Polyphase Induction Motors Originating in or Exported from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America*, Canadian Import Tribunal, Inquiry No. CIT-5-88, Finding, April 28, 1989, Statement of Reasons, May 12, 1989.

[54]. The Tribunal used statistics for the 1994 calendar year for its cumulation analysis. This time period was selected because it represents a full calendar year for which import statistics were available and because it is the only overlapping period of time between Revenue Canada's dumping and subsidizing investigations.

Moreover, subsections 37.1(1) and (2) of the *Special Import Measures Regulations*[55] (the Regulations) prescribe certain factors for the Tribunal to consider in making its injury, retardation or threat of injury finding. The Tribunal notes that these factors have, as their primary focus, the effect or impact that dumped or subsidized goods have had or may have on a number of economic indicia. As already indicated, the subsidized goods and the dumped goods originating in the European Union are, in fact, one and the same goods. Given that fact, the Tribunal is of the view that, in considering the effect of the goods originating in the European Union, it is not possible to isolate the effects caused by the subsidizing from the effects caused by the dumping. In other words, the effects of subsidizing and dumping are so closely intertwined that it is impossible to unravel them so as to allocate specific or discreet portions to the subsidizing and dumping.

The volume of dumped goods from the Republic of Korea represents less than 3 percent of the total volume of refined sugar that was imported into Canada from all countries. In light of that fact, the Tribunal is of the view that Korean imports of refined sugar into Canada are "negligible" and may not form part of any cumulative assessment.[56]

In the analysis which follows, the Tribunal has made an assessment of the cumulative effect of the subsidized and dumped imports originating in the European Union and the dumped imports originating in the United States. The Tribunal considers such an assessment appropriate in light of the fact that the subject goods from the various sources of export are fungible between themselves and are fungible with domestically produced like goods. Consequently, the subject goods compete with one another and with like goods in the Canadian market.

COMPAS

In its ruling of September 22, 1995, on the motion regarding the use of COMPAS, the Tribunal indicated that it did not feel bound, legally or otherwise, to follow or adopt the Tribunal's staff's preliminary estimates of the effects of dumping and subsidizing. Moreover, the Tribunal indicated that it would decide what weight, if any, to accord to the results after it had had an opportunity to consider all the evidence on the record.

Although some parties supported the use of COMPAS, there was also considerable opposition to its use in this inquiry. The Tribunal noted the evidence of Dr. James A. Brander, an expert economist appearing on behalf of the CSI, that COMPAS could assist the Tribunal by helping to summarize information regarding the effects of dumping and subsidizing. Counsel opposing this view argued that the dumping margin and countervailing duty level for refined sugar, as calculated by the Deputy Minister, were not reflected in the pricing of refined sugar imports and should, therefore, not be used in COMPAS as the input parameter describing the decline in import prices as a result of dumping and subsidizing. Moreover, opposing counsel argued that the model's market structure assumptions did not reflect the reality of the Canadian refined sugar market.

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55. SOR/95-26, Canada Gazette Part II, Vol. 129, No. 1, January 11, 1995, at 80.

56. During 1994, the sum of all exports from the subject countries, each having less than 3 percent of the total volume of refined sugar imported into Canada, in total represented less than 7 percent of the total volume of refined sugar imported into Canada from all countries.

In reaching its overall decision, the Tribunal is persuaded that there is some merit to the arguments against relying on COMPAS estimates of the effects of dumping and subsidizing in this case. Accordingly, the Tribunal has decided not to give any weight to those estimates.

INJURY AND INDUSTRY PERFORMANCE INDICATORS

Subsection 37.1(1) of the Regulations prescribes factors that the Tribunal may consider when determining whether a domestic industry is being materially injured by dumped or subsidized imports. These factors include: the volume of the dumped or subsidized goods and their effect on prices in the domestic market for like goods; and the consequent impact of these imports on the state of the domestic industry. When examining the impact of the imports, the Tribunal considers the relevant economic factors, which include: actual or potential declines in output, sales, market share, profits, return on investments or utilization of industrial capacity; and actual or potential negative effects on cash flow, employment or the ability to raise capital.

The relevant economic indicators considered by the Tribunal in this inquiry are shown in Table 2. The table shows actual figures for the volume and value of the apparent market, as well as the capacity utilization rates. Due to the confidentiality of the remaining statistics, they are presented as indices, with the value for 1991 equal to 100. Rather than indices of the data for the first quarters of 1994 and 1995, the percentage change between the quarterly figures has been presented, with the exception of market share and per-tonne figures, where indices are used for the quarterly data. The Tribunal has not looked at these indicators in isolation. It has attempted to understand any interrelationships among them and especially to place them in context, recognizing the market dynamics during the inquiry period. The Tribunal has also considered the underlying market strategy adopted by the domestic refiners of protecting market share when faced with competition from dumped and subsidized imports.[57]

[57]. Manufacturer's Exhibit A-7 (protected) at 8, Administrative Record, Vol. 10; Manufacturer's Exhibit A-10 at 1, Administrative Record, Vol. 9A; Manufacturer's Exhibit A-13 (protected), Tab 17 at 1, Administrative Record, Vol. 10A; and Transcript of *In Camera* Hearing, Vol. 4, October 6, 1995, at 749.

Table 2

SELECTED ECONOMIC INDICATORS

	1991	1992	1993	1994	Q1 1994	Q1 1995
			Actual Data			
Market Volume (000 metric tonnes)	983	1,094	1,183	1,193	272	250
Market Value ($ million)	577	590	694	747	165	170
Capacity Utilization (%)	88	94	93	94	N/A	86
			Indices			
Market Share						
Industry Volume	100	102	99	101	101	99
					Percent Change over Previous Period	
Production Volume	100	109	114	119		0
Export Volume	100	97	96	126		-29
Import Volume						
United States	100	125	206	183		-26
Republic of Korea	100	82	94	201		-75
European Union	100	83	82	37		-61
Other Countries	100	44	6	1		N/A
Total Apparent Imports	100	97	131	110		-28
Capacity (volume)	100	102	107	111		N/A
Employment	100	97	90	91		N/A
HFCS - Market (volume)	100	86	86	94		53
	FY1991	**FY1992[1]**	**FY1993**	**FY1994**	**9 months FY1994**	**9 months FY1995**
Refiners' Sales Volume	100	97	115	119		-4
Refiners' Sales Value	100	88	112	125		5
Net Income Before Interest and Taxes						
- Value	100	87	117	105		-27
- $/Metric Tonne	100	90	102	88	98	74
Refining Margin Per Tonne (including trading profits)	100	93	93	85	N/A	86

N/A = Not available.

1. The refiners' fiscal year ends on September 30. The fiscal 1992 sales and net income figures include results for only 9 months for Lantic.

Source: Public Pre-Hearing Staff Report, August 31, 1995, Tribunal Exhibit NQ-95-002-6, Administrative Record, Vol. 1A; and Protected Pre-Hearing Staff Report, August 31, 1995, Tribunal Exhibit NQ-95-002-7 (protected), Administrative Record, Vol. 2.

The Tribunal agrees fully with many counsel that, on the basis of most typical indicators, the domestic industry has performed well. Refined sugar production, including sugar produced for export, increased by 19 percent during the Tribunal's period of inquiry. The domestic refiners were able to increase their sales volumes, maintain their share of the market and increase their capacity utilization during that period.

Table 2 shows that the volume of imports peaked in 1993, at 131 percent of the volume reported for 1991, declined during 1994 and declined again in the first quarter of 1995, compared to the first quarter of 1994. The CSI submitted Statistics Canada import data in support of its case. These import volumes differed from those compiled by the Tribunal's staff, which were compiled primarily on the basis of questionnaire responses. The Statistics Canada data show smaller declines in 1994 than those shown in the statistics compiled by the Tribunal's staff and an increase in the first quarter of 1995, compared with the first quarter of 1994, as opposed to the decrease shown in the statistics compiled by the Tribunal's staff. The Tribunal notes that both sets of data show that imports have declined since 1993.

