CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, May 13, 1996

Inquiry No.: NQ-95-003

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

THE DUMPING AND SUBSIDIZING OF DRY PASTA, NOT STUFFED OR OTHERWISE PREPARED, AND NOT CONTAINING EGGS, IN PACKAGES UP TO AND INCLUDING 2.3 kg IN WEIGHT, ORIGINATING IN OR EXPORTED FROM ITALY

F I N D I N G

The Canadian International Trade Tribunal (the 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 January 12, 1996, and of a final determination dated April 11, 1996, respecting the dumping and subsidizing of dry pasta, not stuffed or otherwise prepared, and not containing eggs, in packages up to and including 2.3 kg in weight, originating in or exported from Italy.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Tribunal hereby finds that the dumping and subsidizing of the above-mentioned goods have not caused material injury to the domestic industry and are not threatening to cause material injury to the domestic industry. The Tribunal also finds that the requirements of paragraph 42(1)(*b*) of the *Special Import Measures Act* with respect to massive dumping have not been met.

Anthony T. Eyton
Anthony T. Eyton
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Raynald Guay
Raynald Guay
Member

Michel P. Granger
Michel P. Granger
Secretary

The Statement of Reasons will be issued within 15 days.

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Inquiry No.: NQ-95-003

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	April 9 to 12, 1996 April 15 to 17, 1996
Date of Finding:	May 13, 1996
Tribunal Members:	Anthony T. Eyton, Presiding Member Arthur B. Trudeau, Member Raynald Guay, Member
Director of Research:	Selik Shainfarber
Lead Researcher:	Tom Geoghegan
Researcher:	Paule Couët
Economist:	Ihn Ho Uhm
Statisticians:	Shiu-Yeu Li Nynon Pelland Lise Lacombe Craig Dillabaugh
Counsel for the Tribunal:	Hugh J. Cheetham Shelley Rowe
Registration and Distribution Officer:	Margaret J. Fisher
Participants:	Michael A. Kelen Jeff Walker for The Canadian Pasta Manufacturers Association **(Complainant)**

Richard S. Gottlieb
Robert J. Bertrand, Q.C.
Peter W. Collins
Lawrence S. Rosen

for Aurora Importing & Distributing Ltd.
Bella International Food Brokers Inc.
Bertolli Canada Inc.
Canadian Global Foods Corporation
Falesca Importing Ltd.
Italfina Inc.
Molisana Imports
Numage Trading Inc.
SA-GER Food Products Inc.
Santa Maria Foods Limited
Siena Foods Ltd.
Weston Produce, Division of F & F Supermarkets Inc.

(Importers)

and Unione Industriali Pastai Italiani

(Italian Producer Association)

and Barilla Alimentare S.p.A.
Colavita Ind. Al. Co. Spa
Lli de Cecco Di Filippo S.p.A.
Delverde, S.R.L.
F. Divella S.P.A.
Pastificio Fabianelli S.p.A.
La Molisana Industrie Alimentari S.p.A.
Nestlé Italiana S.p.A.

(Exporters)

Marcus Rössl
Rud-Al Co. Ltd.

(Importer)

Kenneth E. Beswick
The Canadian Wheat Board

(Interested Party)

Ottawa, Tuesday, May 28, 1996

Inquiry No.: NQ-95-003

THE DUMPING AND SUBSIDIZING OF DRY PASTA, NOT STUFFED OR OTHERWISE PREPARED, AND NOT CONTAINING EGGS, IN PACKAGES UP TO AND INCLUDING 2.3 kg IN WEIGHT, ORIGINATING IN OR EXPORTED FROM ITALY

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 that the dumping and subsidizing of dry pasta, not stuffed or otherwise prepared, and not containing eggs, in packages up to and including 2.3 kg in weight, originating in or exported from Italy have not caused material injury to the domestic industry and are not threatening to cause material injury to the domestic industry.

The Canadian International Trade Tribunal also finds that the requirements of paragraph 42(1)(*b*) of the *Special Import Measures Act* with respect to massive dumping have not been met.

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Date of Finding:	May 13, 1996
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Participants:

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(Complainant)

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Nestlé Italiana S.p.A.

(Exporters)

Marcus Rössl
Rud-Al Co. Ltd.

(Importer)

Kenneth E. Beswick
The Canadian Wheat Board

(Interested Party)

Witnesses:

Joseph Vitale
President and Chief Operating Officer
Italpasta Limited

Frank DeMichino
Vice-President, Sales
Italpasta Limited

Christine D. Holz
Controller
Italpasta Limited

Bruce W. Major
President
Grocery Division
Nabisco Brands Ltd.

Clyde L. Noel
Vice-President and General Manager
Primo Products, Grocery Division
Nabisco Ltd.

Brian V. Keddy
Vice-President, Finance
Grocery Division
Nabisco Brands Ltd.

Jerry D. Young
President and Chief Executive Officer
Borden Foods Canada

Mike Andrews
Vice-President of Finance
Borden Catelli
Grocery and Foodservice Group
Division of The Borden Company, Limited

Don Meaker
Vice-President, Sales
Borden Catelli
Grocery and Foodservice Group
Division of The Borden Company, Limited

Charles L. McKague
Vice-President, Procurement
The Great Atlantic & Pacific Company
of Canada Limited

Robert Galati
Director
Galati Bros. Supermarkets

Chester Dziemanko
Category Manager
National Grocers Co. Ltd.

Don Jarvis
Executive Director
The Canadian Pasta Manufacturers Association

Kenneth E. Beswick
Commissioner
The Canadian Wheat Board

Marcus Rössl
Rud-Al Co. Ltd.

John Porco
Vice-President, Sales
Unico Inc.

Luigi Paccione
Vice-President
Sales and Operations
Bertolli Canada Inc.

Bruno Salafia
Director of Operations and Buyer
Aurora Importing & Distributing Ltd.

Italo P. Rosati
President and Chief Executive Officer
Santa Maria Foods Limited

Jack Lo Giacco
Key Account Manager
Santa Maria Foods•Sales•Limited

Santo A. Fata
President
SA-GER Food Products Inc.

Vito Violante
Partner and General Manager
Italfina Inc.

Frank Trimarchi
General Manager
Bella International Food Brokers Inc.

Anna Di Biase
General Manager
Molisana Imports
A Division of 996660 Ontario Limited

Frank Di Biase
Assistant Manager
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A Division of 996660 Ontario Limited

Eddy Petaccia
Vice-President
Grisspasta Products Ltd.

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Ottawa, Tuesday, May 28, 1996

Inquiry No.: NQ-95-003

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TRIBUNAL: ANTHONY T. EYTON, Presiding Member
ARTHUR B. TRUDEAU, Member
RAYNALD GUAY, 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 January 12, 1996, and of a final determination[3] dated April 11, 1996, respecting the dumping and subsidizing of dry pasta, not stuffed or otherwise prepared, and not containing eggs, in packages up to and including 2.3 kg in weight, originating in or exported from Italy.

On January 12, 1996, the Tribunal issued a notice of commencement of inquiry.[4] As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian manufacturers, importers and purchasers of dry pasta and to the Italian dry pasta industry. Respondents provided production, financial, import, export and market information, as well as other information relating to dry pasta, for the period from January 1, 1992, to December 31, 1995.

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 and the transcript of all proceedings. All public exhibits were made available to the parties. Protected exhibits were made available only to independent counsel who had filed a declaration and undertaking with the Tribunal.

1. R.S.C. 1985, c. S-15.
2. Canada Gazette Part I, Vol. 130, No. 4, January 27, 1996, at 365.
3. *Ibid.*, No. 17, April 27, 1996, at 1263.
4. *Ibid.*, No. 3, January 20, 1996, at 316.

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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 dry pasta, not stuffed or otherwise prepared, and not containing eggs, in packages up to and including 2.3 kg in weight, originating in or exported from Italy. In both the preliminary and the final determinations, the Deputy Minister indicated that the subject goods were wheat-based dry pasta, including dry pasta containing other ingredients, such as spinach, tomatoes and vitamins, which may have been added for aesthetic and nutritional purposes.

Dry pasta products are often referred to as macaroni or vermicelli products, depending on their shape. Long shapes are generally referred to as vermicelli and include spaghetti, capelli, linguini, vermicelli, angel hair and fettucini. Short lengths are generally referred to as macaroni and include elbow macaroni, penne, rigatoni, rotini, fusilli and ziti. In addition, dry pasta products may be in cut in specialty shapes, such as bows, shells, cannelloni, lasagna and wagon wheels. Dry pasta in packages up to and including 2.3 kg in weight is packaged in cellophane or in cartons, in various package configurations, of which the 450-, 500- and 900-g packages are the most popular.

In the final determination, the Deputy Minister identified 106 Italian companies that exported the subject goods to Canada. The Department of National Revenue requested information from 13 of those companies, which accounted for approximately 80 percent of the imports of the subject goods into Canada during the periods of investigation into dumping and subsidizing, and advised that other companies could provide submissions on a voluntary basis.

The Deputy Minister's investigation into dumping covered shipments of the subject goods during the period from July 1, 1994, to June 30, 1995. The period of investigation into subsidizing was from January 1, 1993, to June 30, 1995.

The Deputy Minister found that, during the period of investigation into dumping, 91 percent of the subject goods exported to Canada were dumped. The margins of dumping ranged from 0 to 50.0 percent, with a weighted average margin of dumping of 18.8 percent. During the period of investigation into subsidizing, the Deputy Minister found that Italian exporters shipped approximately 41 million kg of the subject goods, of which 34 million kg qualified for European Union export refunds. The weighted average amount of subsidy was 212 lire/kg, or approximately $0.18/kg. Table 1 presents the results of the Deputy Minister's investigation for selected exporters.

Table 1

MARGINS OF DUMPING AND AMOUNTS OF SUBSIDY FOR SELECTED EXPORTERS

Company	Margin of Dumping Expressed as a Percentage of Normal Value	Amount of Prohibited Export Subsidy (lire/kg)
Barilla S.p.A.	9.1	258
		(Parma plant)
		217
		(Caserta and Matera plants)
Industrie Alimentare Colavita S.p.A.	23.5	24
Delverde S.R.L.	8.8	197
La Molisana Industrie Alimentari S.p.A.	29.7	202
Pastificio De Cecco Di Filippo S.p.A.	11.8	73
Nestlé Italiana S.p.A.	31.4	161
		(Sansepolcro plant)
		208
		(Eboli plant)
Pastificio Fabianelli S.p.A.	6.6	139
Pasta Bernardo S.N.C.	4.8	116
Petrini S.p.A.*	50	299
Liquori S.p.A.	50	186
Pastificio F. Lli Federici S.p.A.*	50	282
Pastificio F. Lli Pagani S.p.A.*	50	233
Pastificio Antonio Pallante S.R.L.*	50	269
Corex S.R.L.	12.1	434
Pasta Combattenti S.p.A.	N/A	0
Alimentitalia Industria E Commercio	12.1	0
Apulia Traditions S.A.S.	12.1	0
F. Divella S.p.A.	27.1	228

N/A = Not applicable.

* No response to the Deputy Minister’s request for information.

Source: Department of National Revenue, Final Determination of Dumping and Subsidizing, April 11, 1996, Statement of Reasons, Tribunal Exhibit NQ-95-003-4, Administrative Record, Vol. 1 at 150-59.

POSITION OF PARTIES

The Canadian Pasta Manufacturers Association

The Canadian Pasta Manufacturers Association (CPMA), the complainant in this inquiry, is a trade association representing all of the domestic producers of dry pasta in Canada, which are as follows: Borden Catelli Consumer Products, Division of The Borden Company, Limited (Borden), Primo Foods Co., Division of Nabisco Ltd. (Primo), Italpasta Limited (Italpasta) and Grisspasta Products Ltd. (Grisspasta).

Borden, the largest domestic producer of dry pasta, is a division of The Borden Company, Limited which is a unit of Borden Inc. based in Columbus, Ohio. It sells dry pasta under brand names, such as Catelli, Lancia, Gattuso, Creamette, Splendor and Romi, and under private labels to all market sectors, i.e. retail, institutional and foodservice and industrial, throughout Canada and abroad.

Primo is a division of Nabisco Ltd.[5] The company is vertically integrated, milling its own durum wheat, and its primary business is the production, distribution and sale of dry pasta and other Italian food products. Its dry pasta is sold primarily under its own brand name, “Primo,” although it also sells private label products. While it sells nationally to all food sectors, its main focus is the retail sectors in Ontario and Quebec.

Italpasta was founded in 1989 in Brampton, Ontario. The company produces dry pasta in all package sizes under its own brand name, “Italpasta,” and under private labels for sale to retail, foodservice and industrial markets primarily in Ontario and Quebec.

