



Ottawa, Monday February 26, 1996

Public Interest Investigation No.: PB-95-001

**CAPS, LIDS AND JARS SUITABLE FOR HOME CANNING,
WHETHER IMPORTED SEPARATELY OR PACKAGED TOGETHER,
ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA**

TRIBUNAL'S CONSIDERATION OF THE PUBLIC INTEREST QUESTION

BACKGROUND

On October 20, 1995, pursuant to subsection 43(1) of the *Special Import Measures Act*¹ (SIMA), the Canadian International Trade Tribunal (the Tribunal) found that the dumping in Canada of caps, lids and jars suitable for home canning, whether imported separately or packaged together, originating in or exported from the United States of America, had caused material injury to the domestic industry. The Tribunal also found that the requirements of paragraph 42(1)(b) of SIMA with respect to massive dumping had not been met.

During the course of the inquiry, Kerr Group, Inc. (Kerr) and the Director of Investigation and Research, Bureau of Competition Policy, Department of Industry (the Director), requested an opportunity to make representations on the public interest pursuant to subsection 45(2) of SIMA. On July 28, 1995, the Tribunal advised counsel that, in the event of a finding of injury, it would consider the question of public interest in accordance with the Tribunal's "Guidelines for Public Interest Investigations" dated February 1995. On October 20, 1995, the Tribunal informed counsel and interested parties of the procedures to be followed with respect to public interest representations.

On November 17, 1995, counsel for Kerr requested a postponement of the public interest proceedings. On November 22, 1995, the Tribunal agreed to delay the filing of representations until December 4, 1995. Subsequently, on November 30, 1995, counsel requested a second postponement of the proceedings. On December 6, 1995, the Tribunal advised counsel and parties that the postponement had been granted. Interested parties supporting a public interest investigation were requested to file representations by January 5, 1996. Persons wishing to respond to such representations were requested to file their response by January 19, 1996. The Tribunal advised that, following consideration of the representations, it would take a view as to whether the representations demonstrated that there was a public interest issue worthy of further investigation.

Kerr and the Director filed submissions in support of a public interest investigation. Bernardin Ltd. (Bernardin) and Consumers Packaging Inc. (hereinafter referred to as Consumers Glass) filed a submission which opposed a public interest investigation.

1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.

SUMMARY OF SUBMISSIONS

Counsel for Kerr submitted that there were three aspects of the public interest affected by the imposition of anti-dumping duties: (1) the interest of Canadian purchasers in an alternative source of supply from which they may make their purchase decisions; (2) the interest of Canadian purchasers and consumers in reasonable and affordable prices for home canning products; and (3) the health and safety of consumers of home canning products.

Imposition of the anti-dumping duties, counsel for Kerr argued, would establish a complete monopoly in the production and distribution of caps, lids and jars in Canada. For purchasers, there would be no supply alternatives to meet delivery and availability problems. For consumers, there would be no style choices. Moreover, imposition of the anti-dumping duties would cause prices to rise. Higher prices would be difficult for consumers of home canning products. These consumers, counsel argued, are of modest means and attempt to save money by canning. As well, higher prices would cause some consumers to resort to cheaper, unsafe alternatives to store and preserve vegetables and fruits.

Counsel for Kerr submitted that the anti-dumping duties ought to be eliminated in their entirety, in the public interest. In the alternative, the anti-dumping duties ought to be reduced to a level sufficient to eliminate the injury.

The Director submitted that anti-dumping duties on the subject goods would result in the complete elimination of competition in the supply of caps, lids and jars in Canada. This would operate to the detriment of consumers by depriving them of the benefits of such competition with respect to the prices and services of such goods. The Director noted the withdrawal of domestic and foreign suppliers of the subject goods over the recent past, the maturity of the market and the high cost of entry. These factors, when combined with the imposition of anti-dumping duties, would result in the elimination of import competition in the domestic market with little likelihood of new entry, either domestic or foreign.

The Director claimed that the public's interest in free competition is the controlling feature of this case, and this interest is supported by legislation and judicial statements of principle. In his view, the "public interest" requires a balancing of the interests of the domestic producers with the interests of consumers and users. The Director submitted that, if the Tribunal does not conclude that the anti-dumping duties should be removed altogether, it should entertain submissions in order to determine whether or not a reduction of anti-dumping duties to a level sufficient to permit price competition to continue at non-injurious levels would be appropriate.

