



**REPORT TO  
THE MINISTER OF FINANCE**

**PUBLIC INTEREST INVESTIGATION INTO  
CERTAIN IODINATED CONTRAST MEDIA  
ORIGINATING IN OR EXPORTED FROM THE  
UNITED STATES OF AMERICA (INCLUDING THE  
COMMONWEALTH OF PUERTO RICO)**

**AUGUST 29, 2000**

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Ottawa, Tuesday, August 29, 2000

**Public Interest Investigation No.: PB-2000-001**

IN THE MATTER OF an opinion of the Canadian International Trade Tribunal, under section 45 of the *Special Import Measures Act*, resulting from Inquiry No. NQ-99-003 conducted under section 42 of the *Special Import Measures Act*;

RESPECTING whether the imposition of anti-dumping duties, or the imposition of such duties in the full amount, on iodinated contrast media used for radiographic imaging, in solutions of osmolality less than 900 mOsm/kg H<sub>2</sub>O, originating in or exported from the United States of America (including the Commonwealth of Puerto Rico) would not or might not be in the public interest.

**OPINION**

The Canadian International Trade Tribunal herewith reports to the Minister of Finance under section 45 of the *Special Import Measures Act* that it is of the opinion that the imposition of the anti-dumping duties in the full amount, in respect of the goods originating in or exported from the United States of America (including the Commonwealth of Puerto Rico), is not in the public interest.

**a) Searle Ltd. Exports to Nycomed Amersham Canada Ltd.**

The Canadian International Trade Tribunal recommends that the Minister of Finance reduce the anti-dumping duties on shipments of low osmolality contrast media from Searle Ltd. to Nycomed Amersham Canada Ltd. by the amount by which the per-millilitre anti-dumping duties payable determined by the Canada Customs and Revenue Agency exceed the per-millilitre anti-dumping duties determined as follows:

- (i) Establish new normal values by increasing, by 11.72 percent, Searle Ltd.'s final determination section 25 export prices per millilitre for the 1999 portion of the Canada Customs and Revenue Agency's period of investigation. These new normal values would remain fixed for the duration of the finding.
- (ii) Establish new section 25 export prices per millilitre by deducting from resale prices an amount to cover the costs of selling in, and importing into, Canada, plus a profit. The amount would be established in the following manner:
  - (a) Establish the weighted average section 25 export price per millilitre for Searle Ltd. for the 1999 portion of the period of investigation.
  - (b) Establish the weighted average resale price per millilitre for Nycomed Amersham Canada Ltd. (end user price) for the 1999 portion of the final determination.

- (c) Express the difference between the weighted average resale price per millilitre and the weighted average section 25 export price per millilitre as a percentage of the weighted average section 25 export price per millilitre. This percentage would remain fixed for the duration of the finding.
  - (d) Apply the percentage established in (ii)(c) to the new normal values to arrive at the amount to cover the costs of selling in, and importing into, Canada, plus a profit.
- (iii) Anti-dumping duties are equal to the amount by which the new normal values exceed the new section 25 export prices.

The Canadian International Trade Tribunal recommends that, if the domestic market resale price per millilitre for imports of low osmolality contrast media from Searle Ltd. is at a level that produces a new section 25 export price per millilitre that is less than the new normal value per millilitre, then there should be no duty reduction for the imports.

**b) Bristol-Myers Squibb Company Exports to Bracco Diagnostics Canada Inc.**

The Canadian International Trade Tribunal recommends that the Minister of Finance reduce the anti-dumping duties on shipments of low osmolality contrast media from Bristol-Myers Squibb Company to Bracco Diagnostics Canada Inc. by the amount by which the per-millilitre anti-dumping duties determined by the Canada Customs and Revenue Agency exceed the per-millilitre anti-dumping duties determined as follows:

- (i) Establish new normal values by increasing, by 22.51 percent, Bristol-Myers Squibb Company's final determination section 25 export prices per millilitre for the Canada Customs and Revenue Agency's whole period of investigation. These new normal values would remain fixed for the duration of the finding.
- (ii) Establish new section 25 export prices per millilitre by deducting an amount to cover the costs of selling in, and importing into, Canada, plus a profit. The amount would be fixed for the duration of the finding and would be established in the following manner:
  - (a) Establish the weighted average new normal value per millilitre for Bristol-Myers Squibb Company for the period of the investigation.
  - (b) Subtract the weighted average new normal value per millilitre established in (ii)(a) from 28.5¢/mL to arrive at the amount to cover the costs of selling in, and importing into, Canada, plus a profit.
- (iii) Anti-dumping duties are equal to the amount by which the new normal values exceed the new section 25 export prices.

The Canadian International Trade Tribunal recommends that, if the domestic market resale price per millilitre for imports of low osmolality contrast media from Bristol-Myers Squibb Company is at a level that produces a new section 25 export price per millilitre that is less than the new normal value per millilitre, then there should be no duty reduction for the imports.

**c) Other**

The Canadian International Trade Tribunal recommends that the Minister of Finance reduce the anti-dumping duties on shipments of low osmolality contrast media to importers in Canada other than those identified in recommendations a) and b) above in a manner that has the same market price effects as the recommended duty reductions.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Raynald Guay  
Raynald Guay  
Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Michel P. Granger  
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Secretary

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**Others that made submissions and/or responded to the Tribunal's requests for information:**

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Berlex Canada Inc.

Calgary Regional Health Authority

Faulding (Canada) Inc.

Winnipeg Regional Health Authority

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## PART I

### INTRODUCTION

#### 1. BACKGROUND

On May 1, 2000, the Canadian International Trade Tribunal (the Tribunal) found, pursuant to subsection 43(1) of the *Special Import Measures Act*,<sup>1</sup> that the dumping in Canada of iodinated contrast media used for radiographic imaging, in solutions of osmolality less than 900 mOsm/kg H<sub>2</sub>O, commonly referred to as low osmolality contrast media (LOCM), originating in or exported from the United States of America (including the Commonwealth of Puerto Rico), had caused material injury to the domestic industry (Member Close dissenting).<sup>2</sup> SIMA provides that, after an injury finding, interested persons may make representations to the Tribunal that the imposition of anti-dumping or countervailing duties, or the imposition of such duties in the full amount, would not or might not be in the public interest and that, if after an investigation pursuant to section 45 of SIMA, the Tribunal is of such an opinion, it shall report to the Minister of Finance (the Minister) and provide the Minister with a statement of facts and reasons for its opinion.

Having been informed during the inquiry under section 42 of SIMA that interested persons wished to make public interest representations if there was a finding of injury, the Tribunal invited, at the same time that it issued its finding of injury, representations on the question of whether it should initiate a public interest investigation.<sup>3</sup> Several interested persons, including medical associations, public health advocates, radiologist associations, hospitals, buying groups, importers and the Commissioner of Competition made representations that there was a public interest question worthy of further investigation. Mallinckrodt Canada Inc. (MCI), the sole domestic producer, opposed a public interest investigation. After considering these representations, the Tribunal was of the view that a number of factors existed which, taken together, demonstrated a public interest concern worthy of further investigation. Accordingly, on June 15, 2000, the Tribunal commenced a public interest investigation.

As part of this investigation, the Tribunal sent requests for information to MCI, importers, exporters, purchasers and potential producers of generic LOCM, as well as to associations of radiologists and medical radiation technologists. It also sent requests for information to the Patented Medicine Prices Review Board (PMPRB), the Therapeutic Products Programme of the Department of Health (TPP) and the Canada Customs and Revenue Agency (CCRA).

The Tribunal also received written submissions from several persons and associations, as well as from the Commissioner of Competition, all stating that there was a public interest warranting the elimination or, alternatively, the reduction of the duties. MCI submitted that there was no public interest issue. The

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1. R.S.C. 1985, c. S-15 [hereinafter SIMA].

2. See *Certain Iodinated Contrast Media*, NQ-99-003, *Finding* (1 May 2000), *Statement of Reasons* (16 May 2000).

3. The Tribunal's invitation for submissions and its public interest investigation were made on the basis of section 45 of SIMA prior to the April 2000 amendments.

Tribunal held a public hearing in Ottawa, Ontario, from July 19 to 21, 2000.<sup>4</sup> Eight parties testified at the hearing in response to questions by members and counsel.

