



Ottawa, Monday, June 2, 1997

Inquiry No.: NQ-95-003R

IN THE MATTER OF a recommencement of inquiry under section 44 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**

**FINDING**

The Canadian International Trade Tribunal, further to the judgment of the Federal Court of Appeal dated January 31, 1997, recommenced an inquiry in accordance with section 44 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.

Pursuant to subsection 44(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada 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 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.

Anthony T. Eyton

Anthony T. Eyton  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member

Michel P. Granger

Michel P. Granger  
Secretary

The Statement of Reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: May 5 to 7, 1997

Date of Finding: June 2, 1997

Tribunal Members: Anthony T. Eyton, Presiding Member  
Raynald Guay, Member  
Arthur B. Trudeau, Member

Director of Research: Selik Shainfarber  
Researcher Manager: Tom Geoghegan

Statistician: Lise Lacombe

Counsel for the Tribunal: Hugh J. Cheetham  
Shelley Rowe

Registration and Distribution Officer: Gillian E. Burnett

**Participants:**

Michael A. Kelen  
David Lewis  
Kal B. Whitnell  
Dan Friesen  
Dalton J. Albrecht  
Markus Koehnen  
for The Canadian Pasta Manufacturers Association

**(Trade Association)**

Richard S. Gottlieb  
Jeffery D. Jenkins  
for Unione Industriali Pastai Italiani

**(Italian Producer Association)**

and Barilla Alimentare S.p.A.  
Delverde, S.R.L.  
La Molisana Industrie Alimentari S.p.A.  
F.Lli de Cecco Di Filippo S.p.A.  
Nestlé Italiana S.p.A.  
Pastificio Fabianelli, S.p.A.

**(Exporters)**

and Italfina Inc.  
Molisana Imports  
Numage Trading Inc.  
SA-GER Food Products Inc.  
Santa Maria Foods Limited

**(Importers)**

Peter W. Collins  
Peter E. Kirby  
for Bertolli Canada Inc.

**(Importer)**

Richard Klassen  
for The Canadian Wheat Board

**(Interested Party)**

John S. McKeown  
Catherine M. Dennis  
for Unico Inc.

**(Interested Party)**



Ottawa, Tuesday, June 17, 1997

Inquiry No.: NQ-95-003R

**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 in Canada 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.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: May 5 to 7, 1997

Date of Finding: June 2, 1997  
Date of Reasons: June 17, 1997

Tribunal Members: Anthony T. Eyton, Presiding Member  
Raynald Guay, Member  
Arthur B. Trudeau, Member

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John S. McKeown  
Catherine M. Dennis  
for Unico Inc.

**(Interested Party)**

**Witnesses:**

Leonard Kubas  
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Kubas Consultants

Luigi Paccione  
Vice-President  
Sales & Operations  
Bertolli Canadian Inc.

Lawrence Klusa  
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Ottawa, Tuesday, June 17, 1997

Inquiry No.: NQ-95-003R

IN THE MATTER OF a recommencement of inquiry under section 44 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**

TRIBUNAL: ANTHONY T. EYTON, Presiding Member  
RAYNALD GUAY, Member  
ARTHUR B. TRUDEAU, Member

**STATEMENT OF REASONS**

**BACKGROUND**

The Canadian International Trade Tribunal (the Tribunal), further to the judgment of the Federal Court of Appeal dated January 31, 1997,<sup>1</sup> setting aside the Tribunal's finding in Inquiry No. NQ-95-003<sup>2</sup> made under section 43 of the *Special Import Measures Act*<sup>3</sup> (SIMA), recommenced the inquiry, in accordance with section 44 of SIMA.

Inquiry No. NQ-95-003 was conducted subsequent to the issuance by the Deputy Minister of National Revenue (the Deputy Minister) of a preliminary determination<sup>4</sup> dated January 12, 1996, and of a final determination<sup>5</sup> dated April 11, 1996. On May 13, 1996, the Tribunal issued a finding that the dumping in Canada 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 had not caused material injury to the domestic industry and were not threatening to cause material injury to the domestic industry. The Tribunal issued its statement of reasons on May 28, 1996 (the SOR).

On January 31, 1997, following the hearing of an application for judicial review under section 28 of the *Federal Court Act*<sup>6</sup> brought by The Canadian Pasta Manufacturers Association (CPMA), the Federal Court of Appeal (the Court) set aside the Tribunal's finding. The Court found that the Tribunal had made contradictory and irreconcilable statements concerning the volume and significance of what was described as "non-premium Italian pasta" in the Canadian market. In remitting the matter to the Tribunal for a new

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1. *The Canadian Pasta Manufacturers' Association v. Aurora Importing & Distributing Ltd.*, unreported, Federal Court of Appeal, Court File No. A-473-96, January 31, 1997.

2. *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, Finding*, May 13, 1996, *Statement of Reasons*, May 28, 1996.

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

4. *Canada Gazette* Part I, Vol. 130, No. 4, January 27, 1996, at 365.

5. *Ibid.*, No. 17, April 27, 1996, at 1263.

6. R.S.C. 1985, c. F-7.

hearing on a basis not inconsistent with its reasons, the Court stated that “the error is not the only factor considered by the Tribunal in support of its conclusion that the non-premium Italian pastas did not play a significant role in such injury.<sup>7</sup>”

The Tribunal recommenced the inquiry pursuant to section 44 of SIMA and, on February 10, 1997, issued a notice of recommencement of inquiry.<sup>8</sup> The same members who conducted the original inquiry were appointed to the rehearing of this matter.

A pre-hearing conference was held in Ottawa, Ontario, on March 6, 1997, at which the Tribunal heard submissions on a motion by the CPMA requesting that three new members be appointed to form the panel for the hearing. The CPMA argued that the fact that the members rehearing this matter were the same as those who conducted the original inquiry, in combination with the nature of the errors found by the Court, raised a reasonable apprehension of bias. The Tribunal dismissed the motion in a decision issued on March 10, 1997, and reasons for decision issued on March 13, 1997. The CPMA made an application for judicial review of the Tribunal’s decision, which was followed by an application by counsel for various importers and exporters to strike the CPMA’s application. The Court granted the application to strike and quashed the CPMA’s application.<sup>9</sup>

The hearing for the Tribunal’s recommencement of the inquiry was held from May 5 to 7, 1997. The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, all exhibits filed by the parties and the transcript of all proceedings in Inquiry No. NQ-95-003. The record also consists of all Tribunal exhibits, all exhibits filed by the parties and the transcript of all proceedings in Inquiry No. NQ-95-003R.

