CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, April 9, 1990

Request for Review No.: RD-89-009

IN THE MATTER OF requests for review under subsection 76(2) of the *Special Import Measures Act* of the finding of material injury of the Canadian Import Tribunal dated March 6, 1987, respecting:

SUBSIDIZED GRAIN CORN IN ALL FORMS, EXCLUDING SEED CORN, SWEET CORN AND POPPING CORN, ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA, WITH THE EXCEPTION OF GRAIN CORN FOR CONSUMPTION IN BRITISH COLUMBIA AND CERTAIN YELLOW AND WHITE DENT CORN

O R D E R

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has received representations from the New Brunswick Department of Agriculture, the Atlantic Division of the Canadian Feed Industry Association and the Nova Scotia Federation of Agriculture jointly with the Nova Scotia Department of Agriculture and Marketing, requesting a review of the finding of the Canadian Import Tribunal dated March 6, 1987, concerning subsidized grain corn in all forms, excluding seed corn, sweet corn and popping corn, originating in or exported from the United States of America, with the exception of such grain corn for consumption in the Province of British Columbia, and yellow and white dent corn, imported by snack foods and tortilla manufacturers, for use by them in the manufacture of snack foods and tortillas.

Pursuant to subsection 76(3.1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby denies the requests for review.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
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Requests for Review Made by:	New Brunswick Department of Agriculture Atlantic Division of the Canadian Feed Industry Association Nova Scotia Federation of Agriculture jointly with the Nova Scotia Department of Agriculture and Marketing
Date of Order:	April 9, 1990
Tribunal Members:	Robert J. Bertrand, Q.C., Presiding Member Kathleen E. Macmillan, Member Sidney A. Fraleigh, Member
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SUBSIDIZED GRAIN CORN IN ALL FORMS, EXCLUDING SEED CORN, SWEET CORN AND POPPING CORN, ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA, WITH THE EXCEPTION OF SUCH GRAIN CORN FOR CONSUMPTION IN THE PROVINCE OF BRITISH COLUMBIA, AND YELLOW AND WHITE DENT CORN, IMPORTED BY SNACK FOODS AND TORTILLA MANUFACTURERS, FOR USE BY THEM IN THE MANUFACTURE OF SNACK FOODS AND TORTILLAS

TRIBUNAL: ROBERT J. BERTRAND, Q.C., Presiding Member
KATHLEEN E. MACMILLAN, Member
SIDNEY A. FRALEIGH, Member

STATEMENT OF REASONS

BACKGROUND

On March 6, 1987, by a majority decision, the Canadian Import Tribunal (CIT) found that the subsidizing of importations into Canada of grain corn in all forms, excluding seed corn, sweet corn and popping corn, originating in or exported from the United States of America, with the exception of such grain corn for consumption in the Province of British Columbia, and yellow and white dent corn, imported by snack food and tortilla manufacturers, had caused, was causing and was likely to cause material injury to the production in Canada of like goods. This decision was rendered subsequent to an investigation by the Deputy Minister of National Revenue for Customs and Excise who determined that imports of grain corn from the United States were benefiting from a subsidy that could be countervailed, and the margin of subsidization was established at US$0.849 per bushel (approximately CAN$1.10).

During the course of the material injury inquiry, the CIT received representations from a number of corn users who claimed that imposition of a countervailing duty would not be in the public interest. A subsequent examination of the public interest issue led the CIT, in a report dated October 20, 1987, to advise the Minister of Finance that, in its opinion, the imposition of a countervailing duty on imports of grain corn originating in or exported from the United States (the corn countervail) in excess of CAN$0.30 per bushel, or the amount of the subsidy, whichever was less, would not be in the public interest.

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On February 4, 1988, the Minister of State for Finance announced that the level of the countervailing duty was being reduced to CAN$0.46 per bushel (CAN$18.11 per tonne) and that the government would be asking the Tribunal to reconsider the public interest issue in approximately 18 months. By letter dated October 20, 1989, the Honourable John McDermid, Minister of State (Privatization and Regulatory Affairs) issued a reference, pursuant to section 19 of the *Canadian International Trade Tribunal Act* (the Act), which instructed the Canadian International Trade Tribunal (the Tribunal)[1] to conduct a preliminary examination to determine whether there was "a reasonable indication of a material change in circumstances" to warrant a second comprehensive inquiry into the public interest issue concerning grain corn.

On December 29, 1989, the Tribunal reported to the Minister that it had completed its preliminary investigation and concluded that, although a number of circumstances affecting corn producers and users had changed since 1987, none of these changes had been sufficiently material to warrant a review of the original public interest finding. The Report of the Tribunal on the section 19 reference (MN-89-002) was laid before each House of Parliament on January 31, 1990, pursuant to the requirements of section 21 of the Act.

As part of the section 19 reference, the Tribunal invited and received written submissions from interested parties. Certain parties, the applicants in this case, also took the opportunity to request, pursuant to subsection 76(2) of the *Special Import Measures Act* (SIMA), an exemption from the injury finding. Such an exemption could be made only if the Tribunal reviews the finding of material injury after parties requesting the review have first satisfied the Tribunal, under subsection 76(3) of SIMA, that the review is warranted. It is these requests for exemption (which must be made on relevant grounds that differ from a public interest reexamination) that are the subject of this decision.