## **2. FINAL DETERMINATION OF THE COMMISSIONER OF THE CANADA CUSTOMS AND REVENUE AGENCY**

On March 30, 2000, the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) made a final determination respecting the dumping in Canada of LOCM from the United States.<sup>5</sup> The Commissioner found that 100 percent of the LOCM imported during the period of investigation<sup>6</sup> were dumped. The weighted average margin of dumping for all exporters was 69 percent, when expressed as a percentage of the normal value, or 222.6 percent, when expressed as a percentage of the export price.<sup>7</sup> Expressed in terms of the normal value, the margins of dumping for Searle Ltd.<sup>8</sup> (Searle) and Nycomed Inc. were 66 and 56 percent respectively. Because the Commissioner did not have sufficient information to determine specific normal values for the products manufactured by Bristol-Myers Squibb Company (BMS)<sup>9</sup> and Mallinckrodt Inc., he determined their margins of dumping to be 74 percent, the highest margin of dumping found for Nycomed Inc. Export prices were determined under section 25 of SIMA (hereinafter section 25 export prices) on the basis of each importer's resale prices in Canada, less all costs incurred in selling LOCM in, and importing LOCM into, Canada, plus an amount for profit. As discussed below, the imposition of the duties in the full amount would result in average selling prices in Canada for LOCM imported from the United States as much as three times more than current prices.

## **3. SUMMARY OF THE TRIBUNAL'S INJURY FINDING**

The majority of the Tribunal concluded that dumped imports had caused material injury to MCI in the form of eroded prices. The Tribunal estimated that the price erosion incurred by MCI on its sales of Optiray amounted to well over \$2 million for the first nine months of 1999 based on 1996 prices. The Tribunal found that MCI's domestic sales of Hexabrix were also affected by the dumping, resulting in a 50 percent decline in gross margins between fiscal 1997 and 1999, as well as losses in fiscal 1998 and 1999. The Tribunal found that the pricing behaviour of Nycomed Amersham Canada Ltd. (Nycomed) and Bracco Diagnostics Canada Inc. (Bracco) was confirmed by references to the aggressive price offers made by the two companies. In this regard, the Tribunal concluded that MCI had lost the Calgary Regional Health Authority contract to Nycomed on the basis of its low price offering made possible by dumping.

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4. The record of this investigation consists of the record of the inquiry under section 42 of SIMA, all Tribunal exhibits, including the public and protected replies to requests for information, all submissions and exhibits filed by the parties and the public and in camera transcripts of the proceedings in this investigation. All public exhibits were made available to the parties. Protected exhibits were made available only to independent counsel who had filed a declaration and confidentiality undertaking with the Tribunal.
  5. Canada Customs and Revenue Agency, *Final Determination of Dumping and Statement of Reasons*, 30 March 2000, Tribunal Exhibit PB-2000-001-3, Administrative Record, Vol. 1 at 142.
  6. The period of investigation was from July 1, 1998, to June 30, 1999.
  7. The simple relationship between the margin of dumping expressed as a percentage of the normal value (MN) and expressed as a percentage of the export price (MX) is:  $MX = MN / (100 - MN)$ .
  8. Searle Ltd., located in Puerto Rico, manufactures the LOCM sold by Nycomed Amersham Canada Ltd. in Canada.
  9. BMS manufactures the LOCM sold by Bracco Diagnostics Canada Inc. in Canada.

Although the Tribunal agreed that other factors may have contributed to the price declines in the Canadian market, such as the purchasing power of buying groups, healthcare budget constraints, product cycle and patent protection, the Tribunal was of the view that the magnitude of the price erosion could only be attributed to the substantial margins of dumping found on the Nycomed and Bracco products. The Tribunal found that the question of who initiated the price war that was observed during the inquiry period was irrelevant. In the Tribunal's view, based, in part, on the *Soda Ash* case,<sup>10</sup> the domestic industry had the right to reduce its prices to try to increase its market presence through increased sales and market share, and the importers had the same right, up to the point where the products were offered at dumped prices which caused material injury to the domestic industry. The Tribunal also found that the PMPRB did not play a role in the price declines. With respect to the fact that the vast majority of MCI's production was exported, the Tribunal found that the industry had benefited from its export performance, as it helped, by distributing the fixed costs over a larger volume, to offset some of the injurious effects of dumping in the domestic market.

#### 4. LOCM INDUSTRY AND MARKET FACTS

LOCM are special diagnostic imaging agents or radiopaques used for X-ray imaging in the medical examination of soft tissues or organs. The agent makes the detection system responsive to detailed imaging of the tissue of interest. LOCM are iodine-based compounds. They may be injected or administered orally, although more than 95 percent of the applications require an injectable solution. LOCM create fewer adverse side effects than high osmolality contrast media (HOCM).<sup>11</sup>

In terms of their molecular structure, LOCM may be non-ionic monomers, ionic dimers or non-ionic dimers. Non-ionic monomers account for the largest part of the LOCM sold in the market. LOCM are sold in a variety of concentrations, sizes and packaging. The most popular size is the 150-mL bottle with the most popular iodine concentration in the 300-320 I mg/mL range.

There are four suppliers of LOCM to the Canadian market: MCI, Nycomed, the largest supplier, and Bracco, both supplying LOCM from the United States, and Berlex Canada Inc. (Berlex), a supplier of German-made non-subject LOCM. MCI sells Berlex's LOCM in Canada under a distribution agreement concluded with Berlex in 1999. MCI's LOCM include Optiray, a non-ionic monomer, and Hexabrix, an ionic dimer. Nycomed sells Omnipaque and Visipaque, a non-ionic monomer and a non-ionic dimer respectively. Bracco's Isovue is a non-ionic monomer. The Berlex brands, Ultravist and Osmovist, are a non-ionic monomer and a non-ionic dimer respectively. All four suppliers produce and sell LOCM elsewhere in the world.

Like other pharmaceutical products, LOCM must be approved for use by the TPP. It approves a low osmolality contrast medium for use in specific medical applications (indications). Although there may be some differences in the approved specific indications of a particular low osmolality contrast medium, the approved uses in Canada for each of the LOCM closely resemble each other.

At least, three generic manufacturers<sup>12</sup> have had TPP approval for LOCM for several years, but do not market them in Canada. MCI, Nycomed and Bracco also sell HOCM in Canada. While LOCM now sold in Canada have been subject to patent protection, only Osmovist and Optiray are still under patent.

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10. See *Commercial Grade Sodium Carbonate, Commonly Known as Soda Ash* (7 July 1983), ADT-7-83 (ADT).

11. HOCM have a higher iodine content and an ionic molecular structure.

12. Abbott Laboratories, Limited, Faulding (Canada) Inc. and Pharmascience. See *Transcript of Public Hearing*, Vol. 2, 20 July 2000, at 433-34.

Accordingly, they continue to be subject to the jurisdiction of the PMPRB,<sup>13</sup> Optiray until the end of 2002, and Osmovist until June 17, 2003. The PMPRB monitors prices and determines “non-excessive” prices taking into account prices for the product in other countries and selling prices in the preceding period, increased by the consumer price index.

LOCM are used primarily in hospitals, many of which have formed buying groups. While these groups are responsible for negotiating prices and conditions with suppliers, the clinical choice of a specific contrast medium is made by hospital radiologists. Typically, hospitals satisfy most of their LOCM requirements by purchasing from a single supplier, with other suppliers providing certain other LOCM in lesser volumes. In 1999, the market for LOCM amounted to 93,000 litres, up 43 percent from 65,000 litres in 1997. The total value of LOCM sold in 1999 was just over \$22 million, at an average price of 24¢/mL, down from 33¢/mL in 1997. In the first five months of 2000, average prices declined further to 22¢/mL. These average prices are net of various incentives, such as rebates and various types of funding that sellers provide the hospitals for education and research.

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13. The PMPRB is an independent quasi-judicial body created by Parliament in 1987 under the *Patent Act*. The mandate of the PMPRB is to protect consumers and to contribute to Canadian health care by ensuring that the prices charged by the manufacturers of patented medicines are not excessive in accordance with statutory criteria. The PMPRB’s jurisdiction applies to the factory-gate price at which the manufacturer sells these products to wholesalers, hospitals and pharmacies.