### **Tribunal’s Decision Regarding New Evidence**

The CPMA and The Canadian Wheat Board (CWB) sought to introduce evidence not on the record of Inquiry No. NQ-95-003, most of which related to the time period before the Tribunal’s finding of May 13, 1996, and some of which related to the time period subsequent to the Tribunal’s finding. By letter dated April 24, 1997, the Tribunal ruled on these requests.<sup>10</sup> The Tribunal concluded that any evidence and submissions relating to the time period prior to the Tribunal’s finding dated May 13, 1996, would be considered by the Tribunal at the hearing, while any evidence and submissions relating to the period subsequent to the Tribunal’s finding would not be considered.

### **Scope of the Inquiry**

In view of the Court’s directions, the central issue to be addressed in this inquiry is the significance of sales of non-premium brands of Italian pasta in terms of their actual percentage share of total sales of Italian pasta and of the impact of those brands in the Canadian marketplace during the period of inquiry. Counsel agreed at the hearing that this was the central issue. Furthermore, in addressing the issue before it at the outset of the hearing, the Tribunal made clear that, in its view, the rehearing of the matter was not an inquiry *de novo*. Consideration of this issue requires, in the Tribunal’s view, a review of the brand analysis of

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7. *Supra* note 1 at 13.

8. *Canada Gazette* Part I, Vol. 131, No. 8, February 22, 1997, at 547.

9. *The Canadian Pasta Manufacturers’ Association v. Aurora Importing & Distributing Ltd.*, unreported, Federal Court of Appeal, Court File No. A-252-97, April 23, 1997.

10. Tribunal Exhibit NQ-95-003R-9, Administrative Record for Inquiry No. NQ-95-003R, Vol. 1 at 161.



the 450- and 500-g package sizes for dry pasta conducted by the Tribunal in the original inquiry in the context of the Court's judgment, as well as consideration of the staff re-hearing report, new evidence, argument about the validity of various approaches to this analysis, and evidence of price suppression and lost sales.

In these reasons, the Tribunal does not intend to repeat the background information and findings that it made in the SOR up to the beginning of its analysis of "Causation." The Tribunal, therefore, adopts its reasons in this regard and affirms its conclusion in the "Injury" section of the SOR that the extent of the injury suffered by the domestic industry, especially on the financial side, was material. The Tribunal also affirms its finding that the requirements of SIMA relating to massive dumping have not been met.

## **POSITION OF THE PARTIES**

### **The CPMA<sup>11</sup>**

Counsel for the CPMA referred to the evidence of the witness for the CPMA, Mr. Leonard Kubas, and submitted that the AC Nielsen HomeScan Panel data that Mr. Kubas reviewed with the Tribunal showed that consumers do not segment the pasta market by package size.<sup>12</sup> Rather, consumers tend to purchase pasta based on value. Thus, whether pasta is being sold in a 900-g package size or 450- and 500-g package sizes, consumers are making their purchasing decisions based on price per gram or price per package. As a result, counsel argued, low-priced non-premium brands of Italian pasta in all package sizes can affect the prices for Canadian pasta in the 900-g package size.

Counsel for the CPMA submitted a revised version of Table 7 of the *Protected Staff Re-Hearing Report*.<sup>13</sup> This revised table showed, as non-premium brand pasta, all Italian pasta imports other than the five brands identified by the Tribunal as premium. It also reflected the allocation of all "unaccounted" for Italian pasta imports, i.e. Italian pasta not accounted for by the responses to the Tribunal's importer's questionnaire, as non-premium. Counsel submitted that it was appropriate to allocate the unaccounted for pasta in this manner because the five premium brands identified by the Tribunal, the retailers' brands and imports by Unico Inc. (Unico) are fully accounted for in the responses to the Tribunal's importer's questionnaire. Furthermore, it is reasonable to assume that importers that had not participated in the Tribunal's inquiry, either in person or through the completion of the questionnaire, were "bottom scrapers" that sold low-priced non-premium pasta.

With respect to categorizing Unico's pasta, counsel for the CPMA added that, although Unico's imports of Italian pasta were of the 900-g package size, like the non-premium and secondary brands of Italian pasta in the 450- and 500-g package sizes, it was being sold at wholesale prices that were less per kilogram than the wholesale prices for Canadian pasta in the 900-g package size. Therefore, Unico's imports should also be considered non-premium brands.

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11. A trade association representing: Borden Catelli Consumer Products, Division of The Borden Company, Limited; Primo Foods Co., Division of Nabisco Ltd.; Italtasta Limited; and Grisspasta Products Ltd.

12. Manufacturer's Exhibit A-9A, Administrative Record for Inquiry No. NQ-95-003R, Vol. 5; and Manufacturer's Exhibits A-10A and A-10B (protected), Administrative Record for Inquiry No. NQ-95-003R, Vol. 6.

13. Manufacturer's Exhibits A-2A (protected) at 9 and A-2B (protected), Administrative Record for Inquiry No. NQ-95-003R, Vol. 6.

Based on these assumptions, the CPMA's revised Table 7 indicates that, in 1994, non-premium brands represented 63 percent of total Italian imports of all package sizes, or 48 percent of Italian imports of the 450- and 500-g package sizes. In 1995, the non-premium brands represented 50 percent of total Italian imports of all package sizes, or 41 percent of Italian imports of the 450- and 500-g package sizes. Therefore, counsel for the CPMA argued, the actual share held by non-premium brands was much higher than estimated by the Tribunal. It was further suggested by counsel that, in understanding the role of non-premium brands over the period of inquiry, the Tribunal should focus on 1994 because it was in this year that the CWB imposed temporary restrictions on imports and Unico stopped importing the subject goods.