Grisspasta, the smallest of the four domestic producers of dry pasta, is a family-owned corporation specializing in production (co-packaging) for other companies, including other domestic producers, and for sale to the foodservice industry, as well as the production of its own brand name pasta, “Giardino,” in packages over 2.3 kg.

In argument, counsel for the CPMA first considered the issue of injury. They identified a number of means by which, they submitted, the domestic producers had suffered injury as a result of the effects of the dumped and subsidized imports. First, the domestic producers experienced price suppression at the wholesale level. This is reflected in the evidence that shows that the domestic producers could not pass on price increases to retail accounts following the rise in their input costs due to the run-up in the price of durum wheat, particularly in 1993, because of the availability of inexpensive Italian pasta. Continuing on into 1994 and 1995, the price increases that did occur did not cover the cost increases that the domestic producers had to confront, and counsel noted that, in certain instances, these price increases did not hold.

Second, the consolidated financial statement for the domestic industry reveals significant financial losses in 1993, 1994 and 1995.

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5. It is owned by Nabisco Enterprises IHC, Inc. and Nabisco Holdings IHC, Inc. of Delaware. The ultimate owner of the firm is RJR Nabisco Holdings Corp., also of Delaware.

Third, the domestic industry lost market share to the subject goods between 1992 and 1994. These losses were reflected in both Nielsen Marketing Research (Nielsen) reports filed by the domestic industry and the Tribunal's more comprehensive statistical data found in the pre-hearing staff report. Counsel for the CPMA noted that 10 percentage points of market share were lost in this period and that, in 1994 alone, the subject goods doubled their market share. These increases were particularly dramatic in respect of the 450- and 500-g packages.

Fourth, counsel for the CPMA referred to the loss of sales and loss of shelf space, reflected both in the Nielsen studies and in the direct evidence of each producer. This evidence demonstrated the extent to which the subject goods had penetrated the chain store segment of the market and showed the domestic producers losing sales and/or shelf space at almost every account.

Finally, counsel for the CPMA submitted that the evidence before the Tribunal also demonstrated price erosion in 1993, as reflected in the increase in trade promotion spending found in the domestic producers' financial statements.

Counsel for the CPMA submitted that the injury set out above could not be said to have been caused by intra-industry competition because all of the domestic producers wanted to increase prices. Furthermore, with respect to the possible impact of an injury finding, they submitted that, if domestic industry prices increased by just 10 percent, this would raise income before taxes from a negative to a positive figure and move the domestic industry a long way towards the 10 percent return on net sales, a level that all producers identified as reasonable in this industry.

Counsel for the CPMA also submitted that no effective "defence" to the complaint had been presented by either the importers and exporters that appeared before the Tribunal or the retailers that imported directly from producers in Italy. With respect to the former group, counsel first suggested that these importers represented only a portion of importers of the subject goods. They then submitted that the Tribunal's pricing report confirmed that the prices of many of these importers' brands were lower than those of domestic producers' brands at the wholesale level. They also submitted that evidence such as the domestic industry's Nielsen shelf space audit demonstrated that the importers' claim that their brands were not competing with domestic brands was incorrect.

With respect to threat of injury, counsel for the CPMA submitted that the Tribunal could find ample evidence of threat in the sourcing habits of Unico Inc. (Unico) alone. Counsel submitted that, without an injury finding, Unico was likely to return to Italy to source its pasta and noted that Unico's market share was approximately two times that of the subject goods. In addition, counsel warned that the recent trends in private label sourcing (e.g. Loblaws Supermarkets Ltd. [Loblaws], A&P Food Stores Ltd. [A&P] and Galati Bros. Supermarkets [Galati]) would be given greater momentum if the Tribunal did not make an injury finding. Counsel noted that this last issue was not mere conjecture, as reflected in the testimony of one importer and its recent discussions with one of the major retailers.

Finally, counsel for the CPMA submitted that the circumstances of this inquiry should be distinguished from those in the 1987 inquiry[6] before the Canadian Import Tribunal (the CIT) in the following manner. First, the volume of subject goods is three times greater than in 1987, having risen from approximately 5 million kg to over 15 million kg. Second, the key segmentation in the 1987 decision, that is, that Italian product is found primarily in specialty or ethnic stores and the domestic product in chain stores and supermarkets, no longer exists, as reflected in both the significant penetration of the subject goods into the chain stores and the fact that retailers are now importing directly from Italy. They submitted that these changes are reinforced by the fact that many of the ethnic stores that existed in 1987 have subsequently grown into chain stores themselves (for instance, Fortino's Supermarket Ltd., Galati, Longo's and Highland Farms).

The Canadian Wheat Board

The Canadian Wheat Board (CWB) has the sole authority to market and sell in Canada, as well as in all other countries, all wheat and barley produced in Western Canada. In Canada, wheat and barley are sold principally to flour mills and malt houses. The CWB submitted that the level of dumped and subsidized dry pasta from Italy has caused a reduction in the Canadian dry pasta manufacturers' demand for semolina flour which, in turn, has resulted in reduced Canadian milling industry demand for western Canadian durum wheat and reduced revenues to Canadian wheat growers.

Exporters[7] and Importers[8]

Counsel for the exporters and importers opposing the complaint submitted that the evidence shows that there are essentially three categories of dry pasta products: manufacturers' brands, private labels or retailers' brands, and controlled labels or distributor/importer brands. Taking into account these categories, they submitted that the imported Italian dry pasta and, in particular, the imported Italian manufacturers' brands[9] whose companies they represented, which account for the majority of all imported Italian dry pasta, have not been the cause of the price competition in the dry pasta market and have not caused or threatened to cause injury.

Counsel for the exporters and importers submitted that the imported Italian manufacturers' brands of dry pasta do not compete with the Canadian producers' brands or retailers' private labels of dry pasta. Counsel referred to the evidence of various importers that the Italian manufacturers' brands of dry pasta are sold to different categories of customers, both Italian and non-Italian, by reason of quality differences, real or

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6. *Dry Pasta Originating in or Exported from the European Economic Community*, Canadian Import Tribunal, Inquiry No. CIT-5-86, Finding, January 28, 1987, Statement of Reasons, February 12, 1987.

7. Barilla Alimentare S.p.A., Colavita Ind. Al. Co. Spa, Lli de Cecco Di Filippo S.p.A., Delverde, S.R.L., F. Divella S.P.A., Pastificio Fabianelli S.p.A., La Molisana Industrie Alimentari S.p.A. and Nestlé Italiana S.p.A.

8. Aurora Importing & Distributing Ltd., Bella International Food Brokers Inc., Bertolli Canada Inc., Canadian Global Foods Corporation, Falesca Importing Ltd., Italfina Inc., Molisana Imports, Numage Trading Inc., SA-GER Food Products Inc., Santa Maria Foods Limited, Siena Foods Ltd. and Weston Produce, Division of F & F Supermarkets Inc.

9. Barilla, Colavita, De Cecco, Delverde, Bertolli, Divella, Fabianelli, La Molisana, San Marco, Buitoni and Mastro.

perceived, image, reputation or simply because the product is Italian-made. Counsel also pointed out that, with respect to each of the Italian manufacturers' brands of dry pasta whose companies they represented, there was no evidence of price competition with domestically produced dry pasta or price suppression, particularly since the Italian manufacturers' brands of dry pasta are sold at higher prices per gram than domestically produced dry pasta.

Given that imported Italian manufacturers' brands are not in competition with domestically produced dry pasta, counsel for the exporters and importers submitted that the Tribunal should consider the question of injury as it relates specifically to imported Italian manufacturers' brands of dry pasta separately from its consideration of injury as it relates to the other categories of dry pasta, namely, private labels and controlled labels of dry pasta. If it did so, the Tribunal would find that the imported Italian manufacturers' brands of dry pasta have not caused and are not threatening to cause injury. Alternatively, counsel submitted that the Tribunal should exclude the Italian manufacturers of those brands from any injury finding.

In addressing the domestic producers' allegations of financial loss, counsel for the exporters and importers questioned how the marketing expenses relating to the groups of related pasta and non-pasta Italian food products sold by Borden and Primo were allocated to the individual products. In particular, they questioned why, for both Borden and Primo, the general and administrative expenses allocated to dry pasta were proportionally higher than those allocated to other products. Counsel further submitted that the financial situations of both Borden and Primo are affected by both companies adopting certain financial devices in conjunction with their U.S. parent companies in order to reduce reported income in Canada. Moreover, counsel submitted that the two smallest domestic producers of dry pasta, namely, Italpasta and Grisspasta, did not experience financial losses and that their profitability in the retail dry pasta sector was similar to what they achieved in the institutional and foodservice sector.

With respect to the allegations of the domestic producers that they lost shelf space, counsel for the exporters and importers submitted that shelf space is not indicative of sales and is, therefore, meaningless. By way of illustration, counsel referred to Primo's shelf space audit and, in particular, to the shelf space at Fortino's, a retail business which they considered to be catering to Italian consumers. At this account, imported manufacturers' brands of dry pasta held approximately 57 percent of the shelf space, but had only 22 percent of the sales, while the domestically produced dry pasta had 78 percent of the sales.

Counsel for the exporters and importers argued that, on balance, it is the domestic producers that are in competition with each other and that are initiating the promotions to retailers which are suppressing prices. These promotions are motivated by reasons unrelated to imports of dry pasta. In support of their submissions, counsel referred to the business plans of Borden, as well as to a report prepared for RJR Nabisco Holdings Corp. in contemplation of its purchase of Primo. In particular, counsel pointed out that both the Borden plans and the Primo purchase document identify Canadian producers and Unico as competitors and do not refer to imports and the need to meet competition from imports.

In addressing the allegations of threat of injury, counsel for the exporters and importers argued that both Primo and Borden are restructuring to become more streamlined, efficient and cost-effective and that Italian producers are generally no longer receiving export restitution and subsidizing. In counsel's view, if there is any threat of injury, it is from imports of private labels and controlled labels, such as Galati's imports of "Reggia" pasta and A&P's imports of "Sapori Mediterranei" dry pasta, and not from imports of Italian manufacturers' brands of dry pasta. Finally, counsel stated that a new dry pasta producer recently entered the market in Quebec and submitted that such an investment would not have been made in the face of alleged dire threats of injury.

In the view of counsel for the exporters and importers, aside from the introduction of retailers' controlled labels of dry pasta, very little has changed since the CIT's 1987 finding relating to dry pasta. Counsel cited a passage from the 1987 Statement of Reasons in which the CIT states, in part, that Italian dry pasta is sold primarily in 500-g packages to Canadians of Italian origin at prices per gram above the price for domestically produced dry pasta and that domestically produced dry pasta is most often sold in 900-g packages at a price point of $0.99, as a traffic builder.

REQUESTS FOR SPECIFIC PRODUCT EXCLUSIONS

The Tribunal received four requests for exclusions of certain imported dry pasta products in the event of an injury finding or threat of injury finding caused by the dumping and subsidizing of the subject goods.

Mr. Enzo Salvatori, counsel for Brunello Imports Inc., requested an exclusion for imports of "specialty" pasta from Italy. He submitted that this imported pasta is a "high end" pasta that does not compete with domestically produced pasta, as it is produced from different wheat using a different drying process, is packaged differently and is higher-priced.

Mr. Marcus Rössl of Rud-Al Co. Ltd. appeared at the hearing and requested an exclusion for imports of Dalla Costa flavoured dry pasta in specialty cuts. Mr. Rössl submitted, first, that Dalla Costa dry pasta does not compete with the dry pasta produced by Canadian manufacturers, since Canadian manufacturers do not produce certain of the specialty cuts or do not add flavours similar to those found in Dalla Costa dry pasta. Second, he submitted that the retail price for Dalla Costa dry pasta is more than three times the price for any Canadian brands, based on a comparison of Dalla Costa 500-g and Canadian 900-g dry pasta products. He filed invoices with the Tribunal which, he claimed, showed that the purchase and sale prices for Dalla Costa dry pasta are significantly higher than those for domestically produced flavoured dry pasta. Third, he argued that the first time that he imported Dalla Costa dry pasta was in June and July 1994 and only in very small volumes which, in total, account for approximately 0.0025 percent of the total market. Finally, he submitted that the Italian manufacturer, Dalla Costa Alimentare, informed him that it had never received any subsidizing from the Italian government.

The CPMA opposed both of these exclusion requests on the basis that the imported dry pasta competes with domestically produced dry pasta.

Mr. Nick Orton, General Manager of Ports West International, requested an exclusion for imports of Organica Di Sicilia pasta from Grouppo Agricoltura Sana Sal in Italy. He submitted that this imported pasta is the only one in which 100 percent of the ingredients have been certified organic under the European Economic Community regulations. He further submitted that Grouppo Agricoltura Sana Sal stated that it had never applied for subsidies for its exports, that the purchase price for this type of pasta is significantly higher than for ordinary dry pasta and that this brand is only accepted in the natural food trade and among specialized independent retail stores.