In reply to the submissions of Kerr and the Director, counsel for Bernardin and Consumers Glass took the position that there is no compelling public interest to warrant an investigation. However, there is a compelling public interest to maintain the anti-dumping duties in the full amount to maintain the production, further investment and direct and indirect employment created by the operation of the complainants' plants.

Counsel for Bernardin and Consumers Glass submitted that there are alternative sources of food preservation products available to consumers, including drying and freezing products, which compete with products safely used for home canning. Moreover, counsel suggested that there are potential suppliers of the subject goods other than Kerr. For example, counsel noted that caps and lids are produced in Italy, while there exist other potential glass suppliers located in Canada, the United States and Mexico. Further, Anchor

Glass Container Corp. (Anchor), a U.S. supplier of the subject goods, may renew its interest in the Canadian market if price levels become more attractive. Given Anchor's low U.S. prices, counsel submitted, it can expect more favourable normal values than those of Kerr.

In the view of counsel for Bernardin and Consumers Glass, application of the anti-dumping duties in their full amount would not necessarily preclude Kerr's continued participation in the Canadian market. Counsel noted that Kerr's new production facility should improve its manufacturing efficiency and lower its costs, thereby reducing its margin of dumping. In addition, Kerr's premium brand recognition and retailer preferences should allow Kerr to continue to supply the western Canadian market. Kerr could develop the same premium brand recognition for eastern Canadian markets.

Counsel for Bernardin and Consumers Glass submitted that home canning is not concentrated among lower-income persons, but is done in households of all income levels, with the preponderant volume of canning activity being found in middle-income households. As well, counsel contended that increased prices would result in increased consumer education on safe home canning.

In addressing the Director's submissions, counsel for Bernardin and Consumers Glass maintained that one of the objectives of the *Competition Act*² is to ensure that small- and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy. Accordingly, anti-dumping duties are necessary to ensure a level playing field and to eliminate unfair competition in this instance. Counsel further argued that, if a firm acted to restrict unduly competition or to abuse a dominant position, the appropriate redress was under the *Competition Act*. Further, it was argued that the Director failed to conduct a proper analysis in concluding that the anti-dumping duties would cause a net loss to the Canadian economy.

Finally, counsel for Bernardin and Consumers Glass submitted that there are no downstream producers whose production would be impacted by the anti-dumping duties. Counsel also maintained that the market for the subject goods is insignificant in volume and value in the context of the Canadian economy. In counsel's view, if the Tribunal were to grant the applicants' request, it would invite public interest hearings in virtually all cases, which would dissuade small Canadian industries from availing themselves of the SIMA process due to the uncertainties of remedy and related costs.

PUBLIC INTEREST CONSIDERATIONS

Subsection 45(1) of SIMA provides that where, after making a finding of material injury, the Tribunal is of the opinion that the imposition of anti-dumping duties, in whole or in part, would not or might not be in the public interest, it shall report its opinion to the Minister of Finance with a statement of the facts and reasons that caused it to be of that opinion.

The Tribunal notes that the primary purpose of SIMA is to protect Canadian producers from injury caused by imports of unfairly traded goods that are dumped or subsidized. In order for the Tribunal to proceed to a public interest inquiry after making a finding of material injury, the Tribunal must be satisfied that there exist compelling or special circumstances that necessitate a consideration of the public interest.

2. R.S.C. 1985, c. C-34.

In considering the public interest question, the Tribunal has reviewed carefully the representations summarized above, as well as the evidence and testimony adduced during the inquiry under section 42 of SIMA. The Tribunal is of the view that, if there were a public interest in this case, it would relate to the allegations that the imposition of the anti-dumping duties would create a monopoly in the production and distribution of caps, lids and jars in Canada, that increased prices would disproportionately affect lower-income Canadians and that higher prices may encourage unsafe canning practices.