The Tribunal also notes that the increases in domestic production, sales and market share were achieved in 1994 and early 1995 at the expense of imports. However, the domestic refiners were required to accept lower net refining margins and reduced profitability. As indicated in Table 2, net income before interest and taxes, on a per-tonne basis, declined by 12 percent between 1991 and 1994 and by a further 14 percentage points during the first nine months of fiscal year 1994-95. During the first quarter of 1995, prior to the initiation of Revenue Canada's dumping and subsidizing investigation, the net margins reported by the domestic refiners were the lowest reported during the Tribunal's inquiry period.[58]

Several counsel argued that the domestic refiners were earning substantial profits and were transferring these profits to their respective parent companies through interest or other payments. The Tribunal notes that it examined the combined industry "income before interest and taxes" figure that was compiled from information submitted by the domestic refiners.[59] This income indicator, which includes profits from trading raw sugar, peaked in 1993, then decreased in 1994 and declined in the interim 1995 period. Because this income indicator is calculated at a level before interest payments to affiliated companies, it is not affected by any internal debt financing payment arrangements or dividend plans that exist between the refiners and their affiliated companies.

In assessing net margins and how they changed during the course of the inquiry period, the Tribunal found it essential to examine how prices are determined in the Canadian market. The Tribunal found that the pricing of refined sugar in Canada is complex. The domestic refiners calculate their target list price for bulk refined sugar based on the Contract No. 11 raw sugar price on the New York Coffee, Sugar and Cocoa Exchange (NY No. 11). To the NY No. 11 price, the refiners add an allowance for currency exchange,

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[58]. Tribunal Exhibit NQ-95-002-10.1E (protected), Administrative Record, Vol. 4 at 284-85; Tribunal Exhibits NQ-95-002-10.2A (protected) and NQ-95-002-10.2B (protected), Administrative Record, Vol. 4B at 187-92 and 205, respectively; and Tribunal Exhibit NQ-95-002-10.3F (protected), Administrative Record, Vol. 4C at 334-38.

[59]. Protected Pre-Hearing Staff Report, revised September 20, 1995, Tribunal Exhibit NQ-95-002-7A (protected), Table 13, Administrative Record, Vol. 2 at 214.

transportation and other costs to deliver the sugar to their refineries,[60] plus a target margin which covers the costs of refining and other expenses, as well as an amount for profit. To the list price for bulk sugar, a product differential is added to calculate the specific price for the various refined sugar products and package configurations. The sugar is then generally sold at a discount from this list price. The amount of the discount varies with volume, trade level, type of product and other factors. The difference between the ultimate selling price paid by the customer and the landed cost of raw sugar is referred to as the "net margin."

The Tribunal found that the discussions about list prices, discounts and gross margins were not extremely helpful in understanding the pricing of refined sugar in the Canadian market. Discounts may increase, but if the list price also increases, the net ultimate price may be unchanged. In addition, movements in raw sugar prices affect the list price and may or may not be offset by changes in the other factors affecting the ultimate selling prices. Importers and suppliers of imported products tended to have price lists that changed periodically depending on market conditions. On the basis of the evidence on the record, it was difficult to track the progression of prices for imported refined sugar or to make meaningful comparisons to pricing information for domestically produced refined sugar.

Several counsel argued that reductions in the net margins earned were also the result of a time lag in the domestic refiners' ability to recoup rapidly rising raw sugar costs. It was submitted that, since the refiners had commitments to supply sugar at a fixed price in the future, they had not been able to pass on the full amount of raw sugar increases to all customers, thereby decreasing the overall net margins earned. The Tribunal notes that each of the domestic refiners testified that its raw sugar purchases were always fully hedged to protect the refiners from fluctuations in the world price of raw sugar.[61] Moreover, formula pricing, based on the pass-through to buyers of both increases and decreases in raw sugar costs, has long been the practice in Canada and is well understood and accepted by market participants. In the Tribunal's view, any lag in recouping the raw sugar cost increases experienced in 1994 and 1995 was, in some measure, due to competitive discounting by importers of refined sugar.

In addition, the Tribunal heard extensive testimony that there have been changes in how prices are negotiated for certain accounts, primarily larger industrial accounts. Historically, the most predominant method of determining the ultimate selling price was a discount from the list price. The Tribunal heard that, recently, some customers have moved toward different types of contracts, such as a "points-over" contract,[62] which is based on the NY No. 11 price, but with a fixed margin over the raw sugar costs. The Tribunal also heard that there has been a movement by some buyers toward assuming more of the exchange rate and commodity market risks on the purchase of raw sugar futures, thereby reducing the margin earned by the refiner commensurably. While this would account for some of the margin depression that the domestic refiners have experienced in recent years, the Tribunal was not convinced that this was a substantial factor in the overall net margin depression experienced. The evidence indicates that these changes occurred at a small number of accounts. Moreover, according to the evidence, these changes occurred before the decline in net margins experienced in late 1994 and early 1995.

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60. The domestic refiners purchase raw sugar primarily from Australia and Cuba.

61. Tribunal Exhibit NQ-95-002-10.2 (protected), Administrative Record, Vol. 4B at 45; Tribunal Exhibit NQ-95-002-10.1 (protected), Administrative Record, Vol. 4 at 72; and Tribunal Exhibit NQ-95-002-10.3 (protected), Administrative Record, Vol. 4C at 6.

62. Transcript of Public Hearing, Vol. 8, October 12, 1995, at 1533, 1624 and 1679.

There was evidence relating to differences in pricing, price transparency and net margins earned in two main sectors of the market, the industrial sector and the retail sector.[63] The industrial sector accounts for approximately 74 percent of the volume of sugar sold in Canada, while the retail sector accounts for the remaining 26 percent.[64]

The considerable evidence provided by the domestic refiners regarding net margin declines for a variety of individual customers was substantiated by the overall net margin declines revealed in the refiners' financial statements.[65] The Tribunal was convinced by this evidence that net margins in the industrial sector, on an account-by-account basis, were declining. The Tribunal's review of the information submitted concerning 32 industrial accounts[66] revealed that the average margin depression experienced in this sector between the fourth quarter of 1993 and the first quarter of 1995 equalled 30 percent.[67]

In the retail sector, traditionally the highest-margin sector, the net margins were also declining. The Tribunal's review of specific account information concerning 16 retail accounts[68] revealed that the average margin depression experienced in this sector between the fourth quarter of 1993 and the first quarter of 1995 equalled 24 percent.[69]

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63. This segment includes sales to the wholesale distributors, retail operations and foodservice companies.

64. Public Pre-Hearing Staff Report, revised September 29, 1995, Tribunal Exhibit NQ-95-002-6B, Table 7, Administrative Record, Vol. 1A at 216.

65. Protected Pre-Hearing Staff Report, August 31, 1995, Tribunal Exhibit NQ-95-002-7 (protected), Administrative Record, Vol. 2 at 91-92, and revised September 20, 1995, Tribunal Exhibit NQ-95-002-7A (protected), Administrative Recod, Vol. 2 at 214-16.

66. Tribunal Exhibit NQ-95-002-10.1 (protected), Administrative Record, Vol. 4 at 145-80; Tribunal Exhibit NQ-95-002-10.2 (protected), Administrative Record, Vol. 4B at 82-137; and Tribunal Exhibit NQ-95-002-10.3 (protected), Administrative Record, Vol. 4C at 230-53.