Counsel for the CPMA challenged several statements in the SOR concerning injury and threat of injury which were also referenced by the Court. They submitted that these were incorrectly based upon the Tribunal's assessment that the non-premium brands did not represent a significant proportion of total Italian imports of pasta. Counsel, therefore, urged the Tribunal to reconsider the issues of injury and threat of injury on the basis that the non-premium brands represented a significant proportion of total Italian imports of pasta and to review the evidence from the original inquiry which, they submitted, showed price suppression and lost sales caused by the non-premium brands of Italian pasta. In particular, counsel referred the Tribunal to evidence which, they submitted, showed that Unico, retailers' brands of Italian pasta and other brands of Italian pasta were underselling Canadian brands of pasta. Counsel also referred the Tribunal to evidence of witnesses for Borden Catelli Consumer Products, Division of The Borden Company, Limited, Primo Foods Co., Division of Nabisco Ltd. and Italpasta Limited that those companies were being told by their customers that they would have to meet the price of the lower-priced Italian pasta.

With respect to the standard of causation to be applied in reconsidering the issue of injury in this inquiry, counsel for the CPMA acknowledged that SIMA does not provide any guidance on the appropriate standard. However, relying on the provisions of Article 3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*<sup>14</sup> (the GATT Anti-Dumping Code), counsel submitted that the dumping and subsidizing do not have to be the "only" or "principal" causes of injury and that there can be more than one cause of material injury being experienced by an industry. Moreover, even if there are other factors contributing to the injury, the threshold for finding a causal link may be met. Thus, counsel submitted, notwithstanding that there may have been other factors causing injury to the Canadian producers, such as intra-industry competition and the market power of the retailers, it is still open to the Tribunal to find that the dumping and subsidizing of the subject goods are causes of material injury to the domestic industry.

With respect to threat of injury, counsel for the CPMA submitted that the standard is set out in paragraph 6 of Article 3 of the GATT Anti-Dumping Code, which provides as follows: "A determination of threat of injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent." Counsel submitted that there is a threat of injury based on a number of factors, including Unico's propensity to switch sources, the upward trend in imports of Italian pasta, the pending decision of the United States International Trade Commission concerning pasta which may impede exports of Italian pasta to the US market, Italy's excess capacity, decreases in international wheat prices and the increased use of Italian imports for private label pasta.

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14. Geneva, March 1980, GATT BISD, 26th Supp. at 171.

## The CWB

The 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 representative of the CWB stated that the EU agricultural sector is highly subsidized and that, although export subsidies were reduced or eliminated in the European Union during the 1995-96 crop year as a result of high world prices due to decreased production and low ending stocks, there is a high probability that, if world wheat stocks increase and world prices fall, the European Union will reintroduce export subsidies. He also stated that subsidized exports of pasta to Canada damage the pasta manufacturing industry, as well as other businesses related to this industry, such as the Canadian milling industry and the western Canadian wheat growers.

## Exporters<sup>15</sup> and Importers<sup>16</sup>

Counsel for the exporters and importers submitted that the re-hearing of the matter should be limited to determining and identifying what the Tribunal meant in its categorization of the marketplace and the extent to which the non-premium brands of Italian pasta caused or threatened to cause injury. Counsel submitted that the Court, in its judgment, only found error with respect to the portion of the Tribunal's reasons relating to non-premium or secondary brands and did not find error with those portions dealing with what they called "medium-priced" Italian pasta and retailers' brands of Italian pasta. Therefore, based on the Court's judgment, counsel submitted that all but the low-priced brands of Italian pasta have been found to be non-injurious. In counsel's view, the Tribunal ought to reinstate its finding of no injury or threat of injury, particularly in relation to those brands of Italian pasta that are sold at premium prices to the Canadian brands and in light of the fact that those brands of Italian pasta that are not sold at premium prices have not been a factor and are not likely to be a factor in the future.

Referring to the statement in the Court's judgment concerning the issue of causation,<sup>17</sup> counsel for the exporters and importers submitted that, contrary to the submission of counsel for the CPMA, the mere presence of the non-premium brands of Italian pasta is not sufficient to show that those brands were a cause of injury or threat of injury. Rather, counsel submitted, there must be evidence of a link between the dumped and subsidized imports and material injury through the price effects of dumping and subsidizing.<sup>18</sup> With respect to the test for determining whether there is such a link, counsel argued that SIMA does not specify a required degree of causal relationship between dumping and subsidizing or set out exactly what factors must be considered and the appropriate weight to be given to each factor.<sup>19</sup>

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15. Barilla Alimentare S.p.A., F.Lli de Cecco Di Filippo S.p.A., Delverde, S.R.L., Pastificio Fabianelli S.p.A., La Molisana Industrie Alimentari S.p.A. and Nestlé Italiana S.p.A.

16. Bertolli Canada Inc., Italfina Inc., Molisana Imports, Numage Trading Inc., SA-GER Food Products Inc. and Santa Maria Foods Limited.

17. *Supra* note 1 at 5.

18. *Colour Television Receiving Sets Originating in or Exported from the United States of America, Japan, Taiwan and Singapore, Having an Overall Diagonal Measurement Across the Picture Tube of Sixteen Inches and Over*, Anti-dumping Tribunal, Inquiry No. ADT-4-75, *Finding and Statement of Reasons*, October 29, 1975.

19. *Certain Flat Hot-Rolled Carbon Steel Sheet Products Originating in or Exported from the United States*, CDA 93-1904-07, *Decision and Reasons of the Panel*, May 18, 1994.

Counsel for the exporters and importers disputed that 1994 is the appropriate benchmark year for the Tribunal's analysis, arguing mainly on the basis that the injury must be related to the period of dumping and that 1995 was the only year in which there was a determination of dumping.

Counsel for the exporters and importers argued that Mr. Kubas' testimony was irrelevant, in that it was an attempt to reopen the inquiry and that it was based on data which could not be tested. Counsel were, therefore, of the view that his testimony should be completely inadmissible or subsidiarily given very little weight. Counsel challenged Mr. Kubas' conclusions that "price is everything" and that there is no brand loyalty on the basis that the evidence showed that price is only one factor in purchasing decisions and that certain consumers purchase Italian brand pasta even at much higher prices. Moreover, counsel challenged the value of the tables and Venn diagrams relied on by Mr. Kubas as being devoid of detail concerning the frequency of purchases, the volumes purchased, the weighting and other relevant factors. In addressing Mr. Kubas' conclusions regarding the degree of interchangeability of purchases of imported Italian pasta and Canadian pasta, counsel submitted that the tables also show a degree of interchangeability among purchases of domestic brands.