## PART II

### PUBLIC INTEREST FRAMEWORK

Under section 45 of SIMA, the Tribunal may conduct a public interest investigation and report to the Minister on whether the anti-dumping duties should be maintained in full, reduced or eliminated. There is no legislative or other guidance on what is meant by the public interest.<sup>14</sup> Accordingly, the interpretation of “public interest” has been left to the Tribunal, which has expressed its views in several instances.<sup>15</sup> In general, the Tribunal has taken the view that, because SIMA as a whole “was enacted by Parliament in the interest of the public good”,<sup>16</sup> it followed that section 45, being a specific provision within SIMA, should “be applied on an exceptional basis”.<sup>17</sup> This means that a recommendation to the Minister that the imposition of duties in less than the full amount would be in the public interest should only be made in those cases where the facts demonstrate a sufficiently compelling public interest rationale for doing so.

In the Tribunal’s view, a public interest investigation conducted pursuant to SIMA permits a wide variety of factors to be taken into account in considering the appropriate level of duties. Keeping in mind the primary purpose of SIMA, which is to provide protection to a domestic industry from injurious dumping, the Tribunal balances the relevant public interest concerns in considering both whether the threshold has been met and, if met, what the appropriate level of duties should be. In considering the public interest in this case, the Tribunal took into account a variety of factors. These include the direct or indirect price effects of the duties on the choice of LOCM by medical practitioners and on the number of radiology procedures and their related implications for the health and safety of patients. The Tribunal also took into account the availability of LOCM from other sources and the extent to which MCI and Berlex can meet all the medical requirements of radiologists and the interest of the domestic industry in obtaining protection under SIMA from injurious dumped imports.

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14. Amendments to SIMA enacted in April 2000, which are not applicable in this investigation, clarify the public interest provisions under section 45. For example, the amendments provide that the Tribunal may initiate a public interest inquiry if there are “reasonable grounds” for doing so. The amended legislation also prescribes, in the *Special Import Measures Regulations*, the factors that the Tribunal may consider in public interest inquiries.

15. See, for example, *Certain Prepared Baby Food* (30 November 1998), PB-98-001 (CITT).

16. *Report on Public Interest – Grain Corn*, October 1987 (CIT) at 2.

17. *Ibid.*

## PART III

### POSITION OF PARTIES

#### 1. SUBMISSIONS IN SUPPORT OF ELIMINATING OR REDUCING THE ANTI-DUMPING DUTIES

##### a) Medical Community and Public Health Advocates

In addition to their written submissions, several witnesses gave oral testimony. These witnesses included: Mr. Normand Laberge of the Canadian Association of Radiologists; Mr. Raymond Foley of the Ontario Association of Radiologists; and Dr. Harald Stolberg, a radiologist.<sup>18</sup> They submitted that the imposition of the duties would bring the prices for LOCM to a level where economics would be the predominant factor in the radiologist's clinical choice of a specific contrast medium, rather than the welfare of the patient. In addition, the magnitude of the price gap between LOCM and HOCM would pressure radiologists to revert to HOCM, which, in their view, have more negative side effects. In this regard, they noted that, over the 1990s, the price ratio between LOCM and HOCM declined significantly from 10 to 1 to approximately 1.5 to 1. Furthermore, the discomfort resulting from HOCM causes patients to move, which compromises the quality of the diagnostic image.

They also expressed concern that any price increase in LOCM would force radiology departments to perform fewer examinations. They noted that the amount spent on LOCM represents approximately 5 to 7 percent of a radiology department's annual budget. The current budgets are stretched to the limit, and any price increase will, in their opinion, translate into longer waiting lists for the patients. Accordingly, it will take longer to get appropriate medical treatment.

Finally, concerns were expressed about whether, with reduced competition, there would be reduced access by the hospitals to research and development activities undertaken by the producers of contrast media. Research and development, they noted, were critical for the advancement of products and treatment of benefit to patients. If there is a monopoly in the supply of contrast media to the domestic market, a state that they felt will occur if Nycomed and Bracco are denied access to the Canadian market, they will have no incentive to develop new products and introduce them into the Canadian market.

Ms. Cindy Wiggins, a representative of the Canadian Health Coalition,<sup>19</sup> supported concerns raised by others with respect to the availability of supply, if a single producer supplied the entire market. She also noted that the higher prices resulting from the imposition of anti-dumping duties would restrict product choice for radiologists. She reiterated concerns that higher-priced contrast media would negatively impact on health care. Finally, the Canadian Health Coalition's position is that trade decisions should not have primacy over adequate access to health services.

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18. Dr. Harald Stolberg appeared on behalf of the Canadian Association of Radiologists and the Ontario Association of Radiologists.

19. The Canadian Health Coalition is an organization that represents a wide constituency, including women, seniors, nurses and the poor.

**b) Hospitals and Buying Groups**

Representatives from two buying groups, Mr. David Davidson of Medbuy and Mr. Bill O'Driscoll of Shared Healthcare Supply Services, as well as Ms. Patricia Smith of the Charles LeMoyne Hospital, appeared at the hearing. In addition to these two groups, other organizations, including the Winnipeg Regional Health Authority and the Queen Elizabeth II Health Sciences Center, filed written submissions with the Tribunal or responded to its requests for information.

Their main concern was the impact of higher-priced LOCM on the current precarious financial health of many hospitals. Any increase in the price for LOCM would eventually lead to a decrease in the number of procedures utilizing these agents. As radiology department budgets are already fixed for the current fiscal year, there is no further money available if costs increase. Department administrators would have to find the money from within their existing budget allotments. If money could not be found, there would be no option but to stop or delay providing the service. Another option available in certain provinces is to revert to HOCM, which are less desirable products in view of the higher number of adverse effects experienced by the patients. Other concerns addressed by them were in respect of clinical choice, creation of a monopoly situation, and potential reduction of clinical research and product innovation.

**c) Competition Bureau**

The Commissioner of Competition made a written submission that the economic costs associated with the imposition of anti-dumping duties outweigh the economic benefit and will, among other things: (1) result in the elimination of competition in the Canadian market by the creation of a monopoly; (2) adversely affect competition in the distribution channels; (3) increase prices and raise serious health and safety risks to patients; (4) reduce choice; and (5) produce an overwhelmingly negative effect on the economic welfare. The Commissioner of Competition submitted that anti-dumping duties were not in the public interest and that, in any case, the duties imposed should not be greater than the minimal amount required to avoid material injury to MCI. This could be achieved by setting the duties at a level that is a small percentage increase over the export price determined by the CCRA.

**d) Nycomed and Bracco**

Nycomed and Bracco submitted that the public interest warrants the elimination of the anti-dumping duties. They noted that their LOCM are specialized pharmaceutical products that cause fewer adverse reactions to patients. Given the amount of a radiology department's budget that is dedicated to the purchase of contrast media, any increase in prices will negatively impact those budgets and the treatment of patients in Canada. Therefore, the presence or absence of imported LOCM in the market, as well as their range of availability in terms of approved use and price, has an obvious public health dimension.

Nycomed submitted that the evidence made it clear that Canada's fragile healthcare system cannot absorb any price increase, certainly not one of the magnitude that would result from the imposition of the duties in the full amount. Nycomed and Bracco argued that the increased cost of LOCM would force a switch to HOCM, with its more negative reactions and side effects for patients. These were sufficient public interest grounds to warrant the elimination or reduction of the duties.

Nycomed and Bracco stated that, besides having to meet high technical standards, LOCM must be approved by the Department of Health prior to sale and distribution and can only be used in approved clinical applications. Consequently, these products would not be readily available from other non-subject sources.



Accordingly, the duties will exclude these two companies from the Canadian market and will limit the range of products available. This will force radiologists to use MCI's contrast media, whether or not the radiologists want to use them.

Nycomed pointed out that MCI admitted that it did not require the duties in the full amount, when MCI proposed a 46 percent price increase over the January to May 2000 average market price. According to Nycomed, MCI's proposition, which would return prices to their approximate level in 1997, fails to take into account factors not attributable to dumping. Bracco supported Nycomed's position that the 46 percent price increase solution proposed by MCI was far in excess of what was required to eliminate the injury caused by the dumping and could not be absorbed by the healthcare system. Bracco also argued that, to the extent that duties are imposed, the ability of the large LOCM customers to exert price pressure or gain other concessions from suppliers would be absent, leaving MCI in a monopoly position to charge whatever price the market was able to bear.