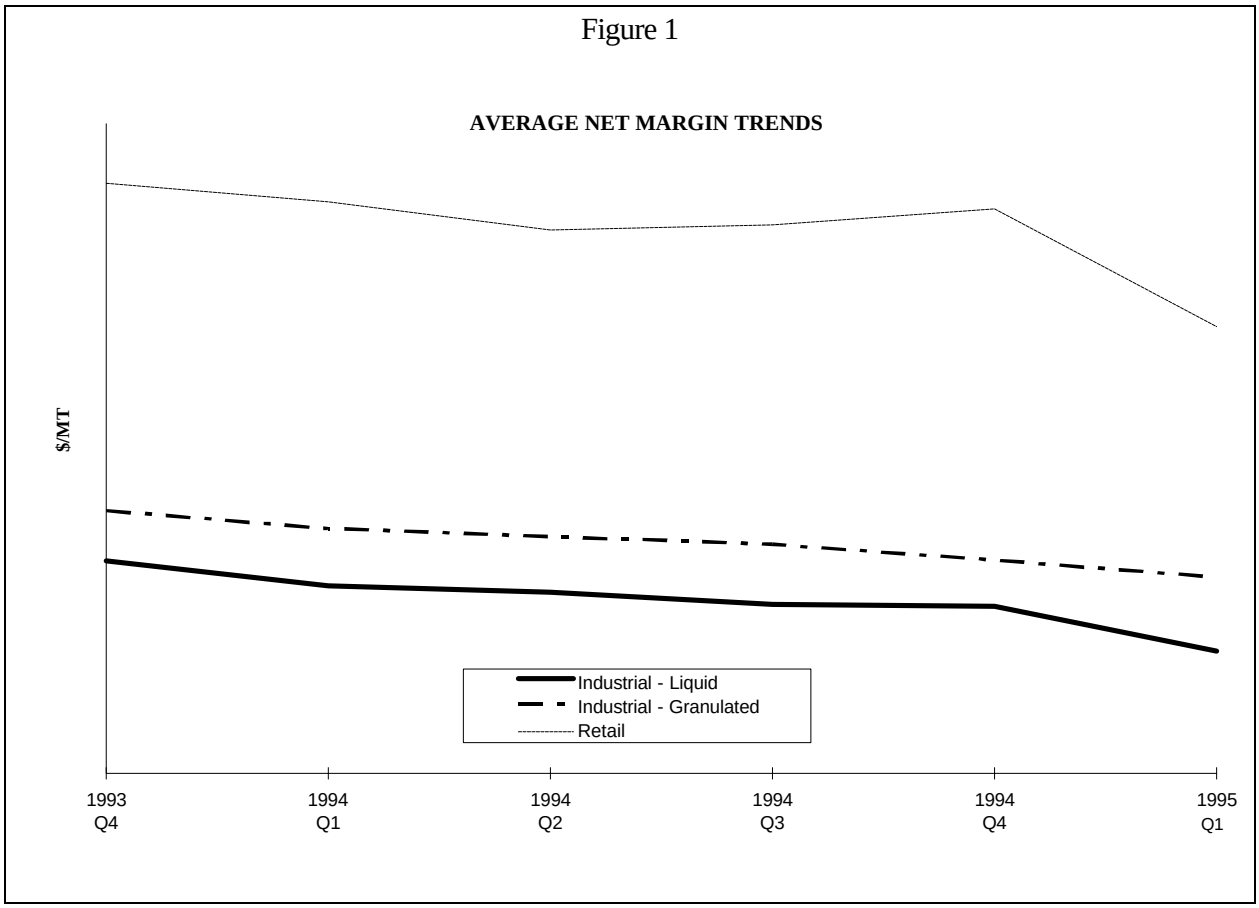
67. This percentage was calculated from the weighted average margins earned on sales by the domestic refiners to their largest accounts, as listed in each refiner's response to question 25 of the manufacturer's questionnaire (Tribunal Exhibit NQ-95-002-10.1 (protected), Administrative Record, Vol. 4 at 145-80; Tribunal Exhibit NQ-95-002-10.2 (protected), Administrative Record, Vol. 4B at 82-137; and Tribunal Exhibit NQ-95-002-10.3 (protected), Administrative Record, Vol. 4C at 230-53). These sales accounted for 42 and 37 percent of the domestic refiners' sales to the industrial sector during 1994 and the first quarter of 1995, respectively.

68. Tribunal Exhibit NQ-95-002-10.1 (protected), Administrative Record, Vol. 4 at 145-80; Tribunal Exhibit NQ-95-002-10.2 (protected), Administrative Record, Vol. 4B at 82-137; and Tribunal Exhibit NQ-95-002-10.3 (protected), Administrative Record, Vol. 4C at 230-53.

69. This percentage was calculated from the weighted average margins earned on sales by the domestic refiners to their largest accounts, as listed in each refiner's response to question 25 of the manufacturer's questionnaire (Tribunal Exhibit NQ-95-002-10.1 (protected), Administrative Record, Vol. 4 at 145-80; Tribunal Exhibit NQ-95-002-10.2 (protected), Administrative Record, Vol. 4B at 82-137; and Tribunal Exhibit NQ-95-002-10.3 (protected), Administrative Record, Vol. 4C at 230-253). These sales accounted for 37 and 39 percent of the domestic refiners' sales to the retail sector during 1994 and the first quarter of 1995, respectively.

The decline in net margins earned by the domestic refiners was illustrated by graphs presented by Lantic,[70] as well as by the following figure which depicts the weighted average net margins earned on the domestic refiners' sales to their largest customers. The data are separated into net margins earned on retail sales, industrial liquid sugar sales and industrial granulated and specialty sugar sales. To avoid disclosure of confidential information, the scale has been suppressed; however, the Y axis starts at zero and the figure depicts actual relationships between the three data series presented.

Figure 1



The preceding figure shows that margins earned on sales to the retail sector[71] decreased in the first half of 1994, then recovered somewhat in the second half of the year, before decreasing dramatically in the first quarter of 1995. Margins earned on sales of granulated and specialty sugars to the industrial sector declined during each of the calendar quarters examined, with the decline becoming slightly more pronounced in the fourth quarter of 1994 and the first quarter of 1995. As for liquid sugar in the industrial sector, the net margins earned declined in the first three quarters of 1994, leveled off in the fourth quarter, then declined sharply in the first quarter of 1995.

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[70]. Manufacturer's Exhibits A-33 (protected) and A-34 (protected), Administrative Record, Volume 10B.

[71]. Margins earned on retail sales are generally higher due to higher product differentials which reflect higher packaging costs, as well as lower volumes for many package configurations and retail products, such as specialty sugars.

Factors Affecting Net Margins

The Tribunal must determine whether there is a causal relationship between the dumped and subsidized imports and any material injury, retardation or threat of material injury which may have been suffered by the domestic industry. The Tribunal must also examine other factors to ensure that injury caused by such factors is not attributed to the dumped and subsidized imports. Subsection 37.1(3) of the Regulations prescribes additional factors that the Tribunal may consider in examining this issue. The Tribunal found it helpful to look carefully at the downward movement in net margins during the latter part of 1994 and the first quarter of 1995. In particular, the Tribunal wanted to understand what role dumped and subsidized imports of refined sugar played in the declining net margins reported by the Canadian refiners. The Tribunal also wanted to understand what effects factors other than dumping and subsidizing had on the net margins earned by the refiners during that period.

Other Factors

Competition from HFCS in the liquid sugar component of the industrial sector was foremost among the factors that have caused injury, as argued by parties opposing the domestic refiners. The domestic refiners testified that net margins earned on sales of liquid sugar in the HFCS-substitutable market segments were substantially below those of other refined sugar products and had been lower during the entire inquiry period because they did not treat it as their "core" market.[72] These sales were often made on an "incremental" basis to maintain throughput, at prices somewhat higher than variable costs.[73] Furthermore, Redpath prepared financial statements segregating sales to HFCS-sensitive market segments from other sales.[74] This analysis showed that these sales did not have a major impact on the changes in the overall level of net margins earned on Redpath's total sales of refined sugar, especially during 1994 and the first six months of 1995. On the basis of this evidence, the Tribunal was convinced that the changes in the net margins earned on sales of liquid sugar in the HFCS-sensitive market segments did not significantly impact the downward trend in overall net margins earned by the domestic refiners during 1994 and the first part of 1995.