Mr. Ralph Moscovitch, Purchaser for Pro Organics Marketing Inc. requested an exclusion for an imported custom-made organic dry pasta. He submitted that the price and quantities shipped of the imported organic dry pasta do not and are not likely to cause injury to the domestic producers of dry pasta, that his customers are retailers of organic produce and grocery products, a niche market in Canada, and that retail prices for organic pasta are from 50 to 70 percent above the prices for conventional dry pasta.

The CPMA consented to the exclusion for certified organic pasta from Italy accompanied by an Organic Transaction Certificate issued pursuant to the European Economic Community Regulation No. 2092/91.

ANALYSIS

Pursuant to section 42 of SIMA, as amended by the *World Trade Organization Agreement Implementation Act*,[10] the Tribunal is required to "make inquiry ... as to whether the dumping or subsidizing of goods [to which the preliminary determination applies] ... has caused injury or retardation or is threatening to cause injury" (emphasis added). In its decisions in Inquiry No. NQ-95-001[11] and Inquiry No. NQ-95-002,[12] the Tribunal concluded that, as a result of the amendments to SIMA, in making a finding under subsection 43(1) of SIMA in respect of an inquiry under section 42, it is directed to consider whether the domestic industry either has suffered injury or is threatened with 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[13] unless it first makes a finding of no injury. The Tribunal in this inquiry agrees with these views.

"Injury" is defined in section 2 of SIMA as "material injury to a domestic industry." "Domestic industry" is defined, in part, 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." Therefore, in arriving at its decision in the present inquiry, the Tribunal will first determine which domestically produced goods are "like goods" to the subject goods and then determine who are the domestic producers of those goods, i.e. which producers constitute the domestic industry. The Tribunal will then proceed to determine whether the domestic industry has suffered injury and, if so, whether a causal relationship exists between that injury and the dumping and subsidizing of the subject goods. If there is a finding of no injury, the Tribunal will proceed to consider whether the dumping and subsidizing of the subject goods are threatening to cause injury.

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10. S.C. 1994, c. 47.

11. *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.

12. *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, November 6, 1995, Statement of Reasons, November 21, 1995.

13. *Caps, Lids and Jars* at 10; and *Refined Sugar* at 12.

Like Goods

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

(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.

The Deputy Minister described the subject goods as dry pasta, not stuffed or otherwise prepared, and not containing eggs, in packages up to and including 2.3 kg in weight. The Deputy Minister stated further that the investigation was directed at wheat-based dry pasta products and did not include pasta products made from other types of grains. In the Tribunal's view, the evidence shows that all dry, wheat-based, non-egg pasta has similar characteristics, in that it is made from the same basic ingredients, consisting of milled durum wheat, called semolina flour, and water.[14] In fact, some of the dry pasta from Italy, especially the premium brands, contain a substantial proportion of Canadian semolina flour because of its superior qualities.

There are variations in the physical characteristics among dry, wheat-based, non-egg pasta products in terms of the variety of shapes, sizes and thickness and of the availability of different package configurations, i.e. 375 g, 450 g, 500 g, 900 g and 2.3 kg. Moreover, as indicated by witnesses for certain importers, some consumers and, in particular, Canadians of Italian origin may have preferences for Italian-made dry pasta and the "romance" associated with Italian-made pasta. However, leaving questions of perception aside, the Tribunal has been given no reason to believe that Italian pasta, in general, is superior to Canadian pasta from a quality standpoint.

Viewing the evidence in its entirety, the Tribunal is persuaded that domestically produced dry, wheat-based, non-egg pasta, in packages up to and including 2.3 kg, and the subject goods are similar in terms of physical characteristics, generally have the same end uses and, at the discretion of the consumer, can compete with and, in most instances, can be substituted for one another. The Tribunal is, therefore, of the view that domestically produced dry, wheat-based, non-egg pasta constitutes "like goods" to the subject goods.

Domestic Industry

Having determined that the like goods in this inquiry are domestically produced dry, wheat-based, non-egg pasta, not stuffed or otherwise prepared, in packages up to and including 2.3 kg in weight, the Tribunal must next determine which producers constitute the domestic industry for the purposes of assessing injury. The evidence shows that the production of Borden, Primo, Italpasta and Grisspasta, all members of the CPMA, constitutes 100 percent of the total domestic production of the like goods. The Tribunal, therefore, finds that these producers constitute the domestic industry for this inquiry.

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14. It may also contain additional ingredients for colouring or flavouring, or it may be enriched or fortified with vitamins.

Injury

In assessing whether the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury, the Tribunal did not attempt to isolate any injury or threat of injury caused by the dumping as distinct from any injury or threat of injury caused by the subsidizing. In the Tribunal's view, the dumped and subsidized imports from Italy are one and the same goods, and the effects caused by the dumping and the subsidizing are so closely intertwined that it is not possible to isolate the injury or threat of injury caused by the dumping from the injury or threat of injury caused by the subsidizing.

Subsection 37.1(1) of the *Special Import Measures Regulations*[15] (the Regulations) prescribes certain factors that the Tribunal may consider in determining whether a domestic industry has been injured by dumped or subsidized imports. These factors include: the volume of dumped or subsidized goods and their effect on prices in the domestic market for like goods; and the consequent impact of these imports on a number of economic factors, such as actual or potential declines in output, sales, market share, profits and return on investment. Prior to considering such factors in its analysis of economic indicators in this inquiry, the Tribunal will discuss the structure of the pasta market in Canada. The Tribunal finds this discussion useful because it provides an overview of how this market has evolved in the last 10 years, that is, since the last time that the domestic pasta industry complained about low-priced imports from Italy.[16]

Market Structure

Domestic Industry

At the time of the first finding in 1987, the domestic industry was considerably more diverse than it is today. According to the 1987 Statement of Reasons, it consisted of five national firms, as well as some small regional firms. The national firms were Catelli Inc., Lancia-Bravo Foods, Primo Foods Limited, the Creamette Company of Canada Limited and Gattuso Division, Campbell Soup Company Ltd. These firms, which comprised 90 percent of domestic production, manufactured pasta at a variety of plants located across Canada. Since 1987, and especially over the last seven years or so, the domestic pasta industry has undergone a major transformation. Indeed, of the major players in 1987, only two remain, namely, Borden, which had participated in the Canadian market through the Creamette Company of Canada Limited, and Primo, and even these two companies have undergone major changes since the first inquiry.

The most significant of these changes was driven by Borden. In 1989, Borden purchased Catelli Inc. from John Labatt Limited. In 1990, it purchased the Lancia-Bravo Foods pasta operation from its owner, General Mills, Inc., as well as Gattuso Division. Shortly after these purchases, Borden proceeded to close several of the plants across Canada that it had acquired and to consolidate all its pasta operations at two plants, one in Lethbridge, Alberta, and one in Montréal, Quebec.

The evidence indicates that these mergers and acquisitions are part of a strategy designed to restructure, rationalize and modernize Borden's pasta operations. While most of these mergers, acquisitions and plant closures took place before 1992, the evidence indicates that the effect of these events continued to be felt in the ensuing years, that is, throughout the period of inquiry. This has involved some shifting of

15. SOR/95-26, Canada Gazette Part II, Vol. 129, No. 1, January 11, 1995, at 80.
16. *Supra*, note 6. That case dealt only with the subsidizing of dry pasta.

production between Canada and the United States, as well as administrative downsizing, including the elimination of head office staff.[17] On the marketing side, there has been major brand repositioning, as some brands have grown in profile and importance, while others have declined.[18]

In short, throughout the 1990s, Borden's pasta business has been in a state of transition. The depth, speed and costs of this transition were bound to have some effect on Borden's performance, and evidence submitted by Borden indicates that it did.[19]

Primo, the other major player, has also experienced significant changes over the past two years or so. In 1994, the company closed a pasta manufacturing plant in Edmonton, Alberta, leaving it with one pasta plant in Toronto, Ontario. In Primo's response to the Tribunal' s questionnaire, the reason for the closure is attributed to the Edmonton plant being a higher-cost operation.[20] In January 1995, Primo was sold by its then owner, Pet Inc. of St. Louis, Missouri (which had owned Primo since 1986) to Pillsbury Company. Ten months later, Pillsbury Company, having decided that Primo did not fit within its strategic plans, sold the Primo pasta operation, along with certain other Primo assets, to Nabisco Ltd. In its analysis of the Primo acquisition, Nabisco Ltd. describes rationalization and restructuring steps that should be implemented to integrate the Primo operation with Nabisco Ltd.[21]

In addition to Borden and Primo, which comprise a large proportion of domestic production, the Canadian dry pasta industry today includes two other primarily regional producers, namely, Italpasta and Grisspasta, whose marketing is focused on the Quebec and Ontario markets. Italpasta did not exist in 1987. It was formed in 1989 and is a privately held Canadian company. Grisspasta is also a privately held Canadian company which was created and which began producing pasta in 1983 and whose primary business is the production of pasta for others (co-packaging). Since 1992, both companies have made major capital investments with a view to expanding their dry pasta operations and both have experienced significant increases in their sales volumes. All of the other regional producers of dry pasta which existed in 1987 have disappeared. There are several firms producing fresh pasta in Canada, but this production is not, and has never been, the subject of inquiry by the Tribunal.

In sum, today's domestic industry bears little resemblance to the 1987 industry. There are fewer players and fewer plants, but individual plants are larger, and capacity in the industry has grown since 1992. In addition, the domestic industry is becoming rationalized and organized along North American lines. In the Tribunal's opinion, the transition associated with this restructuring was a factor that affected the domestic industry's performance over the period of inquiry.

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17. Tribunal Exhibit NQ-95-003-9.1, Administrative Record, Vol. 3 at 70 and 72; and Tribunal Exhibit NQ-95-003-48C (protected — single copy), Administrative Record, Vol. 17A at 5.
18. Tribunal Exhibit NQ-95-003-48C (protected — single copy), Administrative Record, Vol. 17A at 22, 24, 70, 80-82, 116 and 121.
19. Tribunal Exhibit NQ-95-003-48C (protected — single copy), Administrative Record, Vol. 17A at 5, 46, 50 and 53.
20. Tribunal Exhibit NQ-95-003-9.2, Administrative Record, Vol. 3 at 86.
21. Tribunal Exhibit NQ-95-003-48A (protected — single copy), Administrative Record, Vol. 17 at 6 and 22-23.

Importers and Exporters

Although the members of the domestic industry in the present inquiry are quite different from those in 1987, many of the participants on the importer and exporter side are the same now as they were then. These include, among the importers, SA-GER Food Products Inc., Bertolli Canada Inc., Italfina Inc., Bella International Food Brokers Inc. and Numage Trading Inc. Just as in 1987, the Italian pasta products represented by importers include the well-recognized, Italian manufacturers' brands such as De Cecco and Barilla, as well as a variety of other lesser-known secondary brands.

One difference from 1987, on the importer side, involves Unico. Unico is a long established supplier of Italian products to the Canadian market and has been a major player in the dry pasta retail market for many years. In 1987, Unico was importing pasta for the Canadian market from Italy, and it participated in the first inquiry on the importer side.

Over the past 10 years, Unico has shown a marked propensity for switching its source of supply from producer to producer and from country to country.[22] In the early 1990s, Unico began sourcing a significant amount of its pasta requirements from Canadian production. However, in 1992, Unico switched back to Italian production for many of its requirements. This continued until mid-1994 when Unico began phasing out its purchases from Italy and turned to Canadian and U.S. production to supply its requirements. It ceased importing Italian dry pasta entirely in 1995. These switches had an effect on Canadian production primarily in the 900-g package size, which is where Unico's dry pasta sales are concentrated. This effect is further examined in the causality section of these reasons.

Retailers

In 1987, the CIT observed that there were essentially two distinct retail markets for dry pasta in Canada. On the one hand, there was the segment of the retail market serviced by the major retail grocery chains, which was Canada-wide and which serviced the majority of the population. On the other hand, there was the segment of the retail market serviced by the large independent grocery outlets that were located predominantly in the Toronto and Montréal metropolitan areas, where there were large concentrations of Canadians of Italian descent. Based on the evidence adduced in this inquiry, the Tribunal finds that the basic structure of the Canadian dry pasta retail market, as described above, still generally applies today.

However, the evidence also shows that there have been some important changes since 1987. Specifically, the past 10 years have seen the advent of limited line box stores whose large size and economies of scale have made them aggressive competitors of the more traditional grocery chains. Moreover, in a number of cases, major grocery chains were taken over by or merged with other chains. In addition, formerly independent stores have been acquired by grocery chains, including independents such as Fortino's which is, and has been, an important supplier to the ethnic community. Many chains have also franchised part of their operations. These separately managed franchised stores, together with other large independents, have, in many cases, affiliated themselves into large buying groups through which they source most of their supplies.