In the alternative, should the Tribunal decide not to eliminate the duties, Nycomed submitted that they should be significantly reduced by requiring normal values to be based on Searle's actual costs of production plus profit in Puerto Rico. As a further alternative, Nycomed proposed that duties be set at a rate of 10 percent as an advance over the export price. Nycomed requested that the elimination or reduction of duties be applied retroactively to the date of the preliminary determination.

Bracco submitted that, if the Tribunal decides to maintain a certain level of duties, it should exclude from the goods imported two iodine concentrations not made by MCI.<sup>20</sup> The second option proposed by Bracco, referred to as the tiered volume approach, would guarantee MCI an increased market share, while allowing Bracco and Nycomed a share of the domestic market with a pre-determined volume of duty-free imports.

## **2. SUBMISSION IN SUPPORT OF MAINTAINING THE ANTI-DUMPING DUTIES**

MCI submitted that the public interest considerations did not warrant the elimination or reduction of the duties. The evidence shows that Canadian prices are stable and did not escalate since the imposition of the duties. A number of market constraints will maintain the Canadian prices at a relatively low level, especially the PMPRB's price monitoring and the availability of HOCM. MCI suggested that LOCM were also available from alternate sources. This prospect would create a price discipline for MCI and prevent any dramatic price increases. Indeed, MCI stated that it did not intend to raise unreasonably the prices for its products.

MCI emphasized that it needed anti-dumping protection, given the price erosion caused by the high margins of dumping. Moreover, MCI noted that Canadian LOCM prices have been extremely low because of the dumped goods. Indeed, it reminded the Tribunal that the price for LOCM in Canada is among the lowest in the world. MCI argued that it was clear from the evidence that MCI has been materially injured and, contrary to Nycomed and Bracco's view, there was no doubt that the revenues earned on sales of Optiray have been affected by the dumping.

With respect to the argument that hospitals cannot afford any price increase for LOCM, MCI submitted that recent federal government announcements foresee a substantial increase in healthcare spending. In addition, it was submitted that LOCM account for a very small proportion of hospital diagnostic

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20. For concentrations of 300 and 370 produced by Bracco.

budgets and, consequently, a price increase could be absorbed. Moreover, MCI noted that, a few years ago, hospitals were still purchasing an important amount of LOCM at considerably higher prices and at a time when the price ratio between LOCM and HOCM was much more important.

In response to the arguments that MCI was unable to supply the entire clinical needs of the radiologists, especially a non-ionic dimer such as Visipaque, MCI referred to the study by the Ontario Association of Radiologists that stated the advantages associated with the use of ionic dimers, such as Hexabrix. MCI further submitted that one of the largest buying groups, Medbuy, did not use Nycomed's non-ionic dimer, Visipaque. MCI also reiterated that it has sufficient capacity to supply the Canadian market and stated that its agreement with Berlex permits it to fulfil the clinical needs for 80 to 85 percent of diagnostic indications throughout Canada.

In conclusion, MCI submitted that the evidence presented in this case did not warrant a recommendation to the Minister that the anti-dumping duties should be eliminated or reduced. If the Tribunal was convinced that a reduction is warranted, MCI submitted that the reduction should take the form of a minimum price based on the 1996-97 market price. This would correspond to the market price prior to the dumping and price erosion and would represent a 46 percent price increase based on the average price for its sales to the Centre hospitalier de l'Université de Montréal in 2000.

## PART IV

### EFFECTS OF ANTI-DUMPING DUTIES

#### 1. INTRODUCTION

The Tribunal notes that, once a finding of material injury is made and the anti-dumping duties are in place, prices typically increase, as the domestic industry is relieved of the downward pressure imposed by the competing imports at dumped prices. This price increase, however, may be constrained. In this part of the report, the Tribunal first analyzes the factors that could constrain the rise in prices with the anti-dumping duties in the full amount in place. The Tribunal then analyzes the effects of the elimination of the duties and, finally, the effects of a partial duty reduction.

#### 2. PRICE CHANGES SINCE THE INJURY FINDING

The Tribunal received evidence on pricing by the three major competitors since the injury finding on May 1, 2000. Nycomed has increased product prices by varying amounts for some of its customers. The increases have tended to include the full amount of the anti-dumping duties for Visipaque. The increases for Omnipaque, of about 10 percent, do not reflect the full amount of the anti-dumping duties in the selling price to the purchaser.

The evidence indicated that Bracco has neither increased its selling price for Isovue nor imported Isovue from the United States since the injury finding. It appears that its response to the dumping investigation was, in part, to increase imports prior to the injury finding in order to sell from inventory at prices specified in its contracts. In order to maintain its prices as the inventory of some products ran out, Bracco imported a limited number of stock-keeping units (SKUs) of Isovue produced in Europe.<sup>21</sup>

For MCI, the evidence indicated that it has not increased its prices since the finding on May 1, 2000.

The Tribunal calculated that the inclusion of the average amount of anti-dumping duties that would have been assessed on imports of LOCM by Nycomed and Bracco during the CCRA's period of investigation would lead to the average full duty-paid resale price for the subject imports of LOCM rising to at least 60¢/mL, from the average price of 22¢/mL in the first five months of 2000. In the Tribunal's view, the price for Omnipaque, the most popular brand in the domestic market, would need to increase much more than it already has to reflect the anti-dumping duties in the full amount as required by SIMA. If Isovue is imported from the United States and sold in the domestic market, then it too would need to increase considerably in price to reflect the anti-dumping duties. The timing of the increases may be uncertain, but they are inevitable for imports from the United States and Puerto Rico with the anti-dumping duties in the full amount in place.

#### 3. EFFECT OF THE ANTI-DUMPING DUTIES IN THE FULL AMOUNT

##### a) Health Care

There is a growing market in Canada for LOCM. The volume of sales of LOCM increased from 65,000 L in 1997 to 93,000 L in 1999, or an increase of 43 percent over this period. This increase reflects

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21. *Transcript of Public Hearing*, Vol. 1, 19 July 2000, at 265.

both a shift from the use of HOCM to the use of LOCM and an increase in the number of procedures undertaken by hospitals.

The Tribunal received a great deal of evidence on the effect that higher prices for LOCM would have on hospital budgets. Testimony indicated that hospital budgets tend to be fixed for the budget year, but are typically reconsidered annually. This reconsideration, however, is done within the current provincial government policy of restraint in medical expenditures.

Buyers testified that cutting other items in the current budget might enable them to accommodate the recent increases in the price for Nycomed's Omnipaque, but that cutting these other items would put some other aspect of patient care at risk. Increases beyond some point would likely lead hospitals to reduce purchases of LOCM and, hence, to reduce the number of radiology procedures undertaken. While there was not a consensus among the buyers on the magnitude of the price increase which could be accommodated without a reduction in the volume of LOCM purchases and in procedures, the Tribunal interpreted their general position to be an increase of 5 to 10 percent from the average price for 1999.

The Tribunal notes that even a small increase in the price for LOCM may slow down or stop the shift from HOCM to LOCM. Faced with a larger price increase, some hospitals would likely opt for a greater use of HOCM to minimize any reduction in the number of procedures undertaken. For other hospitals (e.g. those in Ontario), existing policy requires the use of LOCM rather than HOCM for most indications. For these hospitals, a reduction in purchases of LOCM would be accompanied by a reduction in the number of procedures undertaken or tighter budget constraints on other types of hospital procedures.

The Tribunal heard testimony from the domestic industry that price increases for LOCM for individual hospitals would add a relatively small amount to the overall budget for the hospital. Testimony from the radiologists indicated that between 5 and 7 percent of a hospital's radiology department's budget is spent on some form of contrast media. As an example of the cost of contrast media in a single procedure, the radiologists indicated that 30 percent of the "technical fee"<sup>22</sup> to do a CAT scan was for contrast media.<sup>23</sup>

As indicated above, Nycomed has increased its price to some extent to some hospitals. Based on these increases, three smaller buying groups, in response to a Tribunal request for details on recent price increases for LOCM, indicated that their LOCM costs have increased by 6 to 12 percent.<sup>24</sup> The increase in cost for one major buying group was considerably larger than the above range.<sup>25</sup> The Tribunal notes that a 1 percent increase in prices for all LOCM in a domestic market with a value of approximately \$20 million would add \$200,000 annually to Canadian medical expenditures, assuming no change in the volume of LOCM used.

