



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER

Inquiry No. NQ-2004-003

Frozen Self-rising Pizza

*Order issued
Thursday, June 24, 2004*

IN THE MATTER OF an inquiry under section 42 of the *Special Import Measures Act* respecting the dumping of prepared uncooked frozen pizza products containing uncooked self-rising dough and cooked and/or uncooked toppings which typically may include processed vegetables and/or meats and/or poultry and/or cheeses and/or a prepared sauce, put up for retail sale, originating in or exported from the United States of America.

AND IN THE MATTER OF a motion by Kraft Canada Inc. and Kraft Foods Global, Inc., filed on June 8, 2004, pursuant to subsection 17(2) of the *Canadian International Trade Tribunal Act*, and section 24 and paragraph 60(1)(a) of the *Canadian International Trade Tribunal Rules*, for an order to compel the production of documents relating to the *Preliminary Expert Economic Report of Professor James A. Brander*.

ORDER OF THE TRIBUNAL

WHEREAS McCain Foods Limited (McCain) filed its complaint with the Canada Border Services Agency (CBSA), relying therein on the *Preliminary Expert Economic Report of Professor James E. Brander (Preliminary Brander Report)*, which was prepared on behalf of McCain and appended to its complaint;

WHEREAS McCain's complaint is included as part of the Canadian International Trade Tribunal's (the Tribunal) preliminary injury inquiry record;

WHEREAS McCain has advised the Tribunal that it will call Professor James Brander as a witness in these proceedings and that his testimony will deal largely with the same issues as those of the *Preliminary Brander Report*.

WHEREAS Kraft Canada Inc. and Kraft Foods Global, Inc. (jointly, Kraft) has advised the Tribunal that it will call Professor Donald McFetridge as a witness in these proceedings, to explain and interpret the *Preliminary Brander Report* for counsel for Kraft and to assess the reliability and objectivity of the *Preliminary Brander Report*.

WHEREAS Kraft filed a motion on June 8, 2004, pursuant to subsection 17(2) of the *Canadian International Trade Tribunal Act*, and section 24 and paragraph 60(1)(a) of the *Canadian International Trade Tribunal Rules*, for an order compelling the production of documents relating to the *Preliminary Brander Report*.

WHEREAS Kraft's motion specifically requested the production of the following records:

- (i) The information and documents relied upon to prepare the *Preliminary Brander Report* and specifically referred to at paragraph 6 of the *Preliminary Brander Report*, including:
 - (a) AC Nielson data subscribed to by McCain;
 - (b) McCain's information on its production, sales, costs and profits;
 - (c) estimated margins of dumping provided by McCain;
 - (d) CANSIM databases; and
 - (e) relevant sources in the academic literature.

- (ii) All the data specifically listed at Appendix “A” of the *Preliminary Brander Report*, including “Data from AC Nielson” and “Other Variables”.
- (iii) All equation results underlying “Regressions for McCain Foods Rising Crust” (Appendix “C”), “Regressions for McCain Foods Premiere” (Appendix “D”), “Regressions for Kraft Delissio” (Appendix “E”) and “Regressions for Overall Rising Crust Category” (Appendix “F”), including all diagnostic statistics pertaining to the equation results, such as Durbin Watson coefficients and statistics to measure goodness of fit.
- (iv) All regression results that were estimated but not included in the *Preliminary Brander Report*.

WHEREAS the Tribunal received McCain’s response to Kraft’s motion on June 14, 2004, submitting that Kraft’s requests (i) to (iii) are premature, or not urgent, and are properly made as part of the request for information process and, that Kraft’s request (iv) is, at a minimum, premature and, singularly, unjustified at this stage. McCain also responded that it is prepared to provide the information sought by Kraft should the Tribunal so direct; however, it requested a minimum of five working days to do so.

WHEREAS the Tribunal received Kraft’s reply to McCain’s response on June 16, 2004, submitting that, since McCain makes no claim that it would be burdened or prejudiced by Kraft’s motion for production, the motion should be granted.

AND WHEREAS, UPON CONSIDERATION of the nature and relevancy of the records requested, the inquiry schedule found in the Tribunal’s Notice of Commencement of Inquiry, dated May 18, 2004, the submissions of the parties, and the timeliness of Kraft’s motion;

NOW, THEREFORE, THE TRIBUNAL ORDERS:

THAT McCain produce the AC Nielsen data subscribed to by McCain (i.e. Kraft request (i)(a)).

THAT McCain produce the CANSIM databases (i.e. Kraft request (i)(d)).

THAT McCain produce all the data specifically listed at Appendix A of the *Preliminary Brander Report*, including “Data from AC Nielson” and “Other Variables” (i.e. Kraft request (ii)).

THAT McCain produce all equation results underlying “Regressions for McCain Foods Rising Crust” (Appendix “C”), “Regressions for McCain Foods Premiere” (Appendix “D”), “Regressions for Kraft Delissio” (Appendix “E”) and “Regressions for Overall Rising Crust Category” (Appendix “F”), including all diagnostic statistics pertaining to the equation results, such as Durbin Watson coefficients and statistics to measure goodness of fit (i.e. Kraft request (iii)).

THAT, with respect to the Kraft’s requests (i)(b), (i)(c), and (i)(e), the Tribunal is not compelling McCain to produce the requested information on the basis that this information is either already on the Tribunal’s record or publicly available. Furthermore, with respect to Kraft’s request (iv), the Tribunal is not compelling McCain to produce all regression results that were estimated but not included in the *Preliminary Brander Report* since the Tribunal was not convinced that this information is relevant or necessary for Professor McFetridge’s proposed work.

THAT McCain submit the above-ordered information to the Tribunal by end of day on Friday, July 2, 2004. This information should be submitted in both paper and electronic forms, whenever possible.

THAT, since the date of distribution of the Tribunal's exhibits (i.e. July 6, 2004) is so near, and also considering the statutory holiday (i.e. July 1st) in the interim, the Tribunal will distribute the above-requested information at the same time as its other exhibits on July 6, 2004.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Patricia M. Close
Patricia M. Close
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Hélène Nadeau
Hélène Nadeau
Secretary