



Ottawa, Tuesday, March 2, 2004

Preliminary Injury Inquiry No. PI-2003-006

IN THE MATTER OF a preliminary injury inquiry, under subsection 34(2) of the *Special Import Measures Act*, respecting:

**THE DUMPING OF FROZEN SELF-RISING PIZZA ORIGINATING IN OR
EXPORTED FROM THE UNITED STATES OF AMERICA**

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, under the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the dumping of prepared uncooked frozen pizza products containing uncooked self-rising dough and cooked and/or uncooked toppings which typically may include processed vegetables and/or meats and/or poultry and/or cheeses and/or a prepared sauce, put up for retail sale, originating in or exported from the United States of America, has caused injury or retardation or is threatening to cause injury to the domestic industry.

This preliminary injury inquiry is pursuant to the notification, on January 2, 2004, that the President of the Canada Border Services Agency (formerly the Commissioner of the Canada Customs and Revenue Agency) had initiated an investigation into the alleged injurious dumping of the above-mentioned frozen self-rising pizza.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping of the above-mentioned frozen self-rising pizza has caused injury to the domestic industry.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Patricia M. Close
Patricia M. Close
Member

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

Michel P. Granger
Michel P. Granger
Secretary

The statement of reasons will be issued within 15 days.

Date of Determination: March 2, 2004
Date of Reasons: March 17, 2004

Tribunal Members: Pierre Gosselin, Presiding Member
Patricia M. Close, Member
Meriel V. M. Bradford, Member

Director of Research: Rose Ritcey

Researcher: Manon Carpentier

Statistician: Lise Lacombe

Counsel for the Tribunal: Roger Nassrallah
John Dodsworth

Assistant Registrar: Gillian E. Burnett

Registrar Support Officer: Ingrid Navas

Participants:

for Randall J. Hofley
Susan M. Hutton
Kim D. G. Alexander-Cook
Kevin Rushton
Rachel V. Hutton
McCain Foods Limited

for Richard G. Dearden
Scott P. Little
Wendy Montgomery
Andrew A. Bradley
Andrew Kidd
Kathleen Macmillan
Kraft Canada Inc.
Kraft Foods North America, Inc.

for Riyaz Dattu
John W. Boscarior
Orlando Silva
Canada Safeway Limited

for James P. McIlroy
Canadian Restaurant and Foodservices Association

Ernie Vogt
TH Foods



Ottawa, Wednesday, March 17, 2004

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**THE DUMPING OF FROZEN SELF-RISING PIZZA ORIGINATING IN OR
EXPORTED FROM THE UNITED STATES OF AMERICA**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
PATRICIA M. CLOSE, Member
MERIEL V. M. BRADFORD, Member

STATEMENT OF REASONS

BACKGROUND

On March 2, 2004, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,¹ the Canadian International Trade Tribunal (the Tribunal) issued a preliminary determination of injury relating to the dumping of prepared uncooked frozen pizza products containing uncooked self-rising dough and cooked and/or uncooked toppings which typically may include processed vegetables and/or meats and/or poultry and/or cheeses and/or a prepared sauce, put up for retail sale, originating in or exported from the United States of America (the subject goods).

This preliminary determination of injury was rendered by the Tribunal following the completion of its inquiry, which was commenced on January 5, 2004, after it received notification, on January 2, 2004, that the President of the Canada Border Services Agency (CBSA) had initiated an investigation into the alleged injurious dumping of the subject goods. The investigation was initiated by the CBSA following a complaint filed on November 12, 2003, by McCain Foods Limited (McCain) of Florenceville, New Brunswick.

CBSA'S DECISION

The CBSA calculated margins of dumping for the 52-week period ending July 12, 2003, by comparing the normal values estimated by McCain with the export prices estimated by the CBSA. The estimated margins of dumping, expressed as a percentage of the export price, ranged from 14 percent to 68 percent. The estimated volume of dumped goods was not negligible, well above the 3 percent threshold, and the overall weighted average margin of dumping, estimated at 50 percent of the export price, was not insignificant, greater than the 2 percent threshold.

SUBMISSIONS

Domestic Industry

In its complaint, McCain submitted that the dumped subject goods have caused and threaten to cause injury to the domestic industry. In support of its allegations, McCain provided evidence of lost sales, price suppression/erosion and reduced profitability. McCain further claimed that, had it not been for the dumping of the subject goods, its share of the growing domestic market would have been much higher.

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

McCain commissioned an econometric study to assess the level of injury that it had already suffered and could suffer in the future from the dumped subject goods.