The Tribunal is of the view that price increases at a level that would lead to a significant reduction in the number of procedures or to a shift towards greater use of HOCM would reduce the quality of health care for patients and, as a result, would not be in the public interest.

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22. All costs other than the professional fee.

23. *Transcript of Public Hearing*, Vol. 2, 20 July 2000, at 324-25.

24. Tribunal Exhibits PB-2000-001-18.1, -18.4 and -18.5, Administrative Record, Vol. 3.2 at 10, 32 and 38 respectively.

25. Tribunal Exhibit PB-2000-001-19.3 (protected), Administrative Record, Vol. 4.2 at 6.

**b) Choice of Product by Radiologists**

The Tribunal heard testimony from some radiologist groups that it was very important for radiologists to be able to choose the appropriate LOCM for their patients from among the products offered by MCI, Nycomed, Bracco and Berlex. The radiologists who appeared before the Tribunal testified that, for a given patient undergoing a particular procedure, the initial decision was to determine which products had the required indications for the procedure. For many procedures, there are indications for more than one product. At that point, a radiologist then chooses which of these products, based on his or her experience, normally produces the best image with the greatest safety and comfort for the patient. Radiologists expressed concern that significant price increases for the products bought from Nycomed and Bracco could mean that hospitals would no longer be able to purchase these products, which, in turn, would mean that radiologists would not have access to products that, for many procedures, are the products of choice based on their experience.

The Tribunal also heard testimony that, even when hospitals award a contract to one supplier of LOCM, the hospitals seek to retain the flexibility to purchase up to 10 to 15 percent of their total requirements from other suppliers.<sup>26</sup> This allows the hospitals to provide a degree of clinical choice to physicians such that they can meet the individual needs of patients.

In the Tribunal's view, price increases large enough to reduce the choice of LOCM for radiologists would not be in the best interest of patients and, as such, the loss of choice by radiologists is not in the public interest.

**c) Supply to Hospitals**

The Tribunal heard testimony that MCI and Berlex could together meet 80 to 85 percent of the needs of hospitals with their current range of products.<sup>27</sup> This means that the hospitals would need to purchase the remainder from other suppliers, some or all of which might be at prices which reflect the full amount of the anti-dumping duties. In the Tribunal's view, the continuing need for hospitals to purchase even 10 to 15 percent of their LOCM at such prices would not be in the public interest.

**d) Contract Competition**

The evidence gathered during the inquiry under section 42 of SIMA indicated that purchasers contributed, to some degree, to the downward trend in prices through the bidding process for contracts. The process essentially allows purchasers to play off one supplier against another to obtain the lowest price. The Tribunal notes that, if the imposition of the full amount of the anti-dumping duties led to one supplier rather than to three independent suppliers, this lack of competition for each contract would significantly reduce the ability of purchasers to prevent this lone supplier from increasing its prices.

The Tribunal received submissions that concessions in contracts obtained in a competitive market yielded additional benefits to hospitals: first, allowances for education and research, which reduced the call on the general hospital budget to support these types of activities; and second, access to research done in other countries by pharmaceutical companies on the use of LOCM. Purchasers and radiologists expressed

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26. *Transcript of Public Hearing*, Vol. 1, 19 July 2000, at 85-86.

27. *Transcript of Public Hearing*, Vol. 2, 20 July 2000, at 510-12.

concern that they would have less access to allowances and research in an environment where only one major supplier remained.

In the Tribunal's view, a reduction in competition that results in a significant loss of monetary or non-monetary benefits to hospitals would not be in the public interest.

**e) New Sources of Supply of LOCM**

The Tribunal received evidence that both Nycomed and Bracco could source their LOCM from European facilities.

In order to change the source of product for import into the Canadian market, Nycomed and Bracco must obtain prior approval from the TPP. The Tribunal heard testimony that the approval process to manufacture, at a new location, a product that already had been approved for production in a different location could take several months. It also heard that the process to manufacture the same product in a location that has an approval for an earlier period might occur more quickly. As noted earlier, the Tribunal received evidence that Bracco shipped a limited number of SKUs of LOCM from Europe.

The Tribunal notes that the reliability of the supply of product from Europe and the prices at which it could be sold in Canada are uncertain. These uncertainties include: the time required to obtain approval for all categories intended to be shipped to Canada; whether there is a complete range of product lines available from these production sites; whether there would be sufficient supply available to meet the import orders from the domestic market; and the landed cost of the imported product in Canada. In the Tribunal's view, the potential effect of shipments from Europe on domestic prices is uncertain. The possible effects range from Nycomed and Bracco being able to import a complete line of products into Canada at prices slightly higher than the current market price to being able to provide a partial range of product at prices significantly higher than the current market price.

There was also evidence that producers of generic versions of LOCM received some approvals several years ago to enter the Canadian market. However, in response to Tribunal requests, two producers of generic products indicated that they have no present or foreseeable plans to enter the Canadian market. One such producer indicated that it required prices to increase to the higher levels of 1994 and 1995 before it would consider entering the market.<sup>28</sup>

In the Tribunal's view, the reliance on sourcing from a new location that has considerable uncertainty on both price and the ability to supply is not in the public interest.

**f) Domestic Industry**

If the full amount of the anti-dumping duties were to remain in place and if MCI were to become the dominant supplier of LOCM to the Canadian market, then MCI would have considerable discretion in choosing how to increase its revenues. It could focus on gaining market share, raising prices, or both.

The Tribunal heard testimony from MCI that it would seek to increase prices to the levels that prevailed in 1997.<sup>29</sup> The Tribunal notes that the average selling price for LOCM in 1997 was 33¢/mL,

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28. Tribunal Exhibit PB-2000-001-24.2, Administrative Record, Vol. 3.4 at 15.

29. *Transcript of Public Hearing*, Vol. 2, 20 July 2000, at 469-71.

compared with 22¢/mL in the first part of 2000. The Tribunal also notes that MCI's market share was higher in 1999 than in 1997.

The Tribunal is aware that MCI's Optiray is under patent until the end of 2002. As well, Osmovist, which is a Berlex product that MCI is licensed to sell in Canada, is under patent until June 17, 2003. As a result, MCI must seek PMPRB approval in order to increase the price for these products by a rate greater than the consumer price index. The PMPRB determines the magnitude of the price increase that it would allow. It is uncertain whether the PMPRB would consider that changes in the market arising from an injury finding under section 42 of SIMA would justify an increase in price greater than an increase it would otherwise approve. In the Tribunal's view, this requirement to obtain approval to increase the price for Optiray and Osmovist would delay and slow the rate of increase that would otherwise likely occur.

After the expiration of the patents, MCI would be able to increase the price for these products without seeking prior approval from the PMPRB. The Tribunal also notes that MCI does not require approval to increase the price for Hexabrix, an MCI product, and Ultravist, the other Berlex product that it is licensed to sell.

The Tribunal is of the view that it remains in the public interest to maintain a level of protection from injurious dumping for the domestic industry. The evidence suggests to the Tribunal that MCI cannot take full advantage of the scope of price increases implied by the anti-dumping duties. In the short run, it is constrained by price controls exercised by the PMPRB on patented products. As well, over the medium term, with the full amount of the anti-dumping duties in place, it would be constrained by the possibility of alternative shipments by Nycomed and Bracco from Europe, at prices that are likely to be significantly lower than the increased prices for the U.S. products. It would also be constrained by market resistance, as buyers seek out alternatives to higher-priced LOCM, possibly including generic products. MCI testified that it is seeking to increase prices only to the levels that prevailed for certain contracts in 1997, i.e. somewhere in the range of 32¢/mL to 34¢/mL. In addition, prices above this level would likely lead to a significant decline in total market volume. All of this suggests to the Tribunal that MCI is unlikely to be able to raise its average selling price for LOCM much, if anything, above 35¢/mL with the full amount of the anti-dumping duties in place.