Also, the Tribunal was not convinced by arguments that high-intensity sweeteners were a substantial cause of injury to the domestic refiners. The testimony of various witnesses, for both the domestic refiners[75] and an industrial sweetener user,[76] was that products containing high-intensity sweeteners had very little impact on the caloric sweetener market.

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[72]. Transcript of Public Hearing, Vol. 2, October 3, 1995, at 474, and Vol. 5, October 6, 1995, at 815-16; Tribunal Exhibit NQ-95-002-10.1 (protected), Administrative Record, Vol. 4 at 263-65; Tribunal Exhibit NQ-95-002-10.2A (protected), Administrative Record, Vol. 4B at 196-99; and Tribunal Exhibit NQ-95-002-10.3C (protected), Administrative Record, Vol. 4C at 322-23.

[73]. Transcript of *In Camera* Hearing, Vol. 3, October 5, 1995, at 561-62 and 693.

[74]. Manufacturer's Exhibit A-9 (protected), Tab 6, Administrative Record, Vol. 10.

[75]. Transcript of the Public Hearing, Vol. 1, October 2, 1995, at 75 and 183-84, Vol. 4, October 5, 1995, at 644-45, and Vol. 5, October 6, 1995, at 815.

[76]. Transcript of the Public Hearing, Vol. 8, October 12, 1995, at 1651-53.

Counsel for the importers, exporters and users also submitted that factors such as general economic conditions during the 1990s and reduced access to the U.S. market had contributed to any injury suffered by the domestic refiners. The Tribunal notes that the Canadian refiners embarked on cost-cutting programs to counter the effects of the tough economic conditions prevalent during the early 1990s and in response to pressure from their customers to reduce prices. If these cost-cutting measures had not been taken, the reductions in profitability sustained by the domestic refiners would have been much greater.

The recent decision of the U.S. government to include imports of refined sugar and certain sugar-containing products from Canada in its global quota for sugar imports will almost certainly have a detrimental effect on the domestic industry. Its ability to export to the United States has been restricted since January 1, 1995. However, during the first quarter of the refiners' fiscal year, October to December 1994, Rogers, the primary Canadian exporter, exported over 35,000 metric tonnes of refined sugar to the United States. Furthermore, Rogers' income statements for the first nine months of 1995 indicate that, during that period, it exported more refined sugar than in the first nine months of 1994.[77] Thus, the impact of the closure of the U.S. market on the Canadian refiners' production is not reflected to any substantial degree in the financial information considered by the Tribunal in this inquiry.

Counsel for many parties argued that intra-industry competition caused the net margin depression suffered by the domestic refiners. The Tribunal agrees that competition between Redpath and Lantic in the central and eastern Canadian markets was one of the contributing factors to the margin depression reported by the refiners. Testimony indicated that, in many cases, Redpath and Lantic were responding to offers from the other refiner, rather than from import competition. However, the refiners submitted that they were responding to either direct or indirect competition from dumped or subsidized imports. For example, a customer that had not been approached by a supplier selling imported refined sugar might, nevertheless, ask for price concessions from the domestic refiners on the basis of market intelligence about import prices available to other buyers that had been directly offered imported products. In many of the accounts cited in the witness statements of the domestic refiners, it is not clear whether the refiners were competing solely with each other or with imported refined sugar as well. In such cases, it is impossible to attribute the margin depression solely to imported products. The Tribunal notes that, given the fungibility of the product, the existence in the market of low-priced imported products is a factor that the domestic refiners must consider in pricing to all accounts, regardless of whether these accounts have been approached directly by sellers of the imported products. However, in the Tribunal's view, in some cases, the domestic refiners appear to have overreacted to the existence, or presumed existence, of dumped and subsidized imports and to offers at various accounts cited in their injury evidence.

The Tribunal was not satisfied, after examining these other factors, that, individually or collectively, they explained to any significant degree the margin depression and resulting reduced profitability suffered by the domestic refiners.

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77. Tribunal Exhibit NQ-95-002-10.3F (protected), Administrative Record, Vol. 4C at 337.

Effects of Dumped and Subsidized Imports

Turning to the effects of dumped and subsidized imports,[78] the Tribunal started its analysis by examining the account-specific evidence presented by the domestic refiners relating to customers in both the retail and the industrial sectors of the market. The evidence indicates that, during the period of inquiry, particularly during 1994 and the first quarter of 1995, the domestic refiners encountered price competition from dumped and subsidized products at more and more accounts.[79] In response to these low-priced imports, the domestic refiners adopted what one refiner called a "zero tolerance strategy.[80]" That is, the refiners decided to protect market share at the expense of margins rather than lose sales and production volume. The Tribunal believes that this is a rational reaction in this market. Due to the high level of investment and consequent fixed costs of sugar refining, decreases in production volume result in higher unit costs. Consequently, sugar refiners strive to maximize throughput to lower or maintain unit cost levels.

The evidence of widespread import pricing activity during the inquiry period was corroborated by a witness for Savannah who stated that: "During the early 1990s, the beet sugar imported from Europe caused serious erosion in prices in Canada, which lasted through 1993. Starting in 1994, severe price pressure arose from the substantial surplus of beet sugar in the United States, which started entering the Canadian market.[81]"

To help the Tribunal understand the effect of low-priced imports in the market, the domestic refiners provided evidence of what happened in the early 1990s when Man was successful in obtaining the National Grocers account,[82] one of the largest retail accounts in Canada. The Tribunal notes that this particular incident cannot be related to dumped or subsidized refined sugar. The evidence shows that this product was sourced, for the most part, from Finland, a country not named in the dumping complaint and, at that time, not a member of the European Union. However, in the Tribunal's view, this incident clearly demonstrates the impact that low-priced competition from imports can have on refined sugar prices and net margins earned in the Canadian market. Lantic presented a graph[83] depicting a sharp downturn in retail margins earned during the period around 1990 and 1991 when Man obtained the National Grocers account.

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78. Counsel for Savannah argued that, for long-term contracts, the Tribunal should consider the date of sale of the imports as opposed to the date on which goods were actually delivered. While it is arguable that long-term contracts could have some negative impact on the domestic industry when they are executed, the Tribunal is of the view that the greater impact would have been felt by the industry in subsequent years as the imports, which were found by the Deputy Minister to have been dumped, entered the Canadian market.

79. Manufacturer's Exhibit A-7 (protected), Administrative Record, Vol. 10; Manufacturer's Exhibit A-13 (protected), Administrative Record, Vol. 10A; and Manufacturer's Exhibit A-20 (protected), Administrative Record, Vol. 10B.

80. Manufacturer's Exhibit A-13 (protected), Tab 17, Administrative Record, Vol. 10A; and Transcript of *In Camera* Hearing, Vol. 4, October 6, 1995, at 749.

81. Importer's Exhibit D-2 at 2, Administrative Record, Vol. 11.

82. Manufacturer's Exhibit A-13 (protected) at 13, Administrative Record, Vol. 10A; Manufacturer's Exhibit A-20 (protected) at 11, Administrative Record, Vol. 10B; and Manufacturer's Exhibit A-7 (protected) at 8, Administrative Record, Vol. 10.