Party Opposed to the Industry Complaint

The Tribunal received only one submission from a party opposed to the complaint. In its submission, Canada Safeway Limited (Canada Safeway) argued that the Tribunal should render a decision of no reasonable indication of injury, or threat thereof, to the domestic industry due to McCain's failure to provide any evidence of injury caused by the dumping of the subject goods. Alternatively, Canada Safeway requested that the subject goods produced by Palermo's Italian Food Products (Palermo) and imported by Canada Safeway be excluded from a preliminary determination of injury based on the share of the Canadian market captured by the subject goods imported by Canada Safeway during the period from January 1 to July 12, 2003.

ANALYSIS

The Tribunal's mandate at the preliminary stage of an injury inquiry is set out under subsection 34(2) and section 37.1 of *SIMA*, which require the Tribunal to determine whether the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or retardation or is threatening to cause injury. Subsection 2(1) of *SIMA* defines "injury" as "material injury to a domestic industry" and "domestic industry" as the domestic producers as a whole of the "like goods" or whose collective production constitutes a "major proportion" of the total domestic production of the like goods. Therefore, the Tribunal has to identify the like goods and the domestic industry that produces those goods before addressing the injury issues.

On the question of like goods, the Tribunal notes that, in initiating its investigation, the CBSA defined the subject goods as prepared uncooked frozen pizza products containing uncooked self-rising dough and cooked and/or uncooked toppings which typically may include processed vegetables and/or meats and/or poultry and/or cheeses and/or a prepared sauce. In its complaint, McCain indicated that frozen self-rising pizza produced in Canada was effectively identical to the subject goods. Based on the evidence on the record, the Tribunal finds the frozen self-rising pizza produced in Canada, which is of the same description as the subject goods, to be like goods to the subject goods.

With respect to the issue of domestic industry, the Tribunal notes that, as part of its investigation, the CBSA identified, in addition to McCain, three other Canadian manufacturers of like goods: T & N Foods Inc., Da Vinci Food Products Ltd. and Multi-do Inc. The CBSA estimated the retail sales volume of like goods for the first two companies, as well as for McCain, and determined that McCain accounted for more than 60 percent of the Canadian production of like goods during the period from July 1, 2002, to June 30, 2003. For its part, the Tribunal finds that McCain alone constitutes a "major proportion" of the total domestic production of like goods and, thus, satisfies the requirement under subsection 2(1) of *SIMA*. Accordingly, the Tribunal accepts that McCain constitutes the domestic industry at this time.

Turning to the evidence on the record relating to injury, the Tribunal notes that the preliminary data indicate a significant increase in the volume of imports of the subject goods from January 1, 2000, to July 12, 2003. At the same time, the Tribunal recognizes that McCain managed to sell an increasing volume of like goods in the context of a growing domestic market. With regard to prices, the evidence on the record indicates that the average retail price of the subject goods declined over the period, thereby affecting the price gap between the subject goods and the like goods produced by McCain.

In the Tribunal's view, the evidence indicates that it is likely that the presence of the dumped subject goods had a negative impact on McCain by depressing its sales of like goods below the levels that

would have prevailed had the subject goods not been dumped. Further, while the Tribunal recognizes that certain of the subject goods generally command a higher price than the like goods,² the evidence also indicates that dumped import prices may have prevented McCain from increasing its prices. The Tribunal finally notes that, based on the evidence on the record, McCain's suppressed prices and lost sales may have had a negative impact on its financial performance.

In the Tribunal's opinion, the evidence at this stage discloses a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry in the form of lost sales, price suppression and reduced profitability.

Finally, the Tribunal notes that Canada Safeway requested an exclusion for its imports of the subject goods produced by Palermo. While the Tribunal may grant exclusions at the preliminary injury inquiry stage, it is prepared to do so only in clear and exceptional circumstances. It is incumbent on the requester to satisfy the Tribunal that granting such an exclusion is justified. Canada Safeway's request is based on the proportion of the total domestic market that its imports from Palermo represent. The Tribunal notes, however, that the evidence on the record clearly indicates that these imports closely resemble the goods produced by the domestic industry. The Tribunal also notes that Canada Safeway has not provided any evidence to convince the Tribunal that its imports should be differentiated from the other subject goods. In order for the Tribunal to determine whether there is a reasonable indication of injury, it must look at imports from a subject country as a whole and not at imports of individual companies from that subject country. Therefore, the Tribunal finds that there are insufficient grounds for granting Canada Safeway's request for exclusion at this time.

CONCLUSION

Having regard to the foregoing, the Tribunal finds that there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

Pierre Gosselin
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Presiding Member

Patricia M. Close
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Meriel V. M. Bradford
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Member

2. Public version of the complaint, Tab 2, Administrative Record, Vol. 1 at 68.