#### **4. ELIMINATION OF THE ANTI-DUMPING DUTIES**

If the anti-dumping duties on imports of LOCM from the United States and Puerto Rico were eliminated, Nycomed and Bracco would be able to sell in the Canadian market at any price level. As Nycomed's General Manager, Mr. J.P. Huot, stated, "if all the duties are eliminated . . . we will just be back to business as usual".<sup>30</sup> If the battle for market share were to resume, further declines in the average price for LOCM could occur. Further declines in prices would increase the injurious effects on MCI. Even if prices were to remain at their current level (and were prevented from falling further), the Tribunal notes that these prices would be injurious to the domestic industry, as they have decreased 10 percent since the end of the period considered during the Tribunal's inquiry under section 42 of SIMA. It was argued in the injury inquiry that, if this were to occur, then the loss of revenues by MCI might put the continued production of LOCM in Canada by MCI in jeopardy. The Tribunal did not receive evidence or submissions on this possibility during this investigation. Nevertheless, the Tribunal is not convinced, given the price erosion of

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30. *Transcript of Public Hearing*, Vol. 1, 19 July 2000, at 177.

LOCM during the period of inquiry under the section 42 inquiry and over the recent period, that the public interest warrants the elimination of the anti-dumping duties.<sup>31</sup>

## 5. REDUCTION OF THE ANTI-DUMPING DUTIES

As indicated earlier, the Tribunal's view is that, with the full amount of the anti-dumping duties in place, both Nycomed and Bracco will generally not be able to compete in the Canadian market with products shipped from the United States and Puerto Rico. These companies would only be able to supply the 10 to 15 percent of the market that MCI indicated that it could not supply. In this situation, MCI would be the dominant supplier to the domestic market. The Tribunal's view is that market factors would keep the expected average price for LOCM well below the price at which both Nycomed and Bracco would have to sell its LOCM with the full amount of the anti-dumping duties included. Moreover, as indicated earlier, the Tribunal is convinced that MCI is unlikely to raise its average selling price for LOCM above 35¢/mL with the full amount of the anti-dumping duties in place. The anti-dumping duties could, therefore, be reduced significantly without affecting the extent to which MCI could increase its price for LOCM. The price for imported products with a lower amount of duty would be higher than the average market price in the first part of 2000. This differential would enable MCI to increase its price (subject to approval by the PMPRB) and/or gain market share, thereby adding to its revenues.

A reduction of the anti-dumping duties would address the concern that a large increase in prices would lead to pressures on hospital budgets, which would result in a reduction of the number of procedures that could be undertaken on patients. A reduction of the anti-dumping duties would also enable both Nycomed and Bracco to continue to be an alternative to MCI for buyers of LOCM. The continued availability of alternatives would address the public interest concern that radiologists require a choice of products in order to provide the greatest safety and comfort for patients. As well, a somewhat higher price for imported LOCM would provide scope for MCI to increase its revenues.

## 6. CONCLUSION

On the basis of the foregoing analysis and the price effects of the anti-dumping duties discussed earlier, the Tribunal is of the opinion that there exists a sufficiently compelling public interest rationale to report to the Minister.

The Tribunal is of the view that a reduction rather than the elimination of the anti-dumping duties is the preferred alternative. A reduction would help to maintain alternative sources of supply of LOCM for the Canadian market. It would also minimize the adverse effect of higher prices for LOCM on the quality of patient care. At the same time, the domestic industry would benefit from both higher average prices and an opportunity to increase its share of the market. Therefore, the Tribunal recommends that the anti-dumping duties on LOCM imported from the United States and Puerto Rico be reduced.

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31. In reaching this conclusion that the elimination of the duties would not be in the public interest, the Tribunal was mindful of the request to exclude from the application of the duties LOCM with iodine concentrations of 300 and 370 which are not produced by MCI. In the Tribunal's view, these products share the same range of clinical needs of users of other LOCM. The new evidence available in this investigation does not change the Tribunal's view stated in its reasons for the finding in the inquiry under section 42 that, while LOCM may be produced in varying concentrations, they are generally substitutable and that these concentrations would compete with MCI in the market.



## PART V

### RECOMMENDATIONS

The Tribunal concluded, in the preceding part of this report, that the effects of the imposition in the full amount of the anti-dumping duties on LOCM imported from the United States and Puerto Rico are sufficiently compelling to warrant a reduction in such duties. The Tribunal now considers the amount by which the duties should be reduced and the best way in which to implement the duty reduction.

The next section reviews the form of the duty reduction. It is followed by a discussion of the Tribunal's determination of the amount by which duties should be reduced. The subsequent section presents a brief summary of the determination of the duty reduction and a review of the effects of the reduction. The concluding section presents the Tribunal's duty reduction recommendations.

#### 1. FORM OF THE DUTY REDUCTION

The Tribunal considered a number of factors in choosing the method for implementing the duty reduction. Prime among those factors was that the method of duty reduction should be based, to the largest extent possible, on the CCRA's existing method of anti-dumping enforcement and duty collection. If the method of duty reduction met this requirement, there would be little increase in resource requirements on the part of the CCRA, and it would be possible to avoid changes to the enforcement system. Also, it would be possible for the CCRA to calculate and administer the duty reduction within its regions. As well, the enforcement system would maintain its prospective nature, allowing importers to avoid paying duties if they raise their resale prices in Canada to a level such that their section 25 export prices are equal to or greater than normal values. The method of duty reduction should also be able to maintain a link with the "public interest price" and be predictable for importers and exporters. In the course of the investigation, the Tribunal issued a staff discussion paper on duty reduction options,<sup>32</sup> and parties made submissions concerning potential duty reduction options.

The Tribunal believes that a duty reduction would best be achieved by establishing new lower normal values calculated by applying a company-specific percentage increase to the exporters' final determination export prices. These new normal values would remain fixed for the duration of the finding. In addition, the costs for each company of selling in, and importing into, Canada, plus a profit used in the calculation of section 25 export prices would be established as a fixed percentage of the new normal values and would also remain unchanged for the duration of the finding.<sup>33</sup> A link between the duty reduction and the public interest price would be maintained by requiring the subject imports to be sold at a price equal to their new normal value plus a specified amount to cover the costs of selling in, and importing into, Canada, plus a profit. Both Searle and BMS would have access to their own new normal value and new export price, which would enable them to sell into the Canadian market at a price sufficiently high to avoid paying anti-dumping duties. This capability would preserve the prospective nature of the Canadian anti-dumping system.

#### 2. PRICES

The Tribunal decided that the most effective approach to recommend an amount by which to reduce the anti-dumping duties would be through the determination of an average net-net domestic market selling

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32. Tribunal Exhibit PB-2000-001-29, Administrative Record, Vol. 1 at 279-89.

33. A general description of the methodology used to derive new normal values and the amount to cover the costs of selling in, and importing into, Canada, plus a profit, are described in the Technical Appendix.

price for the subject imports of LOCM, or a “public interest price” that would balance the various public interests. The focus was on net-net prices for the subject imports because it was those prices that caused injury to MCI. Also, it is the impact of anti-dumping duties on the net-net prices for the subject imports that can have adverse effects on the public interest. In determining the public interest price, the Tribunal considered the average domestic market prices in the years 1997 to 1999 and the first five months of 2000. The Tribunal also considered the level to which domestic market prices might rise, with the full amount of the anti-dumping duties maintained on the subject imports.

The Tribunal had several sources of information to assist it in deciding the amount by which to reduce the anti-dumping duties. The letter accompanying the Tribunal’s notice of commencement of the public interest investigation requested parties making submissions to address the amount by which duties should be reduced if the Tribunal found that an anti-dumping duty reduction was warranted in the public interest. As well, at the outset of the investigation, the Tribunal made specific information requests to a number of parties. The Tribunal asked MCI, Nycomed and Bracco to indicate what the prices for LOCM in the domestic market should be in the event that the Tribunal decided that a duty reduction was in the public interest. Also, several hospital purchasing groups and associations representing radiologists and medical radiation technologists were asked to indicate the amount by which the price for imported LOCM would have to increase before the purchase of imported LOCM declined or a switch was made to LOCM sold by MCI or Berlex.

As an alternative to the elimination of the duties, Nycomed proposed that the anti-dumping duties be reduced to reflect an advance of 10 percent on export prices which, it argued, would result in resale price increases of about the same amount.<sup>34</sup> Nycomed submitted that these increases would restore prices in the market to somewhere between 1998 and 1999 prices.

In argument, Bracco proposed two alternative duty reduction options.<sup>35</sup> These options referred to the provision of duty-free access to either the two concentrations of LOCM not produced by MCI or specified volumes of Bracco and Nycomed imports of LOCM. The main focus of the proposals was not on establishing an across-the-board increase in the price for the subject imports.