83. Manufacturer's Exhibit A-33 (protected), Administrative Record, Vol. 10B.

The evidence indicates that this margin depression spread throughout the eastern and central Canadian markets, as well as to the western Canadian retail sector through national grocery chains.[84]

The domestic refiners also presented evidence relating to both direct and indirect competition from dumped and subsidized imports at large and small retail accounts during the mid-1990s, particularly in 1994 and the first quarter of 1995. The evidence concerned the sales activities of all the major suppliers of dumped and subsidized sugar in Canada. These suppliers, both directly and through their brokers, were offering refined sugar at very competitive prices to a full range of retail outlets including National Grocers, Canada Safeway Limited, Oshawa Foods, Sobey's Inc. and other large and small retail accounts.[85]

Due to the transparency of the retail sector, where each retailer's products are clearly priced for consumers and competitors to see, incidents of low pricing or new sources are highly visible, as is the country of origin of these products. Retailers monitor their competition. If one retailer is able to offer sugar at prices below those at which others are purchasing the sugar, these other retailers are very quick to demand price concessions from their suppliers. Consequently, the impact of low-priced competition is felt throughout the sector, regardless of whether all customers have been directly approached by importers.[86] The Tribunal was convinced that this "cascading effect," particularly in the retail sector, had an adverse effect on the net margins earned by the domestic refiners during 1994 and the first quarter of 1995. Lantic's graph[87] also shows a downturn in retail margins during the fourth quarter of 1994 and the first quarter of 1995.

In the industrial sector, the Tribunal found that pricing practices are less transparent, in that purchasers normally do not know what their competitors or other purchasers are paying for sugar. However, several witnesses for industrial users testified that they were aware of the various suppliers and import price levels in the market.[88]

The refiners presented evidence concerning dumped and subsidized imported sugar being offered or sold to several major accounts, including Robin Hood Multifoods, CSP Foods, Beatrice Foods Inc., Effem and Kellogg Canada Inc.[89] In addition, many smaller accounts were affected by offers from low-priced dumped or subsidized imports.[90]

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84. Manufacturer's Exhibit A-20 (protected), para. 57 at 11, Administrative Record, Vol. 10B.

85. Manufacturer's Exhibit A-7 (protected) at 14-16 and 19-23, Administrative Record, Vol. 10; Manufacturer's Exhibit A-13 (protected) at 15-16 and 21-25, Administrative Record, Vol. 10A; and Manufacturer's Exhibit A-20 (protected) at 12-16, Administrative Record, Vol. 10B.

86. Transcript of *In Camera* Hearing, Vol. 1, October 2, 1995, at 315-16; Manufacturer's Exhibit A-7 (protected) at 11, Administrative Record, Vol. 10; and Manufacturer's Exhibit A-13 (protected) at 8, Administrative Record, Vol. 10A.

87. Manufacturer's Exhibit A-33 (protected), Administrative Record, Vol. 10B.

88. Transcript of Public Hearing, Vol. 8, October 12, 1995, at 1564, 1608 and 1618-19.

89. Tribunal Exhibit NQ-95-002-10.1 (protected), Administrative Record, Vol. 4 at 202 and 210; Tribunal Exhibit NQ-95-002-10.2 (protected), Administrative Record, Vol. 4B at 164 and 169; and Tribunal Exhibit NQ-95-002-10.3 (protected), Administrative Record, Vol. 4C at 261-62, 265 and 270.

90. For example, Tribunal Exhibit NQ-95-002-10.1 (protected), Administrative Record, Vol. 4 at 186; Tribunal Exhibit NQ-95-002-10.2 (protected), Administrative Record, Vol. 4B at 157; and Tribunal Exhibit NQ-95-002-10.3B (protected), Administrative Record, Vol. 4C at 309 (vii).

The domestic refiners filed a substantial number of allegations of lost sales and margin depression at retail and industrial accounts through responses to the manufacturer's questionnaire and through witness statements. The witness statements provided a detailed description, sector by sector, year by year, of how the dumped and subsidized imports affected the net margins earned by the domestic refiners. This evidence implicated all major suppliers of dumped and subsidized refined sugar.[91] The witnesses for the domestic refiners were cross-examined on their witness statements for five days by counsel representing opposing parties. These parties also submitted witness statements and documentary evidence to refute the domestic refiners' allegations.

In some instances, it was clear to the Tribunal that the domestic refiners had reduced prices when imports were not a factor. In many instances, however, their allegations of accounts lost to suppliers of imported products or price reductions to meet competition from these suppliers stood up under cross-examination and were not refuted by opposing witness statements. The Tribunal observes that some of the allegations lacked specificity. However, the Tribunal feels that it is important to understand that information about competition in the marketplace is rarely perfect. In day-to-day business situations, professional salespeople make decisions based on the best information available to them. The Tribunal notes that, in many instances, these salespeople had credible evidence of competition from dumped and subsidized imported refined sugar. It is understandable that, because of the production imperative, they might react in other instances without having irrefutable proof of a competing quotation from suppliers of dumped and subsidized sugar.

In this regard, the Tribunal notes the evidence on how United approached the Canadian market. During 1993-94, it sent out its people to talk to sugar purchasers across the country, "from one end to the other." It covered buyers of approximately 80 percent of the sugar consumed in Canada.[92] United also established a sales office in Canada and hired salespeople for the Canadian market. With this kind of market introduction, the Tribunal is not surprised that the domestic refiners were made aware of the new player in the market and of its pricing. The domestic refiners would have had no choice but to take this threat seriously and react to the pressure from their customers for price reductions.

Several witnesses explained that an offer or price list from a supplier of dumped and subsidized sugar would be used to pressure the domestic refiners, regardless of the suppliers' or even the customers' intentions concerning the imported sugar. Under cross-examination, Mr. Robert G. Atwood of United admitted that, if he left a price list with a customer such as Loblaws, regardless of whether it intended to purchase from United, the customer would use the price list in negotiations with the Canadian refiners.[93] In addition, Mr. Michael Stanly of Multifoods stated that a supplier would likely use a quote from an unapproved supplier to exert pressure on an approved supplier.[94] Mr. Jim Sherlock of Effem testified that it maintained purchases from Man in order to more effectively leverage the domestic refiners.[95] In its

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[91]. Manufacturer's Exhibit A-7 (protected) at 10-26, Administrative Record, Vol. 10; Manufacturer's Exhibit A-13 (protected) at 11-25, Administrative Record, Vol. 10A; and Manufacturer's Exhibit A-20 (protected) at 10-16, Administrative Record, Vol. 10B.

[92]. Transcript of Public Hearing, Vol. 7, October 11, 1995, at 1263-64.

[93]. Transcript of Public Hearing, Vol. 7, October 11, 1995, at 1347-48.

[94]. Transcript of Public Hearing, Vol. 8, October 12, 1995, at 1614.

[95]. This account purchased liquid sugar from Man. The Tribunal notes that this liquid sugar was dumped or dumped and subsidized granulated sugar that was melted in Canada for Man on a contract or "tolling" arrangement with CBP.

questionnaire response, Select Food Processing Corporation stated that it purchased 75 percent of its requirements from Lantic and Redpath and that the remaining 25 percent from imports keeps the Canadian suppliers honest.[96]

Several industrial users testified that imports were not a viable option for their operations due to considerations other than price, such as just-in-time deliveries and security of supply.[97] However, the Tribunal heard that price is also a very important factor affecting the purchase decision and that, if the price were right, these users would make the necessary arrangements to accommodate a supply of imported refined sugar, either granulated or liquid sugar.[98] The Tribunal was also convinced that, whether they actually intended to purchase sugar from foreign sources or not, industrial users were willing to use import offers, written or verbal, to exert additional pressure on the prices negotiated with the domestic refiners.[99]

The evidence in this market sector shows that, during the inquiry period, imports had a substantial detrimental impact on the net margins earned by the domestic refiners.[100] This margin depression was the result of both direct and indirect competition from these imports, which were found to be dumped at very high margins and heavily subsidized.

In conclusion, the Tribunal notes that many typical indicia of injury (i.e. production, sales volume, market share and capacity utilization) indicate that the domestic industry performed well during 1994 and the first quarter of 1995. However, the Tribunal was convinced that the domestic refiners achieved this level of performance at the expense of net margin reductions and consequent reduced profitability. Net margin depression started in the early years of the Tribunal's inquiry period and became more pronounced during the latter part of 1994 and the first quarter of 1995. In the Tribunal's view, the net margin depression suffered up to the time of the preliminary determination was not sufficient to support a finding of material injury to the domestic industry. However, the Tribunal is convinced that the domestic refiners could not remain viable if these depressed levels of net margins continued.