## **ANALYSIS**

### **Causation**

The Court began its discussion of the error made by the Tribunal by highlighting the following passage from the summary of the "Causation" section of the SOR:

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.<sup>20</sup>

Subsequently, the Court concluded that the share of Italian imports represented by non-premium brands was between 30 and 50 percent over the period of inquiry and that it was not reasonable to describe such a share as being a "small proportion" or "small percentage."

The Tribunal acknowledges that the SOR could have been clearer in certain respects. To address this lack of clarity and, more specifically, to address the issue of the significance of non-premium brands of Italian imports in terms of their actual percentage share of total sales of Italian pasta and of the impact of those brands in the Canadian marketplace during the period of inquiry, the Tribunal will begin by re-examining the data underlying its original analysis of the 450- and 500-g package sizes. To begin that re-examination, the Tribunal thinks that it is helpful to explain first why and how this analysis was originally performed.

As indicated in Table 1, the total apparent retail market for dry pasta grew over the period of inquiry. Table 1 also shows the market share trends by package size. The data indicate that the volume of 450- and 500-g package sizes grew by 37 percent between 1992 and 1995, a much faster rate of growth than for the market as a whole. It also shows that the volume of the domestic industry's sales of these sizes were

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20. *Supra* note 2, *Statement of Reasons* at 34.

essentially flat over the period, while its market share showed steady and ongoing declines offset by gains, primarily by Italian imports. These package sizes accounted for at least two thirds of total Italian sales of pasta in each year of the period of inquiry and represented over 80 percent of Italian pasta sales in 1995.<sup>21</sup> It thus became clear to the Tribunal that the most significant growth in sales of Italian imports over the period of inquiry was occurring in the 450- and 500-g package sizes, and it is for this reason that the Tribunal examined the volume and pricing data relating to those sizes during its deliberations.

	<b>1992</b>	<b>%</b>	<b>1993</b>	<b>%</b>	<b>1994</b>	<b>%</b>	<b>1995</b>	<b>%</b>
<b>All Package Sizes</b>								
Domestic Producers	92,031	89	95,075	87	89,754	79	91,880	79
Italian Imports	7,771	8	11,831	11	16,615	15	15,133	13
US Imports	3,219	3	2,410	2	6,652	6	9,709 <sup>2</sup>	8
<b>Total Apparent Market</b>	<b>103,021</b>	<b>100</b>	<b>109,317</b>	<b>100</b>	<b>113,021</b>	<b>100</b>	<b>116,721</b>	<b>100</b>
% Change			6		3		3	
<b>450-g and 500-g Package Sizes</b>								
Domestic Producers	12,708	65	12,662	59	12,711	52	12,269	46
Italian Imports	6,314	32	8,247	39	10,997	45	12,273	46
US Imports	612	3	450	2	837	3	2,380	9
<b>Apparent Market</b>	<b>19,634</b>	<b>100</b>	<b>21,359</b>	<b>100</b>	<b>24,545</b>	<b>100</b>	<b>26,922</b>	<b>100</b>
% Change			9		15		10	
<b>900-g Package Size</b>								
Domestic Producers	70,294	96	73,219	95	67,988	89	68,155	94
Italian Imports	1,310	2	2,529	3	3,656	5	351	0
US Imports	1,759	2	1,145	1	4,953	6	3,947	5
<b>Apparent Market</b>	<b>73,363</b>	<b>100</b>	<b>76,893</b>	<b>100</b>	<b>76,597</b>	<b>100</b>	<b>72,453</b>	<b>100</b>
% Change			5		(0)		(5)	
<b>Other Package Sizes</b>								
Domestic Producers	9,029	90	9,194	83	9,055	76	11,456	78
Italian Imports	147	1	1,055	10	1,962	17	2,509	17
US Imports	847	8	808	7	863	7	769	5
<b>Apparent Market</b>	<b>10,023</b>	<b>100</b>	<b>11,057</b>	<b>100</b>	<b>11,880</b>	<b>100</b>	<b>14,734</b>	<b>100</b>
% Change			10		7		24	

Notes:

- The figures in this table are based on all responses to questionnaires as "grossed up" to account for unsurveyed and non-responding importers.
- US imports for all package sizes are more than the sum of each package size because not all US imports were specified by package size in the questionnaire responses.

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 for Inquiry No. NQ-95-003, Vol. 1A at 72 and 109.6; and protected replies to importer's questionnaire.

21. *Protected Staff Re-Hearing Report*, March 14, 1997, Tribunal Exhibit NQ-95-003R-4 (protected), Table 5, Administrative Record for Inquiry No. NQ-95-003R, Vol. 2 at 14.

More particularly, the Tribunal conducted an analysis of the 450- and 500-g package sizes based upon information found in the importer's questionnaire responses. These were received from a number of importers that were asked to indicate, among other things, their volume and value of sales, by brand and by package size, for the years 1993 to 1995 inclusive. Imports of those importers responding to the questionnaire represented between 80 and 85 percent of total Italian imports during each of these years based on total Italian imports as reported by Statistics Canada.

The Tribunal's consideration of this evidence revealed that the vast majority of the growth in sales in the 450- and 500-g package sizes was represented by sales of five particular Italian brands identified as "premium."<sup>22</sup> The Tribunal considered these Italian brands to be premium brands within these package sizes because their average wholesale prices per kilogram<sup>23</sup> were significantly higher than the average wholesale prices of other Italian pasta. This conclusion is reflected in the average wholesale prices set out in Table 2.