Nycomed indicated at the hearing that some purchasers might tolerate a price increase of 5 percent before they considered switching supplier, but that anything over 5 percent would cause significant problems.<sup>36</sup> Nycomed also referred to the recent increase of about 10 percent applied to Omnipaque after the injury finding. It indicated that, if its prices were still 10 percent higher than those of any other supplier at the expiration of contracts, there would be enormous pressure on the buyers to switch to a supplier offering lower prices.<sup>37</sup> Bracco indicated that the tolerance for price increases varies across the country, with price being a very important component of tender awards in Quebec, while hospitals in other regions might accept price increases that range up to 5 percent, based on the value of the contract.<sup>38</sup>

In response to a Tribunal request, MCI submitted that, in the event that the Tribunal does determine that it is in the public interest to reduce the anti-dumping duties, resale floor prices should be set for each imported product at a level which is 46 percent above current prices to the Centre Hospitalier de l’Université

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34. *Transcript of Public Argument*, 21 July 2000, at 13-16. This proposal included a floor level below which the export price would not be allowed to fall. This floor level would be equal to normal values based on Searle’s costs of production in Puerto Rico, plus a profit.

35. *Transcript of Public Argument*, 21 July 2000, at 34-42.

36. *Transcript of Public Hearing*, Vol. 1, 19 July 2000, at 174-75.

37. *Transcript of Public Hearing*, Vol. 1, 19 July 2000, at 198-200.

38. *Transcript of Public Hearing*, Vol. 1, 19 July 2000, at 270.

de Montréal.<sup>39</sup> MCI indicated that such a price increase would return prices to the levels prevailing in 1996-97, with the average minimum floor price being in the range of 32¢/mL to 34¢/mL.<sup>40</sup>

Radiologists and hospital purchasing groups provided information on the tolerance of the healthcare system of LOCM price increases. The Canadian Association of Radiologists stated that a further 5 to 15 percent difference between LOCM and HOCM prices would place pressure on radiologists to consider buying something else and to reduce the number of examinations.<sup>41</sup> The Charles LeMoyne Hospital in Quebec responded that it could likely absorb a 5 percent increase of the 1999 prices of LOCM.<sup>42</sup> It added that an increase of 10 percent would be a different story, given the tightness of its budget, and that it would lead to the rationing of supplies within procedures. Medbuy, a buying group owned by 16 major hospitals throughout Canada, indicated that the recent increase in the price for Omnipaque is very close to the point at which it would take its contract with Nycomed to the market.<sup>43</sup> Furthermore, Medbuy indicated that, prior to this increase, its average price was close to the average price for LOCM in the domestic market in the first part of 2000 (22¢/mL).<sup>44</sup>

The Tribunal requested information on net-net prices and sales volumes and values from MCI, Nycomed, Bracco and Berlex for the years from 1997 to 1999 and during the period from January to May 2000. The Tribunal used this information to calculate the following weighted average prices for domestic market sales: 33¢/mL in 1997; 26¢/mL in 1998; 24¢/mL in 1999; and 22¢/mL from January to May 2000.<sup>45</sup>

The Tribunal constructed a price line from available pricing information. At the lower end of the line was the average Canadian market price for LOCM in 2000 of 22¢/mL. At the upper end of the line was the price above which MCI is unlikely to be able to sell its LOCM with the full amount of the anti-dumping duties in place, without a substantial loss in market volume. The Tribunal's view was that the price would not likely go above 35¢/mL, and certainly not rise to the full duty-paid price of 60¢/mL.

This price line provided the Tribunal with a reference base for arriving at a public interest price. In 1997, the weighted average price for LOCM was 33¢/mL, which was the mid-point of the floor prices submitted by MCI. In its statement of reasons for the finding following the inquiry that it conducted on contrast media under section 42 of SIMA, the Tribunal stated that the magnitude of the erosion in domestic prices from 1996 to 1999 pointed directly to the substantial margins of dumping found for Nycomed and Bracco, but it also indicated that other factors played a role in depressing prices.<sup>46</sup> The Tribunal therefore concluded that, in setting a public interest price, there was some scope to move down the price line from the 1997 price of 33¢/mL.

The Tribunal was also convinced that a price of 22¢/mL, at the other end of the price line, was insufficient to prevent injury from dumped imports from the United States and Puerto Rico. This price was

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39. Tribunal Exhibit PB-2000-001-12.3, Administrative Record, Vol. 3 at 50; Tribunal Exhibit PB-2000-001-13.3B (protected), Administrative Record, Vol. 4 at 76.12-76.14; Tribunal Exhibit PB-2000-001-13.3D (protected), Administrative Record, Vol. 4 at 76.22; and *Transcript of Public Hearing*, Vol. 2, 20 July 2000, at 465-66, 469-70 and 549-50.

40. *Transcript of Public Hearing*, Vol. 2, 20 July 2000, at 470-71 and 548.

41. *Transcript of Public Hearing*, Vol. 2, 20 July 2000, at 348-50 and 419-23.

42. *Transcript of Public Hearing*, Vol. 1, 19 July 2000, at 74-75 and 78-82.

43. *Transcript of Public Hearing*, Vol. 1, 19 July 2000, at 102-103.

44. *Transcript of Public Hearing*, Vol. 1, 19 July 2000, at 128-29.

45. Tribunal Exhibit PB-2000-001-35A, Administrative Record, Vol. 1 at 362-63.

46. *Supra* note 2, *Statement of Reasons* at 16.

even lower than the average price that prevailed when dumping had been found to cause material injury to MCI.

In determining a public interest price on which to base the duty reduction, the Tribunal had to take into account the various public interest concerns. It had to consider that, as prices increase from the 1999 and the current levels, there would likely be a reduction in the number of diagnostic procedures and a shift towards the greater use of HOCM, thereby reducing the quality of health care for patients. The Tribunal also had to consider that, as prices increase, there could be a loss of choice among LOCM products for radiologists, which would not be in the best interest of patients. The Tribunal also had to consider the impact that an increase in prices would have on the continuing need of hospitals to purchase 10 to 15 percent of their LOCM from Nycomed or Bracco. Finally, the Tribunal also had to consider that too low a price would leave MCI vulnerable to material injury caused by dumped imports of LOCM from the United States and Puerto Rico.

While taking into account the various public interest concerns in choosing a public interest price, the Tribunal also took into account the price and supply uncertainties noted earlier. These uncertainties included the potential for Nycomed and Bracco to import LOCM from Europe and how the PMPRB would respond to a request by MCI to increase the price for Optiray beyond its maximum, non-excessive price level.

The Tribunal noted that a 10 percent increase in the average price for 1999 would bring the price to 26¢/mL. While conscious of the fact that this price increase was in the range of increases that some hospitals and buying groups felt they could tolerate without any reduction in the number of procedures or switching of contracts, the Tribunal was of the view that this price would not be sufficient to protect MCI from material injury and that it was necessary to move further up the price line. The Tribunal was, therefore, left to consider a range of prices between 26¢/mL and 33¢/mL from which to determine a public interest price.

The Tribunal concluded that the appropriate public interest price would be achieved by increasing the average subject import price to the level that prevailed in early 1998, which was about 28.5¢/mL.<sup>47</sup> The choice of this public interest price means that the resale price for imports of LOCM from the United States, including Puerto Rico, should not, on average, fall below 28.5¢/mL. At the same time, this price limits the effects that price increases can have on the public interest. In the Tribunal's view, this price protects the choice for radiologists and minimizes the effects of price increases on patient care and on hospital budgets.

### 3. SUMMARY

The Tribunal selected the public interest price from within the range of potential price points that, in its view, best balanced the various public interest concerns. The public interest price for imports minimizes the effect of price increases on patient care and hospital budgets and provides protection of choice for radiologists. Although this public interest price is higher than the average market price for the first five months of 2000 and all of 1999, it is much less than the estimated full duty-paid price of over 60¢/mL. The Tribunal estimates that, based on the results of the CCRA's final determination, Searle's normal values on average would be reduced by 64 percent in the 1999 portion of the period of investigation and BMS's normal values on average would be reduced by 68 percent over the period of investigation. The Tribunal notes that, because Nycomed and Bracco will be required to sell at prices that are, on average, at least 28.5¢/mL, MCI will have the opportunity to price strategically to gain market share.