The Tribunal was convinced that the primary causes of the decline in net margins experienced by the Canadian industry were sales and offerings of low-priced dumped, or dumped and subsidized, refined sugar from the United States and the European Union, respectively, particularly in the latter part of 1994 and the first quarter of 1995.

With respect to imports of refined sugar from the Republic of Korea, the Tribunal notes that the volume of these imports was negligible and, therefore, the effect of these dumped goods cannot be cumulated with the effects of other dumped or dumped and subsidized goods. Furthermore, Korean sugar was only sold to one retail account in Western Canada, and there was no persuasive evidence that it was causing material injury to the domestic industry. Consequently, the Tribunal finds that these dumped imports have not caused material injury to the domestic industry.

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96. Tribunal Exhibit NQ-95-002-15.10, Administrative Record, Vol. 5 at 209.

97. Transcript of Public Hearing, Vol. 8, October 12, 1995, at 1539-40 and 1614-16; and Transcript of *In Camera* Hearing, Vol. 7, October 12, 1995, at 1247-50.

98. *Ibid.*

99. Transcript of *In Camera* Hearing, Vol. 1, October 3, 1995, at 8-9; and Transcript of Public Hearing, Vol. 8, October 12, 1995, at 1614 and 1619.

100. Manufacturer's Exhibit A-33 (protected), Administrative Record, Vol. 10B.

THREAT OF MATERIAL INJURY

Having found that imports of dumped and subsidized refined sugar have not caused material injury to the domestic industry, the Tribunal turned its attention to whether imports of dumped and subsidized refined sugar are threatening to cause material injury to the domestic industry. In considering this question, the Tribunal is guided by subsection 37.1(2) of the Regulations, which prescribes the following factors: the nature of the subsidy in question and the effects that it is likely to have on trade; whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada; whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods; and other relevant factors. As noted earlier, subsection 37.1(3) of the Regulations prescribes additional factors that the Tribunal may consider in determining whether dumped or subsidized goods are threatening to cause material injury to the domestic industry. The Tribunal must determine whether there is a causal relationship between the dumping and subsidizing of the goods and the threat of material injury and ensure that injury caused by other factors is not attributed to the dumped and subsidized imports. Finally, the Tribunal notes that, in making a finding of threat of material injury to the domestic industry, subsection 2(1.5) of SIMA requires that the "circumstances in which the dumping or subsidizing of [the subject] goods would cause injury [must be] clearly foreseen and imminent."

The Tribunal notes that the evidence regarding the nature of the subsidy programs in the European Union is unequivocal. The Deputy Minister has determined that the subsidies are countervailable. Further, there is unrefuted evidence that these subsidies will continue to be available to producers and exporters of refined sugar in the foreseeable future.[101] Even with the commitments made under the WTO subsidy agreement, the Tribunal notes that the amount of the subsidies and the volume of subsidized goods will still be substantial.[102] Mr. Paul J. Mirsky of Tate & Lyle told the Tribunal that "one would anticipate that the European Community will continue to be a surplus producer to the tune of millions of tonnes, and there is no reason why that sugar should not continue to come to Canada, indeed continue to come to Canada in increasing amounts.[103]"

The evidence reveals that the European Union has gone from being a net importer of sugar in the 1970s to being the largest exporter of refined sugar in the world.[104] During the 1995-96 marketing year, the European Union is expected to export approximately 5 million metric tonnes.[105] The volume of excess sugar available from the European Union is substantial. The most recent U.S. Department of Agriculture

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101. Public Pre-Hearing Staff Report, August 31, 1995, Tribunal Exhibit NQ-95-002-6, Administrative Record, Vol. 1A at 67.

102. *Ibid.*

103. Transcript of Public Hearing, Vol. 4, October 5, 1995, at 608-9.

104. Public Pre-Hearing Staff Report, August 31, 1995, Tribunal Exhibit NQ-95-002-6, Administrative Record, Vol. 1A at 53.

105. Tribunal Exhibit NQ-95-002-15.8, Administrative Record, Vol. 5 at 194.

estimate of refined sugar stocks in the European Union is over 2 million metric tonnes,[106] almost twice the annual apparent market in Canada.

The sugar policies of the European Union support the price of refined sugar in the member countries at levels well above world prices.[107] Through a system of production quotas, EU producers are able to produce sugar in excess of the needs of the member states. This sugar is sold at world prices which are well below those prevailing in the European Union and is, therefore, dumped, regardless of whether an export subsidy has been paid in respect of that sugar. The Tribunal notes that the export statistics of the European Union indicate that it does not have steady markets for its excess sugar. Substantial volumes of sugar are shipped to different markets in different years.[108] Mr. Robert G. Atwood of United stated that "[t]he way the European ABC system works, it is a danger to absolutely anybody -- anybody, anywhere in the world.[109]" In its questionnaire response, Select Food Processing Corporation stated: "We can purchase in Europe, package, ship, unload and dispose of packaging for less than Canadian sugar.[110]"

The statistics indicate that imports of refined sugar from the European Union have declined in recent years. The Tribunal believes that this is a result of the entry of new suppliers from the United States, such as United, and the domestic refiners' decision to defend their market share against imports of dumped and subsidized imports. Moreover, it is clear to the Tribunal that the mere availability of surplus EU sugar has a significant price and net margin depressing effect. In the Tribunal's view, this evidence fully supports the domestic refiners' contention that imports of dumped and subsidized refined sugar from the European Union will continue to pose a serious threat to the Canadian refiners.

In relation to the United States, the Tribunal notes that the sugar program[111] in that country also supports the domestic sugar price at levels well above the world price.[112] This program has been particularly advantageous for beet sugar producers that are not affected by fluctuations in the price of raw sugar to the same degree as are cane sugar refiners. Mr. Joel C. Williams of Savannah submitted that the economics of beet sugar production are different from those of cane sugar refining. He told the Tribunal that beet growers and processors usually work on a revenue-sharing arrangement. Consequently, a beet processor does not have to purchase sugar beets in the same way that a refiner must purchase raw sugar. In addition, as in the European Union, the high level of the supported domestic price in the United States allows beet sugar

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[106]. Public Pre-Hearing Staff Report, August 31, 1995, Table 28, Tribunal Exhibit NQ-95-002-6, Administrative Record, Vol. 1A at 55.

[107]. For example, in 1993-94, the average intervention price in the European Union was 52.33 ECUs/100 kg, while the average price for refined sugar on the London commodity market (Contract No. 5 price) was 26.84 ECUs/100 kg.

[108]. International Sugar Organization, excerpts from the Sugar Year Book 1994, Tribunal Exhibit NQ-95-002-41, Administrative Record, Volume 1B at 95-105.

[109]. Transcript of Public Hearing, Vol. 7, October 11, 1995, at 1291.

[110]. Tribunal Exhibit NQ-95-002-15.10, Administrative Record, Vol. 5 at 209.

[111]. The sugar program in the United States is described in the Public Pre-Hearing Staff Report, August 31, 1995, Tribunal Exhibit NQ-95-002-6, Administrative Record, Vol. 1A at 68-74.

[112]. For example, during 1994, the average price of raw sugar based on the Contract No. 14 price on the New York Coffee, Sugar and Cocoa Exchange (U.S. domestic sales of raw sugar) was 22.04¢/lb., while the N.Y. No. 11 price (world price sales) averaged 12.13¢/lb.

producers to recover all of their overhead costs through domestic sales. Thus, export sales need only recover variable costs.[113]

The Tribunal also heard evidence that the sugar refining business is very capital-intensive with high fixed costs. Consequently, it is necessary to maximize throughput in order to allocate these fixed costs over the greatest possible volume.[114] The increase in beet sugar production in the United States has put additional pressure on cane sugar refiners, as they face increased competition in their domestic market and seek out export opportunities to support their production levels.[115] The U.S. refiners have been able to use the U.S. Sugar Re-Export Program to import world-priced raw cane sugar and export an equivalent volume of refined sugar, thus increasing the throughput of their refineries and taking advantage of economies of scale. The Canadian refiners submitted that the U.S. refiners will sell this sugar in Canada at prices only slightly above variable costs.