22. Tribunal Exhibit NQ-95-003-19.1C (protected), Administrative Record, Vol. 6.1 at 24; Tribunal Exhibit NQ-95-003-19.1E (protected), Administrative Record, Vol. 6.1 at 249; and Transcript of Public Hearing, Vol. 4, April 12, 1996, at 531-33 and 554-57.

The net effect of these changes has been, among other things, to increase concentration in the grocery retail sector in the hands of fewer buyers. In the Tribunal's opinion, this would tend to reinforce the ability of buyers to extract concessions from suppliers in various forms, including increased purchases at feature (i.e. low) pricing, cost-sharing on advertising and the payment of considerable fees for listing new products. These payments by manufacturers are not new; they were referred to as an important characteristic of the dry pasta retail marketing scene in the 1987 inquiry. It is clear from the evidence in this inquiry that these types of expenses were significant for the domestic industry over the period of inquiry and have affected its financial performance.[23]

Distribution Channels

In 1987, the CIT found that the vast majority of imported Italian pasta was sold through the large independent stores located in the major metropolitan centres of Toronto and Montréal. The CIT also concluded that "[w]ith the exception of one or two store brands, and a few well-known Italian brands, imports have not played much of a part in the chain-store market.[24]"

The issue of whether Italian imports have expanded, to a significant extent, their market presence and penetration beyond their 1987 base of independent ethnic stores, into the mainstream marketing channels of the major Canadian chains and affiliated stores has been the subject of considerable attention by the parties to the present inquiry. The evidence presented in this inquiry leads the Tribunal to the conclusion that a significant proportion of Italian imports continue to be sold through stores and independent outlets that are not affiliated with national chains and large buying groups. For example, the Tribunal's importer's questionnaire asked respondents to identify their five largest accounts. The majority of the accounts that were identified fall into the category of unaffiliated independents. Moreover, many of these accounts are located in Toronto and Montréal with outlets in ethnic areas.

However, the Tribunal also concludes that Italian imports have expanded their presence and penetrated the major chains and buying groups. The various Nielsen reports submitted by both sides, which track sales by brand at the major grocery stores, all indicate a rapid growth in sales of a variety of Italian brands, albeit from a relatively low starting sales base in some cases. In their witness statements and replies to the Tribunal's questionnaire, a number of importers also clearly indicate that a substantial portion of their sales are to major chains.[25]

Another document that relates to this issue is a Nielsen shelf space audit[26] that was commissioned by the domestic industry for this inquiry. The purpose of this study was to establish the shelf space given to domestic and imported brands at a total of 220 stores in Toronto and Montréal, including the major chains.

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23. Protected Pre-Hearing Staff Report, revised April 1, 1996, Tribunal Exhibit NQ-95-003-7C (protected), Administrative Record, Vol. 2 at 187; Transcript of *In Camera* Session, Vol. 1, April 9, 1996, at 82-84, and Vol. 4, April 12, 1996, at 643; and Manufacturer's Exhibit A-18 (protected), paragraphs 14-16, Administrative Record, Vol. 10A.

24. *Supra*, note 6, Statement of Reasons at 6.

25. For example, Importers' Exhibits D-1, G-1 and K-1, Administrative Record, Vol. 11; and replies to Schedule VIII of importer's questionnaire, Tribunal Exhibits NQ-95-003-16.1-16.12 (protected), Administrative Record, Vols. 6, 6A and 6B.

26. Manufacturer's Exhibit A-24 (protected), Administrative Record, Vol. 10A.

According to the domestic industry, the results of this study, which the Tribunal accepts, indicate that certain Italian brands have been accorded substantial shelf space at the major chains in these two metropolitan centres.

However, it is also clear from the report that, unlike the domestic brands which are distributed at most of the stores surveyed, the Italian brands are unevenly distributed. For example, of 115 stores surveyed in Toronto, the well-known Italian brand De Cecco was found in only 30 stores. To illustrate its uneven pattern of participation, De Cecco was present at only 2 out of 9 A&P stores surveyed, 4 out of 15 Loblaws stores, 12 out of 20 MFM (Miracle Food Mart) stores, 1 out of 24 Dominion stores, 2 out of 11 Food City stores and was not sold at any of the 11 IGA stores surveyed. This is generally consistent with the testimony of the Tribunal witnesses for Loblaws, A&P and Galati, who each indicated that certain of their stores shelved more Italian products than others because those stores were located in areas where there was a greater demand for Italian dry pasta.[27] The Tribunal notes that this pattern of uneven distribution was also found in the 1987 inquiry.

Nevertheless, it is evident to the Tribunal that Italian dry pasta has, over the period of inquiry, become increasingly available at major retail outlets, especially in the major metropolitan centres, where it is shelved and sold alongside domestic dry pasta.

Semolina Flour Cost

Another fundamental feature of this market is the fact that the fortunes of the domestic pasta industry are closely tied to the availability and costs of durum wheat and semolina flour. According to the evidence, semolina flour is the largest single cost component in the manufacture of pasta, comprising, over the period between 1992 and 1995, from 60 to 75 percent of the total cost of production.[28]

The Tribunal also notes that, from the standpoint of durum wheat costs, the present case is a situation of history largely repeating itself. In the 1987 inquiry, the CIT noted that, between 1985 and 1986, the price of durum wheat, as then fixed by the CWB, rose by about 26 percent, and the cost of semolina flour increased correspondingly by about 18 percent, raising the price of semolina flour from about $0.17/lb. to about $0.20/lb. Moreover, while Canadian prices were rising, international wheat prices were falling, by about 23 percent over the same period in 1985-86. The CIT observed, in the 1987 finding, that these increases in domestic costs were not matched by increases in selling prices of pasta, and, consequently, the domestic industry was caught in a cost-price squeeze, which was exacerbated by the cost advantages gained by imported product from the decline in world durum wheat prices.

The Tribunal notes that, according to a witness for the CWB, prices in Canada today for durum wheat are based on the "North American marketplace," meaning that a Canadian miller pays an in-store price in Thunder Bay, Ontario, that is basically the same as the in-store price in Minneapolis, Minnesota.[29] According to the evidence collected in this inquiry, over the period from 1992 to 1995, the domestic industry again ran into a cost-price squeeze, stemming from sharply escalating costs of durum wheat and semolina

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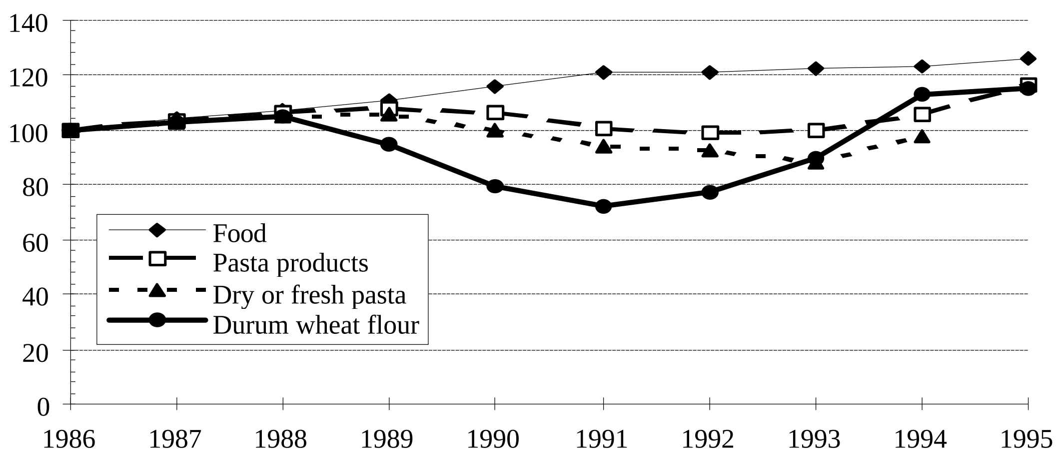
27. Transcript of Public Hearing, Vol. 3, April 11, 1996, at 301 and 332-33.
28. Protected Pre-Hearing Staff Report, revised April 1, 1996, Tribunal Exhibit NQ-95-003-7C (protected), Administrative Record, Vol. 2 at 193.
29. Transcript of Public Hearing, Vol. 4, April 12, 1996, at 493.

flour, especially between 1993 and 1994. More particularly, from 1992 to 1995, the price of semolina flour increased, according to witnesses for Borden, by some 76 percent, with most of the increase occurring in 1993-94, when prices rose by a staggering 70 percent.[30] Unlike 1985-86, the Canadian price increases in the 1990s were reflected in rising international durum wheat prices. The witnesses for Borden also stated that the 1993-94 semolina flour price increase translated into a 42 percent rise in production costs for pasta.[31]

The Tribunal notes that the price of durum wheat in Canada has followed a cyclical pattern over the past 10 years, as indicated in the figure below, which formed part of the Tribunal's pricing analysis.[32]

Figure 1

CONSUMER AND INDUSTRIAL PRICE INDEXES (1986=100)



Source: Statistics Canada, Catalogue Nos. 62-001, 62-010 and 62-011.

Both at the beginning of the cycle, corresponding with the 1987 inquiry, and at the end of the cycle, corresponding with the present inquiry, semolina flour prices were high and rising, as measured by the index, and the domestic industry reported financial injury. In the middle of the cycle, 1990-91, when semolina flour prices were low and falling, the domestic industry seems to have done well. Indeed, according to one domestic industry witness, in 1991, his company achieved a return of more than 10 percent on net pasta sales,[33] which all domestic industry witnesses considered to be the target rate of return for pasta business. What this clearly suggests to the Tribunal is that there has been a correlation between the domestic industry performance and the price of semolina flour.

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30. Transcript of *In Camera* Session, Vol. 2, April 10, 1996, at 194 and 327.
31. Transcript of *In Camera* Session, Vol. 2, April 10, 1996, at 174 and 194.
32. Pricing and Market Characteristics, March 29, 1996, Tribunal Exhibit NQ-95-003-51, Administrative Record, Vol. 1A at 177.
33. Transcript of *In Camera* Session, Vol. 2, April 10, 1996, at 365.

One of the reasons for this correlation is also evident from examination of the above figure. Although pasta prices over the cycle have generally moved in the same direction as semolina flour prices, they have tended to fall more slowly and less deeply than semolina flour prices, and they have tended to rise more slowly and less sharply than semolina flour prices. This would tend to cause margin expansion when industry semolina flour costs were falling, as in the 1988-91 period, and margin contraction when costs were rising, as in 1992-95 period. Indeed, this would also help to explain the apparent paradox of the domestic industry's good returns in the 1990-91 period, despite the fact that pasta prices, as measured by the index, were lower in 1990-91 than in 1986 or 1995.

The above phenomenon of prices falling less rapidly than costs, and cost increases having to be absorbed initially while prices catch up, would, in the Tribunal's opinion, generally be applicable to many manufacturing sectors. It is particularly true in the domestic pasta business where, according to a domestic industry witness, as much as 12 weeks notice must be given to customers before "taking" any price increases.[34] This is a substantial notice period, which means that, when costs are rapidly escalating, as they were in 1993-94, the domestic industry would probably have little choice but to watch margins erode.[35]

Against this background, it is not surprising to the Tribunal that the domestic industry suffered its greatest losses, over the period of inquiry, in the 1993-94 period. In 1995, the domestic industry's performance improved substantially (although losses were still reported), as the purchase costs of semolina flour stabilized and the domestic industry was able to catch up by implementing a number of price increases.[36] (See Table 4 and the discussion of domestic industry financial results for further details on the domestic industry's performance over the period of inquiry.)

In sum, the Tribunal is of the view that, in the situation of rising semolina flour costs which confronted the domestic industry from 1992 to 1995, the domestic industry was bound to incur a certain degree of financial injury from the operation of normal market forces.

Analysis of Economic Indicators

<u>Production</u>

As shown in Table 2, dry pasta, in package sizes of 2.3 kg or less, is by far the largest category of dry pasta produced in Canada. Over the period of inquiry, from 1992 to 1995, these goods represented about 65 percent of all dry pasta produced in Canada. Production peaked at 90.8 million kg in 1993, before dropping by 9.3 million kg in 1994. In 1995, production increased by about 8.0 million kg to 89.3 million kg. Production levels achieved in 1995 were just short of those reported in the peak year of 1993.

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34. Manufacturer's Exhibit A-15, Administrative Record, Vol. 9; and <u>Transcript of *In Camera* Session</u>, Vol. 2, April 10, 1996, at 328, and Vol. 3, April 11, 1996, at 528.
35. The degree of erosion is difficult to quantify because it depends on a number of factors, including the time interval between the purchase of semolina flour and the sale of pasta produced from the semolina flour, the ability to draw down inventories valued at pre-cost increase levels, and the degree to which forward buying of semolina flour may act as a temporary hedge against unfavourable cost-price movements.
36. Manufacturer's Exhibits A-5, A-11 and A-17, Administrative Record, Vol. 9.