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47. The public interest price of 28.5¢/mL is an average of the prices at which the imports would be resold and, as such, does not necessarily represent the resale price of any one product. During the period of investigation, Searle and BMS exported 36 different combinations of products, concentrations and container sizes.

#### 4. RECOMMENDATIONS TO THE MINISTER

##### a) Searle Exports to Nycomed

The Tribunal recommends that the Minister reduce the anti-dumping duties on shipments of LOCM originating in or exported from the United States of America (including the Commonwealth of Puerto Rico) from Searle to Nycomed by the amount by which the per-millilitre anti-dumping duties payable determined by the CCRA exceed the per-millilitre anti-dumping duties determined as follows:

- (i) Establish new normal values by increasing, by 11.72 percent, Searle's final determination section 25 export prices per millilitre for the 1999 portion<sup>48</sup> of the CCRA's period of investigation. These new normal values would remain fixed for the duration of the finding.
- (ii) Establish new section 25 export prices per millilitre by deducting from resale prices<sup>49</sup> an amount to cover the costs of selling in, and importing into, Canada, plus a profit. The amount would be established in the following manner:
  - (a) Establish the weighted average section 25 export price per millilitre for Searle for the 1999 portion of the period of investigation.
  - (b) Establish the weighted average resale price per millilitre for Nycomed (end user price) for the 1999 portion of the final determination.
  - (c) Express the difference between the weighted average resale price per millilitre and the weighted average section 25 export price per millilitre as a percentage of the weighted average section 25 export price per millilitre. This percentage would remain fixed for the duration of the finding.
  - (d) Apply the percentage established in (ii)(c) to the new normal values to arrive at the amount to cover the costs of selling in, and importing into, Canada, plus a profit.
- (iii) Anti-dumping duties are equal to the amount by which the new normal values exceed the new section 25 export prices.

The Tribunal recommends that, if the domestic market resale price per millilitre for imports of LOCM from Searle is at a level that produces a new section 25 export price per millilitre that is less than the new normal value per millilitre, there should be no duty reduction for the imports.

##### b) BMS Exports to Bracco

The Tribunal recommends that the Minister reduce the anti-dumping duties on shipments of LOCM originating in or exported from the United States of America (including the Commonwealth of Puerto Rico) from BMS to Bracco by the amount by which the per-millilitre anti-dumping duties determined by the CCRA exceed the per-millilitre anti-dumping duties determined as follows:

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48. A change in Nycomed Inc.'s corporate policy resulted in the CCRA modifying how it calculated the section 25 export prices for Searle between the first half and second half of the period of investigation. The Tribunal based its duty reduction recommendation for exports from Searle on the export prices for the more recent period, i.e. the first half of 1999, because it was the most recent information available.
  49. The resale price is defined as the net-net price less any cash, quantity or deferred discounts, allowances and taxes and is net of all incentives, such as educational allowances, research allowances and free products and equipment.

- (i) Establish new normal values by increasing, by 22.51 percent, BMS's final determination section 25 export prices per millilitre for the CCRA's whole period of investigation. These new normal values would remain fixed for the duration of the finding.
- (ii) Establish new section 25 export prices per millilitre by deducting an amount to cover the costs of selling in, and importing into, Canada, plus a profit. The amount would be fixed for the duration of the finding and would be established in the following manner:
  - (a) Establish the weighted average new normal value per millilitre for BMS for the period of the investigation.
  - (b) Subtract the weighted average new normal value per millilitre established in (ii)(a) from 28.5¢/mL to arrive at the amount to cover the costs of selling in, and importing into, Canada, plus a profit.
- (iii) Anti-dumping duties are equal to the amount by which the new normal values exceed the new section 25 export prices.

The Tribunal recommends that, if the domestic market resale price per millilitre for imports of LOCM from BMS is at a level that produces a new section 25 export price per millilitre that is less than the new normal value per millilitre, there should be no duty reduction for the imports.

**c) Other**

The Tribunal recommends that the Minister reduce the anti-dumping duties on shipments of LOCM originating in or exported from the United States of America (including the Commonwealth of Puerto Rico) to importers in Canada other than those identified in recommendations a) and b) above in a manner that has the same market price effects as the recommended duty reductions.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Raynald Guay  
Raynald Guay  
Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

## TECHNICAL APPENDIX

This appendix outlines, in general terms, how the new normal values were derived. The appendix briefly describes some of the determinations made by the CCRA. It then indicates the relationships among these determinations and how the Tribunal used them in this report. Finally, it sets out where the sources of information that were used in the Tribunal's calculations are found in the record.

### 1. CCRA'S NORMAL VALUES, EXPORT PRICES, DUMPING MARGINS AND DUTIES

Duties payable on dumped imports are equal to the amount by which the exporter's normal value exceeds the export price.

In general, the exporter's normal value is the undumped price or the price at which the exporter sells the goods in its home market, and the export price is the price paid by the importer to the exporter. Depending on the circumstances of the case, the CCRA may determine an export price under section 25 of SIMA. Whenever this occurs, as it did for the present case involving contrast media, the CCRA "constructs" an export price by deducting from the selling price in Canada an amount to cover the importer's profit and costs associated with the importation and sale of the goods.

### 2. METHODOLOGY

The top panel of the table on the following page indicates the information available to the Tribunal from the CCRA when a section 25 export price is used. This information is provided by the CCRA for each product imported into Canada during the period of investigation. The lower panel indicates the methodology used by the Tribunal to develop a new normal value.

### 3. INFORMATION SOURCES

The sources of information used in the calculations were:

- The CCRA's final determination normal values, export prices and margins of dumping provided in the Tribunal's inquiry under section 42 (Tribunal Exhibit NQ-99-003-4, Administrative Record, Vol. 1 at 82.2-82.34; and Tribunal Exhibit NQ-99-003-5 (protected), Administrative Record, Vol. 2 at 7.2-7.13.)
- The CCRA's response to the Tribunal's request for information provided in the public interest investigation which covered the calculation of section 25 export prices (Tribunal Exhibit PB-2000-001-15.1, Administrative Record, Vol. 3.1 at 13; and Tribunal Exhibit PB-2000-001-16.1 (protected), Administrative Record, Vol. 4.1 at 10-59.)

**Table**  
**Example for Shipments from Searle to Nycomed**  
**(¢/mL)**

**Final Determination**

- (1) End user price
- (2) Costs of selling and importing, plus a profit
- (3) Section 25 export price = (1) – (2)
- (4) Costs of selling and importing, plus a profit, as a percentage of export price =  $100 \times (2)/(3)$
- (5) Normal value
- (6) Margin of dumping or duties payable = (5) – (3)
- (7) Margin of dumping as a percentage of normal value =  $100 \times (6)/(5)$

**Tribunal Methodology**

- (8) Advance of 11.72 percent (Recommendation a)(i))
- (9) New normal value = (3) + (3) x (8)/100
- (10) Costs of selling and importing, plus a profit = (4) x (9)/100
- (11) Public Interest Price = (9) + (10)
- (12) Reduction in normal values = (5) - (9)
- (13) Reduction in normal values as a percentage of old normal value =  $100 \times (12)/(5)$





Ottawa, Thursday, August 31, 2000

**Public Interest Investigation No.: PB-2000-001**

IN THE MATTER OF an opinion of the Canadian International Trade Tribunal, under section 45 of the *Special Import Measures Act*, resulting from Inquiry No. NQ-99-003 conducted under section 42 of the *Special Import Measures Act*;

RESPECTING whether the imposition of anti-dumping duties, or the imposition of such duties in the full amount, on iodinated contrast media used for radiographic imaging, in solutions of osmolality less than 900 mOsm/kg H<sub>2</sub>O, originating in or exported from the United States of America (including the Commonwealth of Puerto Rico) would not or might not be in the public interest.

**CORRIGENDUM**

In sub-paragraph (ii) of section b) on page iv, the first sentence should have read “Establish new section 25 export prices per millilitre by deducting from resale prices an amount to cover the costs of selling in, and importing into, Canada, plus a profit”.

In sub-paragraph (ii) of section b) on page 21, the first sentence should have read “Establish new section 25 export prices per millilitre by deducting from resale prices an amount to cover the costs of selling in, and importing into, Canada, plus a profit”.

By order of the Tribunal,

Michel P. Granger  
Secretary