The U.S. exporters have also been able to take advantage of the "swapping" provisions of the U.S. Sugar Re-Export Program, under which they can import raw cane sugar and export any refined sugar, including refined sugar produced from sugar beets. Consequently, raw sugar can be exported to the U.S. refineries in the eastern or southern parts of the United States, which are closer to sources of supply than are the Canadian refineries. An equivalent amount of refined sugar can be exported from the beet sugar plants in the Midwest, thus saving substantial freight costs in getting the exported refined sugar to markets in Canada.

The Tribunal heard that market allocations in the United States in recent years have forced sugar producers to export all of their production in excess of their allocation for the U.S. market. With Canada being the closest available market, a significant proportion of this excess production has been dumped in Canada. Several witnesses stated that marketing allocations are no longer in place in the United States and likely will not be in place in the foreseeable future. However, in the Tribunal's view, this is unlikely to affect the interest that U.S. sugar producers have shown in the Canadian market. Mr. Robert G. Atwood of United stated that marketing allocations had nothing to do with United's decision to initiate its program in Canada.[116]

Mr. Paul J. Mirsky of Tate & Lyle also told the Tribunal that "[u]nder the existing Farm Bill in the United States, I certainly see no prospect for anything other than continued increases in production in the United States and increasing surpluses in the United States and increasing exports from the United States for the foreseeable future.[117]" This view was confirmed by Mr. Lauren D. Sprague of Savannah, who agreed that, in the foreseeable future, the trend will be for increasing surpluses of beet sugar in the United States.[118]

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113. Importer's Exhibit D-2 at 3-4, Administrative Record, Vol. 11.
114. Transcript of Public Hearing, Vol. 6, October 10, 1995, at 1193-94; and Transcript of Public Hearing, Vol. 8, October 12, 1995, at 1720.
115. Transcript of Public Hearing, Vol. 2, October 3, 1995, at 528-29, and Vol. 6, October 10, 1995, at 1169-76.
116. Transcript of Public Hearing, Vol. 7, October 11, 1995, at 1265-66.
117. Transcript of Public Hearing, Vol. 4, October 5, 1995, at 608.
118. Transcript of Public Hearing, Vol. 6, October 10, 1995, at 1218.

The Tribunal was told by suppliers of dumped sugar from the United States, particularly Savannah and United, that they could not supply large customers, especially in the retail sector or that they "walked away" from numerous accounts because they could not supply them. Regarding Savannah, it is clear to the Tribunal that Savannah's broker was quoting to supply large quantities of refined sugar[119] and, more importantly, at least one large retail customer in Canada believed that it could obtain large quantities from Savannah.[120] This belief allowed it to exert additional price pressure on the Canadian refiners. The Tribunal is of the view that these practices will resume in the absence of anti-dumping duties.

In relation to United, the Tribunal heard testimony that certain customers did not fit into United's plans, primarily because United did not have the packaging capacity to supply the accounts. The Tribunal notes that this situation is changing. United has installed more packaging capacity and intends to double its packaged production.[121] Furthermore, the Tribunal heard that United would have been an even more serious threat if it had had that capacity earlier.[122] The witness for United testified that, in the event that the Tribunal found no injury or threat of injury, it would likely be right back in the Canadian market resuming negotiations with a major eastern Canadian retailer, Sobey's, concerning its supply of refined sugar.[123] The Tribunal also heard testimony about the packaging capacity recently added by another supplier of dumped U.S. sugar in Canada.[124]

Evidence was also presented showing that United, the leading beet sugar producer in the United States, wants to be a North American leader.[125] There was also ample testimony about United's capacity expansions, both those underway and those being planned.[126] The Tribunal is convinced that, in the absence of anti-dumping duties, United will become a significant player in the industrial and retail sectors for sugar in Canada, driving net refining margins lower than they were in 1994 and early 1995.

In summary, the sugar programs operating in the United States and the European Union provide incentives for sugar producers in those jurisdictions to produce refined sugar in excess of their respective needs. These surpluses must be sold on the export market or stored. Moreover, both jurisdictions have programs that encourage exports of refined sugar. Although the United States and Europe are among the largest markets for refined sugar in the world, these markets are all but closed to imports. Consequently, it is clear that the United States and Europe will not be exporting to each other's markets. With Canada being a large open market for sugar and being within a reasonable shipping distance, particularly from the United States, it is also clear to the Tribunal that exporters in the United States and the European Union will have a continuing incentive to sell in this market. Due to the very high level of price support in those jurisdictions, refined sugar exported to Canada will almost certainly be dumped and, in the case of exports from the European Union, dumped and subsidized.

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119. Tribunal Exhibit NQ-95-002-103 (protected), Administrative Record, Vol. 2A at 157-71.
120. Transcript of *In Camera* Hearing, Vol. 5, October 10, 1995, at 1038-39 and 1073.
121. Transcript of Public Hearing, Vol. 7, October 11, 1995, at 1271.
122. Transcript of Public Hearing, Vol. 7, October 11, 1995, at 1273.
123. Transcript of Public Hearing, Vol. 7, October 11, 1995, at 1395-96.
124. Transcript of *In Camera* Hearing, Vol. 5, October 10, 1995, at 1004-8.
125. Transcript of Public Hearing, Vol. 7, October 11, 1995, at 1315.
126. Transcript of Public Hearing, Vol. 7, October 11, 1995, at 1262, 1271-73 and 1302-7.

The Tribunal finds that imports of dumped refined sugar from the United States and dumped and subsidized refined sugar from the European Union caused the domestic refiners to suffer depressed net margins and reduced profitability, especially during 1994 and the first quarter of 1995. The magnitude of the net margin depression grew over the last few calendar quarters but, in the Tribunal's opinion, was not yet material. The Tribunal notes that the net margins recovered following the initiation by Revenue Canada of an investigation into dumping and subsidizing of refined sugar on March 17, 1995. The Tribunal is of the view that, without the imposition of anti-dumping and countervailing duties, the downward pressure on net margins exerted by imports of dumped and subsidized refined sugar will resume, bringing net margins down to at least the levels experienced during the latter part of 1994 and the first quarter of 1995. It is obvious that the domestic refiners cannot continue their "zero tolerance strategy" indefinitely. There is a limit to how long the refiners can sustain net margins at these levels. In the Tribunal's view, if the anti-dumping and countervailing duties were not applied, the domestic refiners would quickly lose substantial sales to lower-priced dumped or dumped and subsidized imports. This would lead to reduced production and a smaller market share for the domestic refiners, in addition to the inadequate returns that they would experience. The Tribunal is persuaded that the threat of injury from dumped and subsidized imports jeopardizes the existence of at least one Canadian sugar refinery, as well as the two sugar beet processing plants.

Several parties argued that other factors have affected the performance of the domestic sugar refiners. Although the Tribunal concluded that these factors had little impact on net margins in 1994 and the first quarter of 1995, the Tribunal has considered the extent to which they may affect the performance of the domestic refiners in the future. In particular, the Tribunal notes that the reduced access to the U.S. market will undoubtedly affect the profitability of Rogers, the major Canadian exporter of refined sugar. More generally, the Tribunal expects the domestic refiners to continue to compete with one another and with HFCS. There will also be continuing pressure from industrial users to keep prices down, so as to keep their production of sugar-containing products competitive. The refiners will also have to keep in mind the potential supply of imports of refined sugar from non-subject countries. In addition, the industry will likely be meeting a steady increase in demand for refined sugar as the population increases. Some of these factors may offset others in terms of the industry's future performance. The Tribunal is not in a position to forecast with precision the impact that these other factors may have on the domestic refiners in the future. However, in the Tribunal's view, in the event that the overall net effect was negative, it would only be in addition to the negative effects that would be sustained by the domestic refiners if there was a resumption of dumped and subsidized imports.