Production of dry pasta over 2.3 kg, which is manufactured on essentially the same production lines as pasta of 2.3 kg or less, increased by 1.4 million kg to 25.5 million kg in 1993, followed by a surge in 1994 of close to 10.0 million kg. This surge in production more than offset the decline posted in the production of dry pasta of 2.3 kg or less in that year. In 1995, production recorded a decline of under 5 percent from the peak year of 1994.

The third pasta category, also made on common equipment, is other dry pasta (e.g. egg pasta and pasta used for further processing). Production of this pasta advanced by 26 percent in 1993, peaking at 20.0 million kg. However, in 1994 and 1995, production fell by close to 20 percent. By 1995, production had fallen to 13.2 million kg, the lowest level posted during the period of inquiry.

Table 2

PRODUCTION

	1992	**1993**	**1994**	**1995**
Dry Pasta, 2.3 kg or Less				
Production (000 kg)	84,425	90,859	81,563	89,302
% Change		8	(10)	9
Dry Pasta over 2.3 kg				
Production (000 kg)	24,135	25,535	35,344	33,756
% Change		6	38	(4)
Other Dry Pasta[1]				
Production (000 kg)	15,838	20,021	16,315	13,219
% Change		26	(19)	(19)
Total Dry Pasta				
Production (000 kg)	124,398	136,415	133,222	136,277
% Change		10	(2)	2

Note:
1. Includes the production of egg pasta and pasta used for further processing.

Source: Protected Pre-Hearing Staff Report, March 4, 1996, Tribunal Exhibit NQ-95-003-7 (protected), Administrative Record, Vol. 2 at 128.

In sum, the production of dry pasta of 2.3 kg or less fluctuated over the period, but ended up somewhat higher in 1995 than in 1992. Taken as a whole, domestic industry dry pasta production increased after 1992 and remained steady thereafter.[37]

37. This suggests that the decline in sales of durum wheat to Canadian millers which was reported by the CWB appears to be due to factors other than reduced dry pasta production by the domestic industry.

Apparent Retail Market

The inquiry focused on the retail market for dry pasta, since over 99 percent of sales of dry pasta of 2.3 kg or less is sold in the retail market, according to Tribunal data.[38]

As indicated in Table 3, the apparent retail market, in volume terms, for dry pasta of 2.3 kg or less, advanced by 13 percent between 1992 and 1995. During this period of market expansion, there was a substantial change in the shares held by the domestic industry and imports from Italy and the United States. The domestic industry's sales volume remained relatively flat during the period of market growth. As a result, its market share fell from 89 to 80 percent.

Imports from both Italy and the United States increased their respective market share during the period of inquiry. Italian imports increased their market share by 7 percentage points between 1992 and 1994, before losing 2 percentage points of market share in 1995. Imports from the United States increased their market share by 4 percentage points, with most of the gain occurring in 1994.

Table 3

APPARENT RETAIL MARKET

	1992	**1993**	**1994**	**1995**
Apparent Retail Market				
Sales Volume (000 kg)	103,021	109,318	113,021	116,721
% Change		6	3	3
Market Share (%)				
Domestic Producers	89	87	79	80
Italian Imports	8	11	15	13
U.S. Imports	3	2	6	7

Note:
1. Figures may not add due to rounding.

Source: Public Pre-Hearing Staff Report, revised March 7, 1996, Tribunal Exhibit NQ-95-003-6A, Administrative Record, Vol. 1A at 109.2.

The apparent retail market for dry pasta of 2.3 kg or less may be analyzed by the principal package configurations in which the product is sold: the 450- and 500-g package sizes; the 900-g package size; and all other package sizes.

38. The balance of dry pasta of 2.3 kg or less is sold in the foodservice and institutional sector. Public Pre-Hearing Staff Report, revised March 7, 1996, Tribunal Exhibit NQ-95-003-6A, Administrative Record, Vol. 1A at 109.2.

As indicated in Table 4, the 450- and 500-g package sizes posted a 37 percent gain in volume between 1992 and 1995. The domestic industry's market share in these sizes showed steady and ongoing declines during the period of inquiry. In 1995, the domestic industry's market share stood at 46 percent, down from 65 percent in 1992.

Imports from Italy in the 450- and 500-g package sizes gained 14 percentage points of market share between 1992 and 1995. The share of imports from the United States remained relatively stable between 1992 and 1994, and then increased by 6 percentage points in 1995.

Table 4 further indicates that the sales of the 900-g package size hold the largest share of the market for dry pasta of 2.3 kg or less. During the period from 1992 to 1995, the apparent market for this package size remained relatively stagnant. The industry, while retaining its role as the dominant player in this package size, nonetheless saw its market share decline by 7 percentage points between 1992 and 1994 in volume terms. In 1995, the domestic industry regained 5 percentage points of market share, retaining 94 percent of the market, compared to 96 percent in 1992.

Sales from imports of 900-g packages from Italy increased their market share by 3 percentage points between 1992 and 1994, according to the evidence, due, in large part, to increasing sales by Unico, a major importer and distributor of Italian food products at that time. The evidence also shows that Unico decided to change from Italian suppliers to Canadian and U.S. suppliers in late 1994. As a consequence, the market share held by Italian imports was reduced to an insignificant level in 1995. U.S. imports captured 4 percentage points of market share in the 900-g package size during the period from 1992 to 1994. In 1995, the share of U.S. imports fell, but the decline was not as great as the decline shown for Italian imports.

The "other retail sizes" (350 g, 375 g, etc.) reported in Table 4 is the smallest of the three size groupings. During the period of inquiry, sales volume in this size grouping grew by about 5 million kg, which was more or less equally divided between the domestic industry and Italian imports. Sales in this grouping are composed, in large part, of specialized items and shapes which are generally sold at prices per gram which are considerably higher than the regular cut 450-, 500- and 900-g packages.

Table 4

APPARENT RETAIL MARKET BY PACKAGE SIZE
(000 kg)

	1992	1993	1994	1995
450 g and 500 g				
Apparent Market (000 kg)	19,634	21,359	24,545	26,921
% Change		9	15	10
Market Share (%)				
Domestic Producers	65	59	52	46
Italian Imports	32	39	45	46
U.S. Imports	3	2	3	9
900 g				
Apparent Market (000 kg)	73,362	76,893	76,596	72,453
% Change		5	(0)	(5)
Market Share (%)				
Domestic Producers	96	95	89	94
Italian Imports	2	3	5	1
U.S. Imports	2	1	6	5
Other Retail Sizes				
Apparent Market (000 kg)	10,023	11,057	11,880	14,734
% Change		10	7	24
Market Share (%)				
Domestic Producers	90	83	76	78
Italian Imports	2	10	17	17
U.S. Imports	8	7	7	5

Notes:
1. The apparent market for 1995 includes 2.6 million kg of unspecified sizes of dry pasta. This volume is not included in the above table.
2. Figures may not add up due to rounding.

Source: Public Pre-Hearing Staff Report, March 4, 1996, Tribunal Exhibit NQ-95-003-6, Administrative Record, Vol. 1A at 73.

Domestic Industry Financial Results

Table 5 presents the consolidated financial results for the domestic industry.[39] Due to the confidential nature of the financial data, the information is presented in index form, with 1992 as the base year.

Table 5

FINANCIAL DATA
(Index 1992=100)

	1993	1994	1995
Sales Volume	104.5	101.3	99.5
Average Unit Revenue	97.9	104.9	119.1
Net Sales	102.7	106.7	118.9
Cost of Goods Sold	107.5	134.4	139.4
Total Trade Promotion	118.2	99.4	98.2
General Selling and Administrative and Other Expenses	100.5	105.1	120.6
Net Income (Loss)	(63.1)	(201.6)	(11.0)

Source: Protected Pre-Hearing Staff Report, revised April 1, 1996, Tribunal Exhibit NQ-95-003-7C (protected), Administrative Record, Vol. 2 at 187.

These results show that the domestic industry's net sales revenues increased by 19 percent between 1992 and 1995. However, during this same period, the cost of goods sold surged by 39 percent.

The domestic industry saw its expenses, other than trade promotion, increase by 21 percent over the period. Total trade promotion expenses jumped by 18 percent in 1993, compared to 1992, and then declined in 1994 and 1995 to a lower level than in 1992. Bottom line results show a profitable year in 1992, but, subsequently, the domestic industry recorded losses in each of the years 1993 and 1994, as average price levels lagged behind cost increases. In 1995, results improved significantly, due in large part to a 14 percent increase in average unit selling prices. These financial results are an indication of the cost-price squeeze encountered by the domestic industry, over the period of inquiry, in part as a result of movements in the cost of semolina flour, which has been discussed earlier in these reasons.

39. This does not include Grisspasta which accounts for well under 5 percent of total domestic sales in 1995. Grisspasta was unable to supply financial data below the gross margin line.

Summary

In sum, over the period of inquiry, the domestic industry experienced a reduction in the share that it held of the retail dry pasta market and, in aggregate, the domestic industry lost substantial sums of money on the portion of its business represented by dry pasta in packages of 2.3 kg or less. In the Tribunal's opinion, the extent of the injury suffered, especially on the financial side, is material.

Causation

The Tribunal must next consider whether there is a causal link between the material injury suffered by the domestic industry and the dumped and subsidized imports. Subsection 37.1(3) of the Regulations prescribes factors that the Tribunal may consider in examining this issue. The Tribunal must also examine other factors to ensure that injury caused by such factors is not attributed to the dumped and subsidized imports. In considering the issue of causation in this inquiry, the Tribunal examined, in particular, the developments in the market as a whole, as well as developments relating to different package sizes and to retailers' controlled labels and the relationship of these developments to pricing. In addition, the Tribunal examined the evidence relating to allegations of lost accounts and price suppression and erosion at specific accounts.

Market Overview

According to the 1987 finding, the Canadian pasta market had been growing at a fairly constant rate from 1983 onward. The domestic industry and Italian imports had both participated more or less equally in the growth of the market. Hence, their market shares had remained relatively unchanged over the period, with the domestic industry holding around 89 percent of the market and Italian imports, about 9 percent. Most of the residual share was held by the United States.

As indicated under "Analysis of Economic Indicators," over the period of this inquiry, the market for dry pasta in packages of 2.3 kg or less also grew at a relatively constant average rate of about 3 percentage points a year. However, unlike 1987, in the current inquiry, the statistical data indicate that the domestic industry did not participate in this growth. Rather, the increase in the market was captured almost entirely by imports from Italy, as well as by imports from the United States. As a result, though sales volumes by domestic producers remained relatively flat from 1992 to 1995, the domestic industry's market share fell by 9 percentage points, from 89 to 80 percent. These 9 percentage points were shared almost equally between Italian imports, which took about 5 percentage points of share to hold 13 percent of the market in 1995, and U.S. imports, which took about 4 percentage points of share to hold 7 percent of the market in 1995.

In 1987, as the domestic industry had not lost market share, the focus of the injury analysis, at that time, was on whether Italian imports had caused the domestic industry financial injury by suppressing prices. In this inquiry, the focus is on both market share loss, as noted above, and any injury caused by price suppression and price erosion. However, as far as the domestic industry's market share loss is concerned, it is important to keep in mind that, from a macro perspective, it is driven not by reduced sales, but rather by a lack of participation in the growth opportunities which existed. A key question, then, is where were these growth opportunities and why did the industry not participate in this growth?

The 450- and 500-g Package Sizes

The Tribunal notes that the 1987 inquiry focused its injury analysis on two package sizes, namely, the 500-g and the 900-g configurations. The present inquiry has also focused predominantly on these two package sizes, as well as on the 450-g package size which apparently was not in the market in 1987. The Tribunal finds that the 450- and 500-g package sizes are essentially interchangeable from a retailing and consumer perspective and has grouped these two sizes together for the purposes of the following analysis. The 900-g and the 450- and 500-g package sizes are the heart of the retail dry pasta market, together representing about 90 percent of total retail sales.

In 1987, the CIT found that most of the Italian dry pasta sold in the Canadian market was packed in 500-g packages. The evidence in this inquiry indicates that the vast majority of Italian dry pasta continues to be sold in the small package, with the 500-g package now having been joined by the 450-g package. The Tribunal notes that the statistical data collected for this inquiry indicate that, from 1992 to 1995, all of the growth in the market, in the principal package sizes, was in 450- and 500-g packages, representing an increase of about 7.3 million kg. The 900-g package, which is overwhelmingly dominated by sales from domestic production, exhibited no sustained growth over the same four-year period.[40]

The data also indicate that about 80 percent of the increase in the 450- and 500-g package configurations or about 6 million kg accrued to sales from Italian imports, with the balance going to U.S. imports.[41] The information available from the importer's questionnaire further indicates that, of the many Italian brands sold in the Canadian market, the vast majority of the sales, and the increase in sales from 1993 to 1995, is accounted for by sales of a limited number of well-known Italian manufacturers' brands, including Barilla, De Cecco, Delverde, La Molisana and Buitoni.