Table 2 sets out the information reported to the Tribunal by importers in their questionnaire responses. It is derived from the staff re-hearing report and reflects the data that were used by the Tribunal to draw the conclusions that it did in the SOR about the significance of the five brands that the Tribunal identified as premium within the 450- and 500-g package sizes.<sup>24</sup>

The Tribunal notes that Table 2 underestimates the sales volumes of the five premium brands, as a percentage of total Italian pasta sales in all package sizes. A considerable amount of Delverde pasta originally included as premium in the 450- and 500-g package sizes has been moved to the "Other" package sizes<sup>25</sup> because of incomplete information on whether it was sold in the 450- and 500-g package sizes or in another package size. Counsel for the CPMA conceded that a portion of this pasta should be included as a "premium" product in 1995.<sup>26</sup> The evidence indicates that at least some of the Delverde pasta is sold in multiple packs of 450-g and, therefore, should be included in the premium 450- and 500-g package sizes.<sup>27</sup> However, for the purpose of the analysis which follows, it has not been included.

It is apparent from Table 2 that, over the period of inquiry, the five brands identified as premium in the 450- and 500-g package sizes have grown substantially in terms of volume of sales and as a percentage of total sales of Italian imports of all package sizes.

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22. These brands being Barilla, De Cecco, Delverde, La Molisana and Buitoni.

23. In this statement of reasons, "average wholesale price" means average wholesale selling price that is reported to be net of all trade promotions or allowances.

24. *Protected Staff Re-Hearing Report*, March 14, 1997, Tribunal Exhibit NQ-95-003R-4 (protected), Table 6, Administrative Record for Inquiry No. NQ-95-003R, Vol. 2 at 16.

25. The "Other" package sizes include 250 g, 350 g, etc.

26. *Transcript of Public Hearing*, Vol. 2, May 6, 1997, at 243.

27. Manufacturer's Exhibit A-2 (protected), Appendix 4-B at 12, Appendix 4-C at 25 and Appendix 4-D at 32, Administrative Record for Inquiry No. NQ-95-003, Vol. 10.

**Table 2**  
**CERTAIN DRY PASTA**  
**SALES OF ITALIAN PASTA TO RETAIL MARKET<sup>1</sup>**

	Sales from Imports (000 kg)						Average Wholesale Price (\$/kg)		
	1993	%	1994	%	1995	%	1993	1994	1995
<b>450- and 500-g Package Sizes</b>									
Premium Brands	5,015	50	6,120	44	7,418	59	1.74	1.90	2.12
Non-Premium Brands	1,662	17	2,190	16	1,317	11	1.05	1.07	1.33
Retailers' Brands	303	3	831	6	1,361	11	0.83	0.97	1.09
Total	6,981	70	9,142	66	10,096	81	1.53	1.62	1.88
<b>900-g Package Size</b>	2,112	21	3,098	22	297	2	1.02	1.12	1.31
<b>Other Sizes</b>	881	9	1,658	12	2,122	17	1.56	1.69	1.83
<b>Total All Sizes (as reported by importers surveyed)</b>	9,973	100	13,898	100	12,515	100	1.43	1.52	1.85
<b>Total Apparent Italian Imports (Table 1)</b>	11,831		16,615		15,133				
<b>Estimated Volume of Unsurveyed Italian Imports</b>	1,858		2,717		2,618				

## Notes:

1. Sales of Italian pasta to retailers are based on responses to the importer's questionnaire and do not account for unsurveyed and non-responding importers.

Premium Brands: Barilla, De Cecco, Delverde, La Molisana and Buitoni.

Non-Premium Brands: Divella, Fabianelli, Pagani, Ponte, Mastro, Pasta Reale and Bertolli.

Retailers' Brands: Master Choice and Reggia.

900-g Package Size: Pasta Reale, Unico and Barilla.

Other Sizes: Pasta Reale, Delverde, Reggia and Bertolli.

Source: Protected replies to importer's questionnaire.

The Tribunal now turns to consider the significance and impact of non-premium brands. The Tribunal finds it helpful to do so in the context of the analysis submitted by the CPMA. Counsel for the CPMA presented revised versions, in effect, of Table 2 to demonstrate why, in their submission, the size of the non-premium segment of the Canadian market for Italian pasta was significant. This interpretation of the data was based on a number of assumptions, including: (1) that all Italian imports, other than the five brands that the Tribunal determined to be premium, should be considered to be non-premium and injurious to the domestic industry; (2) that, as the Tribunal's analysis was limited to the sample of imports represented by importers that responded to the importer's questionnaire, all other unsurveyed Italian imports should be

allocated as non-premium pasta; and (3) that consideration of this data should focus on 1994. The Tribunal will examine each of these assumptions in turn. Prior to doing so, however, the Tribunal notes that counsel for the CPMA agreed that the five brands considered to be premium brands by the Tribunal were not having a price-suppressive effect on the domestic industry.<sup>28</sup> In addition, the Tribunal wishes to comment on the evidence of Mr. Kubas.

The Tribunal is of the view that the evidence of Mr. Kubas attempted to establish two primary conclusions, namely, that consumers purchase a wide range of package sizes and brands of dry pasta products and that there is a high degree of interchangeability or cross-over among purchases of different package sizes. While the Tribunal does not disagree with either of these points, it is of the view that they offer no significant new insights in analyzing the body of evidence before it in this inquiry. The Tribunal specifically acknowledged and discussed the issue of “cross-over” in the SOR.<sup>29</sup> The Tribunal did not conclude, in its original inquiry, and has not concluded in this inquiry, that the different package sizes constitute isolated market segments. Moreover, as demonstrated above, the Tribunal’s consideration of the growth in sales volume of the five brands that it identified as premium was measured in the context of sales of all Italian imports, not just those of the 450- and 500-g package sizes.

Having said this, the Tribunal is of the view that the evidence, including the testimony of various witnesses within the pasta industry, suggests to it that there are considerable differences in the marketing of different package sizes, especially as between the 900-g and 450- and 500-g package sizes. For example, in the 900-g package size, most brands, including the highest-quality brands, are frequently promoted under manufacturer, retailer or joint manufacturer/retailer advertising programs. This is not usually the case for pasta in the 450- and 500-g package sizes, be it domestic or imported, premium or non-premium pasta. In the Tribunal’s view, this factor alone justifies carefully analyzing developments in these different package sizes in the manner in which the Tribunal has.