In light of all the foregoing, the Tribunal concludes that, in the absence of anti-dumping and countervailing duties, the threat of material injury to the domestic industry in the form of net margin reductions, reduced profitability, lost sales, reduced production and lost market share is clearly foreseen and imminent.

The Tribunal finds no reason to believe that the small volume of imports of refined sugar from the Republic of Korea is threatening to cause material injury to the domestic industry. There was no evidence to suggest that the volume of imports from this source is likely to increase in the absence of an injury finding. The information on the record indicates that the Republic of Korea has a relatively small export potential, that its total exports have declined during the Tribunal's inquiry period and that it is selling more of its excess

refined sugar to markets much closer than North America, particularly Hong Kong, China and Vietnam.[127] Consequently, the Tribunal finds that imports of refined sugar from the Republic of Korea are not threatening to cause material injury to the domestic industry.

REQUESTS FOR EXCLUSIONS

Counsel for a number of parties to the inquiry requested various exclusions. Counsel for Savannah requested a producer exclusion for their client on the basis that Savannah had not caused any "past injury due to dumping." With respect to the future, counsel noted that Savannah's beet sugar is priced in the same manner as its cane sugar and is, therefore, distinguishable from beet sugar exported to Canada by other producers. Counsel also submitted that an exclusion would recognize that certain export activities which were not injurious in the past should be permitted to continue.

Counsel for the Bakery Council of Canada requested an exclusion for granulated sugar imported into Canada in bags weighing 20 kg or more or, in the alternative, in bags weighing 40 kg or more. He submitted that such bags would be for industrial use. He argued that, if the domestic industry had suffered any injury, it was due to the impact of dumped and subsidized goods on the retail sector and not the industrial sector. Counsel argued that, notwithstanding the presence of dumped "industrial" imports in the Canadian market for a number of years, the domestic industry's financial results had been reasonable. He submitted that it was only when the highly profitable retail sector was targeted by imports beginning in 1994 that the domestic industry began to show negative results.

Counsel for Effem requested an exclusion for refined sugar produced from sugar cane on the basis that any injury or threat of injury was being occasioned by refined sugar made from sugar beets.

Counsel for CBP and Man requested the following:

- an exclusion in respect of granular sugar imported by CBP for use in the production of liquid sugar;
- that all refined sugar originating in or exported from Denmark, the Netherlands, the Federal Republic of Germany and the United Kingdom be excluded from any finding of injury with respect to dumping; and
- that all refined sugar originating in or exported from EU countries be excluded from any injury finding with respect to subsidizing.

In support of the CBP exclusion, counsel for the CBP submitted that each of the lost sale and margin suppression allegations against CBP had been refuted. They also submitted that, if a finding were put in place and CBP were not given the requested exclusion, it would, having no alternative source of supply, be put out of business. In support of their two requests relating to the European Union, counsel argued that each lost sale and margin suppression allegation had been refuted.

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[127]. International Sugar Organization, excerpts from the Sugar Year Book 1994, Tribunal Exhibit NQ-95-002-41, Administrative Record, Volume 1B at 95-105.

Finally, counsel for Coca-Cola requested an exclusion for certain liquid sugar or, in the alternative, certain liquid sugar for use in the manufacturing of certain beverages. Counsel noted that imports of liquid sugar into Canada were extremely low, that there were only two "allegations of injury" pertaining specifically to liquid sugar and that the price of liquid sugar in the Canadian market is determined, in large measure, by the price of HFCS. They submitted that any circumvention problems associated with the exclusion, for example, the establishment of refined sugar melt stations close to the Canada-United States border, could be addressed with certain conditions.

The Tribunal's discretion to grant exclusions has been recognized by the courts.[128] The Tribunal has consistently maintained that exclusions will only be granted where the basis for an exclusion has been adequately demonstrated. As noted above, in assessing injury, it was, in the past, the Tribunal's practice to consider the cumulative impact of all of the imports into Canada from all the subject countries. In this inquiry, pursuant to subsection 42(3) of SIMA, the Tribunal's injury and threat analysis was made on the basis of the total exports of the subject goods to Canada from all the subject countries, excluding the Republic of Korea, not on the basis of exports from individual exporters or countries.

The Tribunal found that the product exclusions referenced in Appendix A to the Tribunal's findings in this matter are warranted. The Tribunal reached this view based on the fact that, except for low-colour liquid sucrose, the domestic industry does not produce any of the referenced products and did not indicate an intention to begin producing them in the future. The domestic industry indicated that, while it does produce low-colour liquid sucrose, it cannot be guaranteed that its product will consistently meet the "alcohol haze" requirements specified by the party seeking that exclusion. The Tribunal also notes that the domestic industry consented to each of the exclusions granted.

The Tribunal was not persuaded that the balance of the exclusions requested were warranted. In this regard, the Tribunal would first note that all of the requests were in respect of, or related to, goods which the domestic industry currently produces and which are readily substitutable for, and compete directly with, domestically produced goods. Furthermore, virtually all of the subject goods investigated by the Deputy Minister were found to have been dumped or both dumped and subsidized. Moreover, those goods were dumped or dumped and subsidized at significant weighted average margins of dumping and levels of subsidy, whether looked at together or on a country, producer or product basis. Finally, the domestic industry opposed all of these exclusions.

In addition, the request made by the Bakery Council of Canada was predicated, in large measure, on the notion that imports of refined sugar for use in the industrial sector had not caused injury and that injury, if any, was caused by the impact of imports for sales to the retail sector beginning in 1994. However, the Tribunal notes that, from the fourth quarter of 1993 through to the first quarter of 1995, the domestic industry's average net margins in respect of industrial sales of refined sugar were in continuous decline. In light of the fact that, on a volume basis, industrial sales represent approximately 74 percent of the domestic industry's sales, the impact of that decline had a substantial impact on the domestic industry's profitability.

For the foregoing reasons, all of the exclusion requests, other than those set out in Appendix A to the Tribunal's findings, have been denied.

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[128]. *Hitachi Limited v. The Anti-dumping Tribunal*, [1979] 1 S.C.R. 93; and *Sacilor Aciéries v. The Anti-dumping Tribunal* (1985), 9 C.E.R. 210 (F.C.A.), Court File No. A-1806-83, June 27, 1985..

CONCLUSION

Pursuant to subsection 43(1) of SIMA, the Tribunal finds:

a) that the dumping in Canada of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands, the United Kingdom and the Republic of Korea, has not caused material injury or retardation to the domestic industry;

b) that the subsidizing of the aforementioned goods originating in or exported from the European Union has not caused material injury or retardation to the domestic industry;

c) that the dumping in Canada of the aforementioned goods originating in or exported from the Republic of Korea is not threatening to cause material injury to the domestic industry;

d) that the dumping in Canada of the aforementioned goods originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom is threatening to cause material injury to the domestic industry, but it excludes from the decision the goods listed in Appendix A to its findings; and

e) that the subsidizing of the aforementioned goods originating in or exported from the European Union is threatening to cause material injury to the domestic industry, but it excludes from the decision the goods listed in Appendix A to its findings.

In accordance with subsections 43(1) and 43(1.01) of SIMA, the Tribunal finds that the dumping in Canada of the aforementioned goods originating in or exported from the United States of America has not caused material injury or retardation to the domestic industry, but is threatening to cause material injury to the domestic industry. The Tribunal excludes from this decision the goods listed in Appendix A to its findings.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Lyle M. Russell
Lyle M. Russell
Member