Specifically, the analysis of retail sales by brand name, for the years from 1993 to 1995 (brand name sales for 1992 were not available), shows that these five Italian brands grew from about 53 percent of total Italian sales in 1993 to about 75 percent of total Italian sales in 1995. This growth in percentage share by the five brands resulted from the fact that they captured some 93 percent of the volume growth in sales of pasta from Italy in the 450- and 500-g package sizes over the three-year period. This amounted to an increase in sales volume by the five brands of about 3.8 million kg, out of a total increase of 4.0 million kg in sales of 450- and 500-g packages.[42]

A further analysis of Italian dry pasta sales indicates that, in terms of price, there is a distinction between sales of premium Italian manufacturers' brands and other Italian production sold in the Canadian market, which includes lesser known manufacturers' brands, distributor private label brands and retailers' brands. More particularly, at the retail level, the various Nielsen reports indicate that, from 1993 to 1996, the

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40. See Table 4 of these reasons.

41. Public Pre-Hearing Staff Report, March 4, 1996, Tribunal Exhibit NQ-95-003-6, Administrative Record, Vol. 1A at 72.

42. Analysis of retail sales by brand name was done using information provided by importers in Schedules III and VII of the importer's questionnaire, Tribunal Exhibits NQ-95-003-16.1-16.12 (protected), Administrative Record, Vols. 6, 6A and 6B; and Public Pre-Hearing Staff Report, March 4, 1996, Tribunal Exhibit NQ-95-003-6, Administrative Record, Vol. 1A at 72.

five Italian brands, which accounted for almost all of the growth in Italian sales, consistently sold at 10 to 50 percent premiums over other Italian-sourced brands.

The retail price point occupied by the five brands, for regular cut common shapes, was consistently at or near $1.00 or more for 450- and 500-g packages. For example, according to the Nielsen survey of major national grocery supermarket banners, in the 52 weeks ending in each of February 1994, 1995 and 1996,[43] Delverde and De Cecco spaghetti, in the 450-g cellophane pack, sold for between $1.00 and $1.20. Other brands, such as Bertolli and Fabianelli, retailed, for 500-g spaghetti packages, at around $0.65 to $0.80 over the period. At the low end of the market are brands such as San Marco, retailing 500-g spaghetti packages at about $0.50 throughout the period.

This distinction, at the retail price level, between the five Italian brands and the other Italian brands is confirmed by a comparison of the wholesale prices of these major brands against the other brands, as contained in the Tribunal's pricing report and the questionnaires. Since 1993, at the wholesale price level, the five major Italian brands of 450- and 500-g regular cuts have sold at a substantial premium compared to other Italian-sourced brands. For example, the wholesale prices of major brands ranged from 42 to over 100 percent above those of other Italian-sourced brands.[44]

Several witnesses described the pasta market as consisting of high-, middle- and low-end dry pasta.[45] Using this terminology, it is evident to the Tribunal from the foregoing analysis that, over the period of inquiry, Italian pasta imports generally targeted the high or premium end of the market. It is this end of the market where the vast majority of the growth occurred in Canada, and it is premium Italian pasta brands which captured nearly all of this growth.

The Tribunal notes that the domestic industry has argued that the 450- and 500-g package sizes are important to it and that it has suffered substantial injury in this specific area from Italian imports. According to the evidence, the only Canadian producer that has a major presence in these package sizes is Borden.[46] Over the period of inquiry, its sales represented about 80 to 85 percent of domestic producers' sales in these package configurations and about 50 percent of the total sales of 450- and 500-g packages. Most of Borden's sales in this size range were of one brand, namely, Catelli, packaged in the 500-g configuration. The information provided by Borden shows that Lancia, its other major brand, is not sold in the 500-g package, with the exception of lasagna. According to the Nielsen survey, the retail price of Catelli 500-g spaghetti has increased steadily since 1993, going from $0.90 in 1993 to well over $1.00 in 1995. It is evident from this data that Catelli is positioned in the high end of the market, where it sells at similar price points to the premium Italian brands.[47]

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43. Manufacturer's Exhibit A-2 (protected), Appendices 4-B, 4-C and 4-E, Administrative Record, Vol. 10.
44. Pricing and Market Characteristics, March 29, 1996, Tribunal Exhibit NQ-95-003-52 (protected), Administrative Record, Vol. 2A at 83 and Schedule I at 84-98.
45. Transcript of Public Hearing, Vol. 3, April 11, 1996, at 360 and 393, and Vol. 5, April 15, 1996, at 643 and 648.
46. Public Pre-Hearing Staff Report, March 4, 1996, Tribunal Exhibit NQ-95-003-6, Administrative Record Vol. 1A at 73; and domestic producers' replies to Schedule V of manufacturer's questionnaire, Tribunal Exhibits NQ-95-003-10.1-10.4B (protected), Administrative Record, Vols. 4, 4.1, 4A, 4B and 4C.
47. See, for example, Manufacturer's Exhibit A-2, Appendix 4-E, Administrative Record, Vol. 10.

The positioning of Catelli in the high end of the retail market is confirmed by the wholesale pricing data collected by Tribunal staff. Specifically, the data show that Catelli's wholesale prices for all regular cuts, like the average retail price for 500-g Catelli spaghetti, increased steadily from 1993 onward. Since 1994, the average wholesale prices for 500-g Catelli brand regular cuts place it in the same price range as the average wholesale prices for the premium Italian brands.[48] In sum, the Tribunal finds that Catelli 500-g pasta competes at the high end of the market against premium Italian brands.

However, the evidence available to the Tribunal does not demonstrate that retail or wholesale prices have been suppressed for this package size or that this package size is a source of financial difficulties for Borden. In this connection, the Tribunal notes that Borden provided data indicating its average costs of goods sold for regular cuts of Catelli spaghetti and macaroni for the years 1994 and 1995. [49] According to this data, there is a reasonable margin between Borden's average costs of goods sold and its average wholesale selling prices for Catelli 500-g regular cuts.

The Tribunal notes that Primo, over the period of inquiry, had a relatively consistent, though small, presence in sales of the 450- and 500-g package sizes. The only other domestic industry player in this market is Italpasta, whose participation has been growing recently, but from a very small base.[50] Together, these two firms represented around 5 to 10 percent of sales of these package sizes, over the four-year period. According to the evidence, from a price standpoint, Primo is positioned in the middle of the market, at both the retail and the wholesale levels. As for Italpasta, the pricing data collected by Tribunal staff indicate that it is positioned at the low end.[51] At the hearing, Italpasta confirmed this pricing, but argued that this pricing strategy was necessary to buy its way into the market because of competition from Italian imports.[52]

It is clear from the evidence that there is a variety of low-priced, non-premium 450- and 500-g Italian pasta in the market. However, these secondary brands appear to come and go, from time to time, and they do not comprise, and have not comprised, over the past 10 to 15 years, more than a small percentage of total imports from Italy. Nevertheless, in the Tribunal's opinion, their presence could well have a certain price-suppressive effect in the non-premium end of the market, where price is a more important consideration. However, given that the vast majority of domestic and Italian sales are of premium 450- and 500-g pasta, any injury that may have been caused by these non-premium Italian imports has not, to date, been significant, in the Tribunal's estimation.

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48. Pricing and Market Characteristics, March 29, 1996, Tribunal Exhibit NQ-95-003-52 (protected), Administrative Record, Vol. 2A at 83 and Schedule I at 84-98.

49. Tribunal Exhibit NQ-95-003-10.1AB (protected), Administrative Record, Vol. 4.1B at 115.

50. Public Pre-Hearing Staff Report, March 4, 1996, Tribunal Exhibit NQ-95-003-6, Administrative Record, Vol. 1A at 73; and domestic producers' replies to Schedule V of manufacturer's questionnaire, Tribunal Exhibits NQ-95-003-10.1-10.4B (protected), Administrative Record, Vols. 4, 4.1, 4A, 4B and 4C.

51. Pricing and Market Characteristics, March 29, 1996, Tribunal Exhibit NQ-95-003-52 (protected), Administrative Record, Vol. 2A at 83 and Schedule I at 84-98; and Manufacturer's Exhibit A-2 (protected), Appendix 4-E, Administrative Record, Vol. 10.

52. Manufacturer's Exhibit A-11, Administrative Record, Vol. 9; and Transcript of *In Camera* Session, Vol. 1, April 9, 1996, at 6-8.

The 900-g Package Size

In 1987, the CIT found that domestic sales were primarily concentrated in the 900-g package configuration. In addition, the CIT found that, at both chain stores and large independents, this package size was frequently sold on promotion, especially in Montréal and Toronto, with most of the promotional costs borne by producers, at a retail price point of $0.99 that was considered a "powerful traffic builder." The CIT concluded that there was price pressure and price suppression in the retail market, but this was principally the result of intra-industry competition rather than competition from the Italian product.

After reviewing the evidence in this inquiry, the Tribunal is of the view that the situation which prevailed in this market segment over the current period of inquiry is substantially similar to the situation which prevailed over the period of inquiry some 10 years ago. Specifically, the domestic industry still overwhelmingly dominates this market segment. Imports from Italy comprised from 2 to 5 percent of this market from 1992 to 1994 and virtually disappeared in 1995.[53] Most of these Italian imports were brought in by one company, Unico, which effectively was the only source of Italian competition to domestic production in the 900-g package configuration over the period of inquiry.[54] Another small part of sales of the 900-g package, also representing less than 5 percent of total 900-g sales, is accounted for by imports from the United States of retailers' controlled label pasta such as the Loblaws "No-Name" brand.[55]

The promotional retail price point of $0.99, which had been the subject of much consideration in the first inquiry, was again the subject of attention in this inquiry. All the Tribunal witnesses, representing one national, one Ontario regional and one independent retailer, testified that the $0.99 feature price for a 900-g package was still frequent and commonplace, especially in the Toronto area.[56] One witness indicated that this was not even a feature price at his stores, but was offered as an everyday low price.[57] These witnesses also reported that, occasionally, prices for a 900-g package would fall considerably below $0.99.[58]

These witnesses generally confirmed that, at feature prices, there was little or no money to be made by retailers on such sales. In fact, they were viewed as "loss leaders" whose purpose was to draw customers into the store.[59] The retailers were generally unhappy with retail price levels for the 900-g product and wished that they would go away. However, there was some skepticism that frequent feature pricing of the 900-g product, including at the popular $0.99 retail price point, would become a thing of the past, regardless

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53. Public Pre-Hearing Staff Report, March 4, 1996, Tribunal Exhibit NQ-95-003-6, Administrative Record, Vol. 1A at 73.
54. Tribunal Exhibit NQ-95-003-19.1C (protected), Administrative Record, Vol. 6.1 at 30 and 39.
55. Tribunal Exhibit NQ-95-003-25.2 (protected), Administrative Record, Vol. 6.3 at 73.
56. Transcript of *In Camera* Session, Vol. 3, April 11, 1996, at 467, 576 and 580; and Transcript of Public Hearing, Vol. 3, April 11, 1996, at 388, and Vol. 4, April 12, 1996, at 458.
57. Transcript of *In Camera* Session, Vol. 3, April 11, 1996, at 583; and Transcript of Public Hearing, Vol. 3, April 11, 1996, at 352 and 388.
58. Transcript of Public Hearing, Vol. 5, April 15, 1996, at 771.
59. Transcript of Public Hearing, Vol. 3, April 11, 1996, at 370 and 391, and Vol. 4, April 12, 1996, at 566-67; and Transcript of *In Camera* Session, Vol. 3, April 11, 1996, at 468 and 562-63.

of the outcome of this inquiry.[60] Indeed, there was evidence submitted which shows that, despite the implementation of provisional anti-dumping and countervailing duties, 900-g packages of pasta have continued to be featured at $0.99.[61]

It is evident, as the feature pricing phenomenon exemplifies, that 900-g pasta has been and continues to be the subject of intense price pressures at the retail level, which invariably places wholesale prices under similar pressures. From the evidence adduced, the Tribunal considers that there are several factors contributing to this situation. First, the retail environment, as alluded to by the retail witnesses, is extremely competitive in the major metropolitan centres, where the major chains and large independents are all fighting each other for the consumer's attention.[62] One of the major weapons in this battle is feature pricing, as advertised through flyers and other promotional means. Some products serve as better draws than others. According to witnesses, dry pasta, especially in the 900-g package, has been a promotional and flyer mainstay because of its proven popularity with consumers.[63] In a sense, 900-g pasta appears to be a victim of its own success as a consumer draw. However, according to the evidence, in drawing customers into the store, some or all of the losses generated by 900-g pasta sales can be offset for retailers by sales of other products.[64]

A second factor is intra-industry competition. Although there are fewer domestic industry players competing today in the 900-g segment than there were at the time of the first inquiry, in the Tribunal's opinion, there has been no noticeable lessening of what was described in the 1987 finding as "fierce" intra-industry competition. According to the evidence, Borden, Primo and, to a somewhat lesser extent, Italpasta all directed considerable sums of money for promotional expenses designed to increase their sales of dry pasta, over the period of inquiry. Since the vast majority of the domestic industry sales are in the 900-g package configuration, it follows that a high proportion of this spending must be associated with sales of this package size.