In addressing the public interest question, the Tribunal has considered it appropriate to look at the market for the subject goods. Caps, lids and jars are seasonal products that are purchased by only a limited number of consumers to meet specific needs in a particular year. The jars are reusable for a long period of time. The market for caps, lids and jars is small. Moreover, in any one year, purchases of caps, lids and jars account for only a small proportion of overall consumer expenditures. In addition, the Tribunal notes that, in this case, there are only limited purchases of the subject goods by downstream industries.

Counsel for Kerr and the Director argued that no alternative sources of supply exist for the subject goods and that, therefore, application of the anti-dumping duties would lead to a monopoly by the domestic industry. In this regard, the Tribunal is not convinced that other alternative suppliers for caps, lids and jars do not exist. The evidence indicates that a third U.S. producer of the subject goods, Anchor, formerly participated in the Canadian market³ and continues to be active in the low-end price range of the U.S. market.⁴ An increase in Canadian market prices may again make the domestic market attractive to Anchor. Moreover, the Tribunal notes that other glass container manufacturers in Canada, the United States and Mexico have the potential to supply jars, should market opportunities prove profitable.⁵ Finally, as counsel for Bernardin and Consumers Glass noted, caps and lids, which have a reasonable transportation cost component, are currently produced in at least one other non-subject country and may soon be produced in a number of other countries.⁶

Counsel for Kerr and the Director also argued that the imposition of the anti-dumping duties would deprive consumers of competitive prices. In the Tribunal's view, prices in the domestic market are likely to rise. Indeed, this is a natural consequence of an injury finding. However, a number of factors will tend to limit the amount of any price increase which may occur. First, prices cannot be raised too high without inviting new entry into the market, as discussed above. Second, Bernardin and Consumers Glass sell, in large measure, to large retailers that can be expected to exercise their considerable bargaining power in price negotiations. Third, there is expected to be consumer resistance to price increases in a market which is already seen as mature or declining, where alternative food preservation methods are available to the consumer, including freezing, and where preserved food products are readily available to the Canadian public through retail outlets at good prices. The Tribunal has no doubt that these factors will limit the level of any price increases available to suppliers.

3. Transcript of Public Hearing, Vol. 1, September 26, 1995, at 192.

4. Transcript of Public Hearing, Vol. 1, September 26, 1995, at 283-86.

5. Transcript of Public Hearing, Vol. 2, September 27, 1995, at 500-2.

6. Transcript of Public Hearing, Vol. 1, September 26, 1995, at 21-22 and 136.

The Tribunal has also considered the argument that the price increase for caps, lids and jars will fall disproportionately on low-income families. The argument was made by counsel for Kerr on the basis of a non-random sample of home canners in 1992.⁷ In comparison, the results of the research of the witness for Bernardin indicated a contrary conclusion.⁸ The Tribunal considers that home canning is done by persons in all income ranges and that saving money is only one of many reasons to choose to do home canning.

Finally, the Tribunal has considered the argument that the price increase for caps, lids and jars will lead some consumers to resort to cheaper, unsafe alternatives. The record shows⁹ that a certain proportion of consumers have resorted, in the past, to alternative and perhaps unsafe home canning methods. However, the Tribunal is not convinced that a price increase for these products will lead to an increase in the use of unsafe alternatives. The price of caps, lids and jars is not a major consumer expense and, as discussed above, there is a limit on the price increase which may occur. Moreover, the Tribunal notes the efforts of Bernardin to inform consumers of safe home canning methods through educational advertising and promotional materials. The Tribunal believes that Bernardin may further intensify these consumer awareness efforts if it receives a better return on its sales. Indeed, it is in Bernardin's interest to do so in order to increase its sales volumes.

For the above-noted reasons, the Tribunal is not convinced that a compelling public interest exists which would warrant further investigation. Accordingly, a report will not be issued to the Minister of Finance.

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

Desmond Hallissey
Desmond Hallissey
Member

Lise Bergeron
Lise Bergeron
Member

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7. Manufacturer's Exhibit A-46 (protected), Administrative Record, Vol. 10.1.
 8. Transcript of Public Hearing, Vol. 1, September 26, 1995, at 177-78.
 9. Manufacturer's Exhibit A-46 (protected), Administrative Record, Vol. 10.1.