Turning then to the assumptions, the **first** assumption underlying the revised numbers submitted by the CPMA is that the Tribunal considered only the five brands as premium brands and that all other pasta from Italy should be considered non-premium and injurious to the domestic industry. Looking initially at the 450- and 500-g package sizes, it is important to point out that the Tribunal did not state that the five “premium” 450- and 500-g brands identified in its analysis were the only premium brands imported from Italy. Rather, they were the only brands determined to be premium within the sample made up of importer’s questionnaire responses that was analyzed by the Tribunal. As noted above, this sample represented 80 to 85 percent of total Italian imports over the period of inquiry, not 100 percent. It is evident from the record that there are many other 450- and 500-g premium brands that are not included in this sample.

For example, purchasers reported buying other high-priced premium brands, such as Pasta Lenzi. In addition, the Nielsen National Grocery Banner Reports,<sup>30</sup> which cover less than 25 percent of Italian sales, and the Nielsen Market Track Reports<sup>31</sup> indicate numerous other brands, such as Antonio de Niro,

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28. See, for instance, *Transcript of Public Hearing*, Vol. 2, May 6, 1997, at 203-204.

29. *Supra* note 2, *Statement of Reasons* at 30.

30. Importer’s Exhibits D-3 and D-3A (protected — single copy), Administrative Record for Inquiry No. NQ-95-003, Vol. 12.

31. Manufacturer’s Exhibit A-2 (protected), Appendices 4B-4E, Administrative Record for Inquiry No. NQ-95-003, Vol. 10.



Spigadori, Emilio Palandri, Pallante, Vita and Valli Ghigi, which counsel for the CPMA agreed were premium brands,<sup>32</sup> as well as other brands, such as Pasta Zara and Pastene, which the Tribunal considers may also be premium brands. Accordingly, the Tribunal is of the view that there are more than five premium 450- and 500-g brands of pasta from Italy.

Furthermore, the Tribunal has reconsidered the evidence relating to its conclusions about certain 450- and 500-g retailers' brands,<sup>33</sup> namely, Master Choice and Reggia, its discussion of how sales of Unico's 900-g package size were affecting the domestic industry and its conclusions with respect to the impact of Italian imports in the "Other" package sizes.

The Tribunal stated in the SOR that the business represented by Master Choice, a retailer brand of A&P Food Stores Ltd., and Reggia, a retailer brand of Galati Bros. Supermarkets, was not readily available to domestic producers for reasons relating to the specific requirements of the retailers, as reflected in consumer preferences, and that these reasons had nothing to do with dumping or subsidizing.<sup>34</sup> The Tribunal notes that, other than these two retailers' brands, a large proportion of the retailers' brand pasta in Canada is sourced from domestic producers or from the United States. The Tribunal continues to be persuaded that the business represented by Master Choice and Reggia was not available to domestic producers, for the reasons discussed in the SOR.<sup>35</sup> In addition to these comments, the Tribunal notes that, insofar as A&P Food Stores Ltd. is concerned, its sales of Italian pasta, other than its Italian retailer brand product, represented a very low proportion of its total sales of pasta.<sup>36</sup> In other words, this major retailer's decision with respect to its retailer brand business has not prevented domestic producers from selling significant quantities of their brands in this supermarket chain. Therefore, the Tribunal is of the view that the reasons relating to why Reggia and Master Choice have been sourced from Italy relate to factors that have nothing to do with dumping or subsidizing and, accordingly, these imports cannot be considered to have had an injurious effect on the domestic industry.

The Tribunal has reconsidered the evidence with respect to Unico, in general, and competition in the 900-g package size, more specifically, in the course of this hearing. This has necessitated the Tribunal reviewing the evidence with respect to intra-industry competition. As noted in the SOR, the Tribunal found intra-industry competition to be one of the most significant factors which explain the injury suffered by the domestic industry. In further considering the evidence relating to this matter, the Tribunal found it instructive to examine the trends in sales of the 900-g package size that are reflected with respect to both market share and average wholesale prices on a per-kilogram basis. It is important to note that sales of this package size represented approximately three quarters of all sales by the domestic producers in each year over the period of inquiry.

What this examination reveals is that, over the period of inquiry, total domestic sales of the 900-g package size from domestic production of the three largest producers declined slightly. However, one domestic producer increased its sales and took some market share from its domestic competitors in this

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32. *Transcript of Public Hearing*, Vol. 2, May 6, 1997, at 222-29.

33. The term "retailer brand" is used to refer to pasta produced for retailers that sell it under their own proprietary or private labels.

34. *Supra* note 2, *Statement of Reasons* at 31.

35. With respect to The Great Atlantic & Pacific Company of Canada Limited, in addition to testimony referenced in the SOR, see *Transcript of In Camera Session*, Vol. 3, April 11, 1996, at 442.

36. *Transcript of In Camera Session*, Vol. 3, April 11, 1996, at 430.

package size.<sup>37</sup> At different times, this producer's average wholesale prices per kilogram for the 900-g package size were the lowest in the market and, at other times, another domestic producer's average wholesale prices per kilogram were the lowest. Moreover, throughout the period from 1993 to 1995, domestic producers' average wholesale prices per kilogram for the 900-g package size were consistently lower than Unico's average wholesale prices per kilogram.<sup>38</sup>

The Tribunal agrees with the domestic industry that Unico prices its product competitively and, at times, aggressively. However, the evidence reveals that Unico has a history of doing so regardless of the source of its pasta. More importantly, the evidence shows that, over the period of inquiry, it was not only Unico that was pricing aggressively in the 900-g package size but all of the domestic producers. Furthermore, as noted in the SOR, a number of internal company documents that the domestic industry was requested to provide in the original inquiry indicate that domestic producers frequently saw each other, and not simply Unico, as their principal competition in this package size.<sup>39</sup>

The Tribunal acknowledges that Unico's prices were competitive with, and sometimes lower than, domestic industry prices for certain specific products at certain accounts. However, Unico's market share in the 900-g package size fluctuated within a narrow range and remained relatively small as a percentage of the total Canadian market over the period of inquiry. Moreover, a large portion of Unico's increase in sales in 1994 was attributable to increased imports from the United States. In other words, Unico sourced a significant amount of imports from the United States, not only in 1995 but also in 1994.<sup>40</sup> Unico was only one of several factors affecting the industry's performance in its sales of the 900-g package size. As indicated in the SOR, these factors included, in addition to intra-industry competition, the buying power of major national and regional retail chains, the feature pricing phenomenon and consumer expectations. The Tribunal did not analyze Unico's role in the market, nor the role of any 900-g or "Other" package size product on the basis of its brand being a premium or non-premium product, and does not find it useful to extend that analysis in such a manner in this inquiry. Suffice it to say, however, that it is far from evident that Unico's product should be considered a non-premium brand, as it is a high-quality product that competes with most of the high-quality domestic producer brands.