Although retailers testified that they absorb some of the costs associated with these promotions, they also alluded to the regular flow of cheques received from the domestic industry to support the feature prices at which the 900-g pasta was frequently offered.[65] The retailers also indicated that, in many cases, these domestic industry monies were offered to retailers in connection with the promotion of programs which packaged pasta together with other goods from a particular supplier, such as tomato sauces and vegetable oils.[66] This technique of promotional bundling or "cross-selling" is referred to by the domestic industry, in documents submitted in evidence, as a means of leveraging trade spending over an entire family of products. This technique allows products within the bundled group to be sold at different margins, some high and some low, in the expectation that a satisfactory margin for the group, as a whole, will be met.[67] However,

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60. Transcript of *In Camera* Session, Vol. 3, April 11, 1996, at 598; and Transcript of Public Hearing, Vol. 3, April 11, 1996, at 398.
61. Transcript of *In Camera* Session, Vol. 6, April 16, 1996, at 958-60.
62. Transcript of Public Hearing, Vol. 3, April 11, 1996, at 331.
63. Transcript of Public Hearing, Vol. 4, April 12, 1996, at 566-67.
64. Transcript of *In Camera* Session, Vol. 3, April 11, 1996, at 469-70, and Vol. 4, April 12, 1996, at 667.
65. Transcript of *In Camera* Session, Vol. 3, April 11, 1996, at 598-99.
66. Transcript of *In Camera* Session, Vol. 3, April 11, 1996, at 549 and 562.
67. Transcript of *In Camera* Session, Vol. 4, April 12, 1996, at 662-63 and 667.

this cross-selling with other goods can make it difficult to assign specific net net values to dry pasta. Nevertheless, it is clear to the Tribunal that frequent feature pricing by retailers, including $0.99 for a 900-g package of regular cuts, would not be as prevalent as it is in the marketplace without the strong financial support of the domestic manufacturers, to the detriment of domestic industry margins.[68]

The Tribunal notes that dry pasta of 2.3 kg or less is only one of several varieties of pasta products that are produced by the domestic industry. However, the 900-g package of regular cut dry pasta represents the volume end of the domestic industry's pasta production line. This means that, in order to have efficient factory production on pasta products generally, it is important to achieve high production rates on 900-g dry pasta.[69] This production imperative helps to explain, in the Tribunal's estimation, the aggressive nature of the competition in the domestic industry in sales of the 900-g package and some of the low retail and wholesale prices that have been reported.

The Tribunal notes that, as part of the inquiry, the domestic industry was requested to provide a number of documents, prepared for internal company use, that contain a variety of business information.[70] With the exception of some references to Unico, this evidence makes almost no mention of Italian imports as a source of competition, let alone a source of injury.[71] On the contrary, when reference is made to key competitors, it is other domestic manufacturers that are usually identified.[72] This evidence of intra-industry competition in the 900-g package size is confirmed by the Tribunal's own statistical data, which disclose significant market shifts among domestic producers over the period of inquiry. Specifically, the losses in share of domestic sales by one domestic producer were largely offset by gains by other domestic producers, in the 900-g package.[73]

As noted above, Unico has sold and continues to sell 900-g pasta. Moreover, as described under "Importers and Exporters," Unico was a major importer of Italian pasta from 1992 to early 1995, when it ceased importing from Italy. The Tribunal notes that Unico, which has shown a readiness in the past to switch sources of supplies among countries, is clearly a source of competition for the domestic industry. The pricing information available to the Tribunal on Unico's sales of 900-g pasta indicates that, regardless of its source, its prices are quite competitive with domestic industry prices. However, Unico's share of sales of

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68. Transcript of *In Camera* Session, Vol. 3, April 11, 1996, at 598-99.

69. Transcript of *In Camera* Session, Vol. 6, April 16, 1996, at 986-88.

70. Tribunal Exhibits NQ-95-003-48A and 48B (protected — single copies), Administrative Record, Vol. 17; Tribunal Exhibit NQ-95-003-48C (protected — single copy), Administrative Record, Vol. 17A; and Tribunal Exhibit NQ-95-003-48D (protected — single copy), Administrative Record, Vol. 17B.

71. The Tribunal acknowledges that the industry would prefer a lower level of Italian imports as evidenced by representations that it has made to the Canadian Wheat board and other government departments over the last two years.

72. Tribunal Exhibit NQ-95-003-48C (protected — single copy), Administrative Record, Vol. 17A at 28, 59 and 82; and Tribunal Exhibit NQ-95-003-48D (protected — single copy), Administrative Record, Vol. 17B at 34, 84, 200, 221 and 242.

73. Protected Pre-Hearing Staff Report, revised March 11, 1996, Tribunal Exhibit NQ-95-003-7B (protected), Administrative Record, Vol. 2 at 181; and replies to manufacturer's questionnaire, Tribunal Exhibits NQ-95-003-10.1, 10.1J, 10.1V, 10.2, 10.3 and 10.4 (protected), Administrative Record, Vols. 4, 4.1A, 4.1B, 4A, 4B and 4C.

the 900-g package size fluctuated within a narrow range and remained relatively small over the period of inquiry.

A final factor that may be suppressing prices in the 900-g package configuration is the cross-over effect of low-priced Italian dry pasta in the 450- and 500-g package configurations. The domestic industry has argued that some consumers will simply look at the prices for the two package sizes and buy the lower-priced package, that is, the smaller package, regardless of whether, on a per gram basis, they might be paying more for the smaller package than for the larger package. The retailers who testified agreed that this characterized the behaviour of some consumers.[74] While the Tribunal acknowledges the existence of this type of consumer behaviour, it is not evident how it necessarily supports the domestic industry's claim of injury from dumped and subsidized Italian imports.

The consumer may be motivated to buy the smaller package for a variety of personal reasons. There may be a brand preference, the smaller size may be more convenient or may satisfy a desire to buy a number of different shapes, or the consumer may simply wish to minimize the total outlay for the particular purchase. Whatever the reason, if the smaller package is considerably more expensive, on a per gram basis, than the larger package, it is difficult to conclude that the pricing of the smaller package is suppressing the price of the larger package.

In this connection, the evidence establishes that, in the premium end[75] of sales of 450- and 500-g pasta, at the retail level, the smaller package not only generally sells for much more than the larger package on a per gram basis but also occasionally on a package to package basis. In other words, the smaller package, in some cases, retails at higher prices than the larger package, especially when the latter is on feature. Moreover, this appears to be true for both the premium Italian brands and the premium domestic brand, namely, Catelli, in the smaller package. At the wholesale level, the evidence is similar. On a per gram basis, premium Italian 450- and 500-g dry pasta sells for between 30 and 60 percent more than Canadian 900-g pasta.[76]

As noted in the previous section, in the non-premium end of the retail dry pasta market, there is a certain amount of low-priced Italian pasta. This Italian dry pasta may, in certain competitive locations, be setting a floor price which could well be dragging down the price of some domestic 900-g pasta. However, as noted above, these secondary Italian brands have a relatively small presence in the Canadian market, and they are narrowly and sporadically distributed, primarily in Toronto and Montréal. Hence, their ability to cause injury to Canadian production is rather limited, in the Tribunal's estimation.

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74. Transcript of Public Hearing, Vol. 3, April 11, 1996, at 341.
75. Importer's Exhibit D-3 (protected) at 12 and 14, Administrative Record, Vol. 12.
76. Pricing and Market Characteristics, March 29, 1996, Tribunal Exhibit NQ-95-003-52 (protected), Administrative Record, Vol. 2A.

Retailers' Private Labels

Over the period of inquiry, dry pasta carrying the retailers' proprietary private labels accounted for about 15 to 20 percent of the total dry pasta retail market.[77] One of the major retailers testified that growth in the private label market appeared to have slowed recently compared to the pace of growth in the past.[78]

The Tribunal finds that the situation which prevails, and which prevailed over the period of inquiry, is quite similar to the situation described in the first inquiry. More particularly, retailers' private label sales continue to be dominated by Canadian-produced pasta. However, U.S.-produced private label pasta has grown in importance, largely reflecting the growth of private labels. According to the evidence, a very substantial portion of this pasta may be switched from U.S. to Canadian production in the near future.[79]

In terms of market share held, Italian pasta continues to play a small role in the private label business. Indeed, the Tribunal has evidence of only one significant situation where a retailer is sourcing its private label requirements in Italy, namely, that of A&P. According to the witness for A&P, in 1994, A&P decided to develop a private label Italian food program, which included pasta, under a Mediterranean marketing motif. This necessitated switching its private label pasta business to Italian production from U.S. production. The Italian pasta subsequently imported under this program was in the 450-g package and was sold under its Master Choice "Sapori Meditterranei" private label.[80]

Another situation which was discussed at the hearing in the context of the private label issue involved the importation of Italian pasta by a large independent retailer in Toronto, Galati, that was sold under the "Reggia" brand. According to the witness for Galati, this product was tantamount to a private Galati label, but it was not an exclusive proprietary brand for Galati, as it already existed in Italy. He further indicated that he could not presently envisage any circumstances under which the Reggia business could be sourced in Canada, since his principal customer base demanded Italian pasta.[81]

The foregoing evidence indicates to the Tribunal not only that Italian imports have a relatively limited presence in the Canadian private label business but also that, where they are present, the business they represent is not readily available to Canadian production for reasons relating to retailer requirements and consumer preferences that have nothing to do with dumping or subsidizing.

However, the Tribunal notes that, although Italian pasta has had little effect on domestic industry sales volumes in the private label business, the domestic industry has also claimed that the simple availability of low-priced dry pasta from Italy is used by retailers as leverage to keep Canadian prices down. The evidence indicates one particularly significant example of this at a major Canadian retail account.[82]

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77. Public Pre-Hearing Staff Report, March 4, 1996, Tribunal Exhibit NQ-95-003-6, Administrative Record, Vol. 1A at 30.
78. Transcript of Public Hearing, Vol. 3, April 11, 1996, at 377.
79. Transcript of *In Camera* Session, Vol. 3, April 11, 1996, at 391.
80. Transcript of Public Hearing, Vol. 3, April 11, 1996, at 319.
81. Transcript of Public Hearing, Vol. 3, April 11, 1996, at 362; and Transcript of *In Camera* Session, Vol. 3, April 11, 1996, at 559.
82. Transcript of *In Camera* Session, Vol. 3, April 11, 1996, at 348-49.

The Tribunal notes that these claims of price suppression in the private label business repeat similar claims made by the domestic industry in 1987.

The Tribunal finds such claims difficult to evaluate, in the absence of substantial sales volumes of private label product from Italy over the period of inquiry. It is commonplace for buyers to play off potential suppliers against each other in order to minimize their purchase costs, even though they may have no real desire or intention to switch their source of supply. In the present case, buyers would be able to use other domestic sources of supply, as well as U.S. and Italian sources, in their negotiations with individual suppliers. It is up to suppliers to carefully evaluate these buyer representations in order to offer prices that are no lower than is actually necessary to retain the business.

Nevertheless, the Tribunal accepts that the presence and availability of low-priced Italian sources of supply has had some price-suppressive effect on the prices that domestic suppliers can achieve on their private label business with retailers. These Italian sources of supply include Italian manufacturers that produce low-priced pasta directly for retailers under controlled label brands, those that produce such pasta for importers and distributors that market it under their own proprietary name, and those that target the lower end of the market with their own manufacturers' brands.

However, the Tribunal considers that the principal factor which is weighing down prices in the private label category is the low pricing in the market for brand name 900-g pasta. Private label pasta, which is largely a 900-g market, is generally positioned at price points that are at a discount to brand name pasta.[83] If brand name pasta pricing is suppressed, it invariably follows that private label pasta pricing will also be suppressed. As discussed above, the Tribunal finds that the main problem in the 900-g category is competition among retailers and intra-industry competition. In the Tribunal's opinion, the private label situation is simply an extension of that problem.

Specific Accounts

As noted at the outset, at the macro level, this inquiry is not primarily about lost sales, as the domestic industry's aggregate sales remained relatively stable over the period of inquiry. However, in support of its case, the industry has submitted specific instances, at the account level, of how it suffered injury in the form of lost sales, lost shelf space or price suppression and erosion at particular accounts as a result of competition from Italian imports. Generally speaking, counsel for the importers and exporters have not submitted evidence to contradict these domestic industry examples except, in a few cases, where certain importers claim to have actually lost rather than gained shelf space, contrary to domestic industry claims.

It is clear from the evidence that the pasta category is at the forefront of the highly competitive situation which exists for many grocery products.[84] The retailers that testified indicated that they are constantly reviewing the sales turnover and performance of the stock (SKUs or stock-keeping units) that they display on their shelves. Lagging performers or brands were regularly dropped or given less shelf space in favour of new products or brands within the same category. Against this background, the Tribunal finds that retailers have, in some cases and on some occasions, displayed little supplier loyalty in deciding which SKUs to place on their shelves.

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83. Importer's Exhibit D-22 (protected) at 1, Administrative Record, Vol. 12.
84. Transcript of Public Hearing, Vol. 3, April 11, 1996, at 288.

Indeed, there are instances on the record where, over the space of a few years, retail accounts have delisted domestic suppliers, gone to other domestic suppliers, Italian or U.S. imports and then returned to the original domestic supplier.[85] In the Tribunal's opinion, a fair amount of supplier SKU turnover appears to be a natural part of the competitive environment which exists in this market. In this light, the fact that there are examples of sales (and shelf space) losses and gains by individual suppliers at particular accounts is not, in and of itself, unusual or conclusive about the effects of Italian imports on the domestic industry's performance.

In any event, the Tribunal has examined each of the specific examples submitted by the domestic industry and accepts that this evidence shows that, in some cases, Italian imports have had an injurious effect. However, in other cases, the effect is less clear. For example, the Tribunal finds that, in the case of one of the domestic producers, a disproportionate number of the examples involve lost shelf space that occurred at primarily ethnic-oriented independent stores in Toronto and the neighbouring area.[86] Many of these stores tend to serve a multicultural clientele. They also tend to over-represent pasta from Italy on their shelves compared to the chain stores because they have a higher concentration of customers who demand exclusively Italian-made pasta to meet their pasta requirements.

Furthermore, in some examples provided by the domestic industry, the injury allegations describe lost sales to Italian imports generally, but they do not provide details on the brand, the package size involved or the name of the importer. This makes it difficult for the Tribunal to evaluate the various competitive factors discussed in the preceding sections that might have a bearing on why particular sales may have been lost. In certain other examples where details are provided, the information indicates that the competing Italian brand is a secondary brand.[87] The Tribunal has previously concluded that, although these non-premium brands have had some injurious effect, they occupy a limited place in the market, and they showed little or no growth over the period of inquiry.

The Tribunal has also examined other documents on the record in conjunction with its evaluation of the examples of injury at specific accounts. It is clear from this evidence that, in some cases, sales were lost because of brand pricing and positioning strategies that were less than successful for a variety of reasons that are not linked to dumped or subsidized Italian imports.[88] It is also clear from these and other data available to the Tribunal that, in aggregate terms, a substantial proportion of the sales lost by certain producers were captured not by Italian imports but by other domestic producers.

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85. Transcript of *In Camera* Session, Vol. 3, April 11, 1996, at 440-44.
86. Manufacturer's Exhibit A-6 (protected), reports of store shelf survey in metropolitan Toronto and other Southern Ontario locations at 2, Administrative Record, Vol. 10A.
87. Manufacturer's Exhibit A-6 (protected), reports of store shelf survey in metropolitan Toronto and other Southern Ontario locations at 5-11, Administrative Record, Vol. 10A; Tribunal Exhibit NQ-95-003-10.3 (protected), Administrative Record, Vol. 4B at 159 and 162; and Manufacturer's Exhibit A-12 (protected), Administrative Record, Vol. 10A (Galati Bros.).
88. Tribunal Exhibit NQ-95-003-48C (protected — single copy), Administrative Record, Vol. 17A at 18, 28, 49 and 53.

Summary

The Canadian pasta market grew over the period of inquiry. However, this growth occurred primarily not in sales of 900-g pasta which is dominated by domestic production but in sales of 450- and 500-g pasta and, in particular, of 450- and 500-g Italian pasta. Furthermore, this growth in the smaller package size was captured largely by well-recognized premium Italian brands which, over the period of inquiry, generally sold at retail and wholesale price points that are situated at the high end of the market. According to the evidence, there is essentially one major domestic brand competing at the high end in the 450- and 500-g package configurations. The data available to the Tribunal do not indicate that this brand is being sold at injurious price points.

According to the evidence, retail and wholesale prices for 900-g pasta, including private label, are suppressed particularly in Toronto and Montréal. However, the Tribunal finds that this is primarily the result of aggressive competition among retailers for consumers and among domestic producers for volume sales which are critical for efficient overall pasta plant operations.

There is a variety of non-premium Italian-sourced pasta selling on the Canadian market at low prices, including secondary manufacturers' brands, distributor brands and retailers' private labels. However, the Tribunal finds that these brands represent a small proportion of total Italian imports, and their share of the market showed little or no growth over the period of inquiry. While they may set a floor price and act as a drag on some prices at some locations, their small and sporadic market presence limits any injurious effect that they have had to date on the domestic industry, in the Tribunal's estimation.

While the domestic industry, as a whole, was unprofitable for most of the period of inquiry, there are a number of important factors unrelated to competition from Italian imports that appear to have contributed to this situation. These include the sharp rise in semolina flour costs, especially in 1993-94, and the inability of prices to keep pace with these increases, in part, because of common pricing practices which require, in this industry, substantial notice periods to be given to major customers before price increases can be implemented. They also include the effects of substantial industry restructuring, over the period of inquiry, starting in 1992 and in the three or four years prior to 1992.

On the basis of the foregoing, the Tribunal concludes that Italian imports have not caused material injury to the domestic industry.

Threat of Injury

Having found that the subject goods have not caused material injury to the domestic industry, the Tribunal turns to consider whether the subject goods are threatening to cause material injury to the domestic industry. Subsection 37.1(2) of the Regulations prescribes a number of factors that the Tribunal may consider in making this determination. These include: 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 the subject goods into Canada; whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of, in this case, producers in Italy. In addition, the Tribunal notes that, to make a finding of threat of injury, 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 Italy has significant pasta production capacity.[89] There are many large manufacturers and countless small manufacturers located in almost every corner of Italy. These manufacturers, collectively, produce premium pasta, as well as non-premium pasta. A substantial proportion of Italian production is exported around the world.[90] Over the period of the Deputy Minister's investigation, more than 100 Italian producers shipped pasta to Canada. It is evident to the Tribunal that the possibility exists for Italian exporters to significantly increase their participation in the Canadian market for pasta, including pasta directed at the non-premium end of the market. However, the Tribunal is persuaded that the evidence indicates that, at the present time, this risk is more speculative than "clearly foreseen and imminent."

Furthermore, according to the 1987 finding, Italian imports were concentrated in the premium end of the market. At that time, there was, as there is today, a certain limited amount of low-end Italian pasta available in the Canadian market. In the years following the 1987 finding, the basic composition of Italian shipments to Canada remained substantially unchanged. In other words, Italian pasta directed at the low end of the market did not enter the Canadian market in significant volumes following the 1987 finding. Rather, Italian dry pasta continued to be concentrated within certain market niches and to enjoy success primarily at the high end of the market. The Tribunal sees no immediate reason why this should change. However, should events not evolve in this manner, this may lead to a trade action by the domestic industry.

In addition, one importer reported being involved in discussions which suggest that a major chain has recently explored, unsuccessfully, the possibility of sourcing some or all of its pasta business from an Italian producer. The Tribunal is of the view that there is no other evidence in the record that gives an indication of any imminent change in sourcing by any major retailer. In the Tribunal's view, although it is clear that the major national grocery chains have, through their buying decisions, the power to alter the complexion of the Canadian dry pasta market, it is not persuaded that the evidence indicates that these retailers, as a whole, are likely to exercise this power less than prudently in the future, knowing that failure to do so could undermine their domestic sources of supply.

The Tribunal notes that, since the fall of 1995, Italian producers have received no subsidies under the Export Restitution Program (ERP), the principal source of export subsidies over the period of inquiry. Generally speaking, ERP payments fall as world durum wheat prices rise and are nil, at current prices, eliminating this as an immediate source of price pressure in the Canadian market.

Finally, the Tribunal notes that, over the past 18 months or so, there has been a marked improvement in pasta price levels in the retail market. The evidence shows that the industry implemented price increases in 1995,[91] in one case over 20 percent, as prices began to make up lost ground on costs which, as a percentage of net sales, actually declined somewhat in 1995 over 1994.[92] Over the past 18 months, importers

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89. Public Pre-Hearing Staff Report, March 4, 1996, Tribunal Exhibit NQ-95-003-6, Administrative Record, Vol. 1A at 53.
90. *Ibid.*
91. Transcript of *In Camera* Session, Vol. 2, April 10, 1996, at 198 and 327.
92. Protected Pre-Hearing Staff Report, revised April 1, 1996, Tribunal Exhibit NQ-95-003-7C (protected), Administrative Record, Vol. 2 at 107, 187 and 191.

have also raised their prices.[93] Not all of these increases have been driven by the implementation of provisional duties[94] and, in at least one significant case, the increase exceeds the amount of these duties. In short, some of the price pressures which characterized this market in the past have receded.

On the basis of the above, the Tribunal finds that the dumping and subsidizing of Italian pasta are not threatening to cause material injury to the domestic industry.

Massive Dumping

The CPMA submitted that, in addition to finding injury or threat of injury, the Tribunal should also find, pursuant to section 5 and paragraph 42(1)(*b*) of SIMA, that there has been a massive importation of the subject goods and, thus, should provide for the imposition of retroactive duties against these importations.

Counsel for the CPMA pointed out that the volume of subject goods increased significantly in the months of July to October 1995, in comparison to the respective months in 1994. They submitted that this was done in anticipation of a preliminary determination. They also noted that the volume and market share of the subject goods in the 450- and 500-g package sizes, where the subject goods represented over 50 percent of the market, increased more quickly than in the market as a whole. Counsel submitted that these circumstances corresponded to those in *Photo Albums*[95] and that they satisfied all the requirements of the statutory provision. Counsel added that the importers in this inquiry should have known that the prices that they received for the subject goods were dumped prices.

Counsel for the importers and exporters submitted that there was no evidence of stockpiling by the importers and that the evidence revealed no relationship between any restrictions on imports resulting from certain actions of the CWB in 1995 and the activities of the importers and exporters.

In the Tribunal's opinion, the imposition of retroactive duties under paragraph 42(1)(*b*) of SIMA is not justified in this case since the conditions set out in that paragraph have not been met. The Tribunal notes that, unlike *Photo Albums*, the volume and market share of the subject goods actually fell in 1995, while the domestic industry's sales and market share increased, on a yearly basis. Also, the Tribunal notes that, while the volume of the subject goods increased in July 1995, it fell significantly in August, as compared to July, and then remained fairly constant for the next two months. The Tribunal does not find, in these trends, the pattern of a surge and, therefore, the Tribunal does not consider that there was a "massive importation" or "series of importations ... which ... in the aggregate are massive," as required by section 42 of SIMA. Furthermore, the Tribunal notes that the figures referred to by the CPMA in this regard are Statistics Canada figures which may include non-subject goods (for instance, macaroni dinners). In addition, the evidence does not support the conclusion that Canadian importers of the subject goods increased inventories because of the initiation of the Deputy Minister's investigation and in advance of a preliminary determination being made. The Tribunal notes that the reason for one of the largest increases in inventory by an importer did not relate to the trade action, but rather to a new opportunity in the marketplace. Finally, the Tribunal notes that it is of the

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93. Transcript of *In Camera* Session, Vol. 4, April 12, 1996, at 706 and 783.

94. Transcript of *In Camera* Session, Vol. 4, April 12, 1996, at 710.

95. *Photo Albums With Self-Adhesive Leaves, Imported Together or Separately, and Self-Adhesive Leaves, Originating in or Exported from Indonesia, Thailand and the Philippines*, Canadian International Trade Tribunal, Inquiry No. NQ-90-003, Finding, January 2, 1991, Statement of Reasons, January 17, 1991.

view that it is unlikely that it would make a finding that a massive importation would cause injury in a case such as this, where it makes a finding of no injury or threat of injury.

CONCLUSION

For the foregoing reasons, pursuant to subsection 43(1) of SIMA, the Tribunal finds that the dumping and subsidizing of the subject goods have not caused material injury to the domestic industry and are not threatening to cause material injury to the domestic industry. The Tribunal also finds that the requirements of paragraph 42(1)(*b*) of SIMA with respect to massive dumping have not been met.

Anthony T. Eyton
Anthony T. Eyton
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Raynald Guay
Raynald Guay
Member