With respect to the Italian pasta in "Other" package sizes, the Tribunal notes that, in the SOR, it found that sales of "Other" package sizes are composed, in large part, of specialized cuts which generally sold at prices per gram which were considerably higher than the regular cuts in the 450-, 500- and

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37. Reply to manufacturer's questionnaire, Tribunal Exhibit NQ-95-003-10.3 (protected), Administrative Record for Inquiry No. NQ-95-003, Vol. 4B at 26.

38. Replies to manufacturer's questionnaire, Tribunal Exhibits 10.1T, 10.3 and 10.2F (protected), Administrative Record for Inquiry No. NQ-95-003, Vols. 4.1B at 38 (revised Schedule VII), 4B at 26 and 4A at 204 (revised Schedule VII) respectively; and Tribunal Exhibits NQ-95-003-19.1C and 19.1D (protected), Administrative Record for Inquiry No. NQ-95-003, Vol. 6.1 at 34 and 35 (revised Schedule III) and 242 (revised Schedule III).

39. Tribunal Exhibits NQ-95-003-48A and 48B (protected — single copies), Administrative Record for Inquiry No. NQ-95-003, Vol. 17; Tribunal Exhibit NQ-95-003-48C (protected — single copy), Administrative Record for Inquiry No. NQ-95-003, Vol. 17A; and Tribunal Exhibit NQ-95-003-48D (protected — single copy), Administrative Record for Inquiry No. NQ-95-003, Vol. 17B.

40. Reply to importer's questionnaire, Tribunal Exhibit NQ-95-003-19.1C and 19.1D (protected), Administrative Record for Inquiry No. NQ-95-003, Vol. 6.1 at 34 and 35 (revised Schedule III) and 242 (revised Schedule III).

900-g package sizes.<sup>41</sup> The Tribunal has received no additional evidence relating to these package sizes and, therefore, finds no basis upon which to change these views. Furthermore, as discussed above, a significant amount of this pasta is Delverde brand, at least some of which is sold at premium prices in multiple packs of 450 g.

This brings the Tribunal to the **second** assumption, that the analysis should be based on all Italian imports, including both surveyed imports and unsurveyed imports, and that the Tribunal should allocate all unsurveyed Italian imports as non-premium pasta. The Tribunal is of the view that this assumption is flawed. First, as discussed above, it is evident that there are other premium brands of Italian pasta in the unsurveyed sample. For example, the five 450- and 500-g brands defined as premium by the Tribunal are not the only premium 450- and 500-g brands imported from Italy. In conceding this point during the hearing, counsel for the CPMA proceeded to revise the CPMA's alternative analysis on the basis of one of the Nielsen reports originally submitted with its evidence. The Tribunal notes that these revisions are clearly not representative of the potential volumes of other premium brands from Italy for a number of reasons. For instance, as indicated earlier, the Nielsen reports are not representative of total sales of Italian pasta. In addition, sales of other premium pastas are found not only in the Nielsen report that counsel used to make their revisions but also in the other Nielsen reports that were filed. On the basis of the evidence before it, the Tribunal is of the view that it is not reasonable to assume that all of the Italian imports not represented in the Tribunal's sample should be considered to be non-premium.

Second, the Tribunal is of the view that the sample size available to the Tribunal, 80 to 85 percent of total sales of Italian imports, is substantial and, in the Tribunal's experience, can be considered to be a reliable indicator of the population as a whole. Therefore, if any allocation is to be made, the Tribunal is of the view that the most reasonable one would be to allocate the unsampled portion of Italian imports in the same proportion as the sampled portion for the package sizes and brand categories reflected in Table 2.

The **third** assumption is that the Tribunal should focus on the year 1994 in its analysis of the significance and impact of the non-premium brands of Italian pasta, because this was the year in which the CWB restrictions took effect and the year in which Unico stopped importing from Italy. The Tribunal does not agree that it should focus on just 1994 for a number of reasons. First, the action of the CWB was not the only development in the marketplace in 1994. For example, as discussed in the SOR, the restructuring process experienced by the domestic industry in the early 1990s, which included mergers, acquisitions, changes in ownership and plant and product rationalization, continued throughout 1994. Also, Unico is only one of many participants in the marketplace that have to be considered. Furthermore, the Deputy Minister's period of investigation for dumping was spread equally between 1994 and 1995, while the period of investigation for subsidizing covered all or parts of 1993, 1994 and 1995. In light of these factors, the Tribunal continues to find it most helpful to consider developments throughout the period in which dumping or subsidizing was found.

The Tribunal is of the view that, for the reasons set out above, sales from Italian imports of Master Choice and Reggia brands, 900-g package sizes and "Other" package sizes should not be considered injurious to the domestic industry. The Tribunal considers that the portion of Italian imports that can be considered to have had some injurious effect is the amount represented by those imports identified in Table 2 as non-premium. The volumes of these imports are estimated in Table 2 to represent 16.0 percent of total Italian imports in 1994 and 11.0 percent in 1995. As noted, the figures in Table 2 are based on the responses

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41. *Supra* note 2, *Statement of Reasons* at 20.

to the importer's questionnaire. If the unsurveyed portion of Italian imports is allocated on the basis of the same proportions indicated in Table 2, the estimated market share of the non-premium 450- and 500-g imports stays the same in the context of total Italian imports and would be less than 2.5 percent of the apparent retail market in 1994 and less than 1.5 percent in 1995. In the Tribunal's view, these volumes are not large, and the impact of these imports on the domestic industry has not been significant.

In coming to this view, the Tribunal considered not only the magnitude of these figures but also the impact of these imports as reflected in the evidence in the record, including the allegations of price suppression and lost sales put forward by the domestic industry. As indicated in Table 2, sales of these non-premium brands declined over the period of inquiry both in volume and as a percentage of sales of the 450- and 500-g package sizes, despite their lower prices. Furthermore, examination of the sales volume of these brands on an individual basis shows, as noted in the SOR, that many of them had a sporadic presence in the market from year to year, with at least two different brands having little or no sales in the Canadian market at various times over the period of inquiry.<sup>42</sup>

With respect to allegations of price suppression and lost sales submitted by the domestic producers, the Tribunal notes that it had some difficulty evaluating this evidence, in part because some of the allegations do not provide details as to the brand, package size or importer involved. The Tribunal is of the view that a careful review of this evidence reveals that, where these allegations are specific, a large portion relates to the five premium brands, which, the CPMA has acknowledged, are not having a price-suppressive effect on the domestic industry. A good number of the remaining specific allegations relate to either Master Choice or Reggia, as well as to Unico.

With respect to the various other factors discussed in the SOR, the Tribunal adopts its discussion regarding these factors. It notes, in particular, the importance of intra-industry competition and the marketing power of retailers in contributing to the injury suffered by the domestic industry. The consideration of these factors has been added to by the comments on volume trends and wholesale pricing patterns as they relate to the domestic producers and Unico discussed above and by the CPMA's agreement that the five brands identified by the Tribunal as premium have not had a price-suppressive effect on the domestic industry. In light of all these considerations, the Tribunal is not persuaded that the impact of the non-premium 450- and 500-g imports is sufficient to establish that the dumping or subsidizing of Italian imports has caused material injury to the domestic industry.

Finally, the Tribunal wishes to comment on the submissions of counsel for the CPMA with respect to the causation standard used by the Tribunal. As noted, counsel submitted that the Tribunal should use an "a" cause standard not a "principal" cause or "only" cause standard, which, they implied, the Tribunal used in the original inquiry. As is clear from the case law, the issue of causation is an issue of fact.<sup>43</sup>

As indicated by the Tribunal in the SOR, where it has found injury, it must ask itself whether a causal relationship exists between such injury and the dumping and subsidizing of the subject goods. In asking itself this question, the Tribunal is directed by the *Special Import Measures Regulations*<sup>44</sup> to

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42. *Protected Staff Re-Hearing Report*, Tribunal Exhibit NQ-95-003R-4 (protected), Schedule 1, Administrative Record for Inquiry No. NQ-95-003R, Vol. 2 at 22.

43. *Sacilor Acières v. The Anti-dumping Tribunal* (1985), 9 C.E.R. 210 (F.C.A.), Court File No. A-1806-83, June 27, 1985; and *supra* note 19.

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

examine, among other things, other factors that may be causing injury to ensure that injury caused by such other factors is not attributed to the dumped and subsidized imports. The Tribunal did not require that the domestic industry show that the dumping or subsidizing of all Italian imports, let alone that small portion of Italian imports that were found to have had some injurious effect, was the “principal” or “only” cause of material injury. Rather, the Tribunal was of the view that, in light of the injury caused by other factors, such as intra-industry competition and the market power of retailers, as well as the growth in volume captured by the five premium brands in the 450- and 500-g package sizes, the injury attributable to that portion of the dumped and subsidized Italian imports which contributed to injury was not sufficient or significant enough to establish a causal relationship between the dumping and subsidizing of the subject goods and the material injury suffered by the domestic industry.

### **Threat of Injury**

Having found that the subject goods have not caused material injury to the domestic industry, the Tribunal must now turn to consider whether the subject goods are threatening to cause material injury.

The Tribunal originally found no threat of injury, based in large part on its assessment that the factors identified as being a threat were not “clearly foreseen and imminent.” In particular, the Tribunal was not persuaded that the risk that Italian producers would significantly increase their participation in the Canadian market for pasta was “clearly foreseen and imminent.” The Tribunal found that Italian pasta continued to be concentrated in certain market niches and to enjoy success primarily at the high end of the market, and it could see no immediate reason why this situation would change. The Tribunal was of the view that, other than evidence of discussions between one major retailer and an Italian producer of a premium brand of pasta, there was no other evidence giving an indication of any imminent change in sourcing by any major retailer. The Tribunal noted that, since the fall of 1995, Italian producers had received no subsidies under the Export Restitution Program and that, at the then current world durum wheat prices, those subsidies were not an immediate source of price pressure in the Canadian market. Finally, the Tribunal noted that, since the end of 1994, there had been an improvement in pasta price levels in the retail market.

As noted above, in argument, counsel for the CPMA raised a number of factors relating to threat of injury. Counsel’s submissions were predicated on the position that the Tribunal’s original finding was incorrectly based on the Tribunal’s view that the non-premium brands of Italian imports did not represent a significant portion of total Italian sales of pasta. The Tribunal has determined that the non-premium 450- and 500-g brands of Italian pasta represented approximately 16 and 11 percent of total sales of Italian pasta in all package sizes in 1994 and 1995 respectively. The Tribunal concluded that such imports did not have sufficient impact on the domestic industry to establish a causal relationship between the dumping and subsidizing of Italian imports and the material injury suffered by the domestic industry. In light of this finding and having considered the evidence and argument presented in this inquiry, the Tribunal concludes that the dumping and subsidizing of Italian imports of dry pasta are not threatening to cause material injury to the domestic industry. In coming to this conclusion, the Tribunal adopts and affirms its reasons with respect to threat of injury set out in the SOR. In addition, the Tribunal notes that it was aware of the preliminary determination of injury concerning dry pasta imported from Italy and Turkey made by the United States International Trade Commission at the time that it made its original finding.

**CONCLUSION**

For the foregoing reasons, pursuant to subsection 44(1) of SIMA, the Tribunal finds that the dumping in Canada 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

Raynald Guay \_\_\_\_\_  
Raynald Guay  
Member

Arthur B. Trudeau \_\_\_\_\_  
Arthur B. Trudeau  
Member