The applicants, namely, the New Brunswick Department of Agriculture, the Atlantic Division of the Canadian Feed Industry Association and the Nova Scotia Federation of Agriculture jointly with the Nova Scotia Department of Agriculture and Marketing, have each relied on the same facts and arguments advanced in their section 19 briefs to support their case for an exemption under section 76 of SIMA. In considering the issues in this case, the Tribunal, therefore, has relied on essentially the same information that was available to it in connection with the section 19 reference. This includes, in addition to the briefs from parties, information gathered by Tribunal staff (largely published data drawn from the public domain), as well as information provided by Agriculture Canada.

APPLICANTS' SUBMISSIONS[2]

The applicants noted that feed costs are the single largest input cost for Atlantic livestock and poultry producers. Since the mid-1970s, the competitive position of these producers has been gradually eroded as Atlantic Canada feed costs have risen

1. The Tribunal replaced the CIT on December 31, 1988.
2. With the exception of the parties from Nova Scotia (who filed a joint submission), the applicants filed separate submissions. However, their representations have been grouped together below in view of their similarity and common thrust.

substantially more than in other areas of Canada and the United States. Among the principal factors contributing to this situation are:

- the erosion of the federally funded Feed Freight Assistance (FFA) programme which was designed to reduce the costs of transporting feed grains between (and within) different Canadian regions. From a 90-percent coverage of freight costs in Atlantic Canada in 1970, the FFA today offsets only about 20-25 percent of freight costs. Moreover, this erosion of coverage has been greater in Atlantic Canada than in other regions, such as parts of Quebec and British Columbia;

- the termination in 1985 of a policy by the Canadian Wheat Board which tied the price of Canadian feed grains (wheat, oats and barley) to the price of US corn. Elimination of this policy had a price-increasing effect on grains during periods when US corn was relatively low-priced;

- the 1989 federal budget cancellation of the "At and East" programme which subsidized the transportation costs of Western grain exports moving by rail from Great Lakes ports to the Halifax and Saint-John grain elevators for loading onto vessels. Without this programme, there will be lower throughput volumes at these elevators and higher unit costs. This will increase grain handling costs in Atlantic Canada;

- the prohibition on the use of foreign vessels, under the *Canada Shipping Act*, if a Canadian vessel is available to move grain between Canadian ports, irrespective of the rate structure of the Canadian vessels; and

- the general import restrictions on wheat and barley applied by the Canadian Wheat Board.

The applicants argued that the corn countervail is yet another factor to be added to the above list of problems which are diminishing the competitiveness of the Atlantic livestock and poultry industry. Unless some form of relief is granted from these cost pressures, the outlook for the Atlantic livestock and poultry industry is poor. Exemption from the corn countervail would be a step in the right direction.

The applicants also argued that Atlantic Canada's case for exemption is at least as good as the case for British Columbia which had been granted an exemption from the original injury finding in 1987. They claimed that, if the imports of grain corn for consumption in British Columbia were subject to the corn countervail, its overall feed cost position, considering both western grains and corn, would be comparable to the position of feed users in Atlantic Canada.

The applicants further contended that the protection afforded domestic corn producers for sales in Atlantic Canada is, in fact, higher than the countervailing duty rate of $18.11 per tonne since FFA subsidies, which defray the cost of Canadian corn moving to the Atlantic, also protect Canadian corn growers. For example, by adding the countervailing duty, the average FFA subsidy of $11.50 per tonne to points in Nova Scotia gives an effective rate of protection of just under $30 per tonne (or about $31 per

tonne if the regular tariff of $1.60 per tonne on imported US corn is included). Such a high level of protection is unnecessary and unwarranted.

Finally, the applicants argued that the costs and benefits of the corn countervail are inequitably distributed. For example, the Nova Scotia applicants claimed that, in the 1988-89 crop year, the corn countervail had increased total feed costs in the province by $2.25 million, 90 percent of which was absorbed by 900 commercial livestock and poultry producers at an average cost of $2,250 per producer. However, the benefits accrued by 22,000 Ontario corn growers from sales to Nova Scotia livestock feeders during this period amounted to only $1.36 million or $62 per grower.

CORN GROWERS' RESPONSE

The corn growers noted that most of the applicants' arguments are not relevant to the corn countervail. In terms of some of the specific points raised by the applicants, corn producers maintained that FFA subsidies are not a form of protection for grain and corn growers, as claimed by the applicants, in calculating an "effective rate of protection" and that the point about per farm benefits of the corn countervail in Ontario being less than per farm costs in Nova Scotia only proves that there are more corn farmers in Ontario than there are livestock feeders in Nova Scotia.

DECISION

The Tribunal notes that the purpose of a review under section 76 of SIMA is to reexamine an existing finding of injury to domestic production to determine whether there are grounds for continuing, modifying or eliminating the finding. Such grounds would exist if the conditions which gave rise to the injury had changed materially so that the finding was no longer appropriate in whole or in part. Information relevant to such a review might include changes in industry structure, financial circumstances, product mix, marketing or consumption patterns as well as, in countervail cases, significant changes of a permanent nature in subsidy levels. In a request for review, it is incumbent on applicants to present a *prima facie* case that relevant changes have occurred in order to satisfy the Tribunal, within the meaning of subsection 76(3) of SIMA, that a review is warranted.

In the present case, the Tribunal finds that the applicants' request for review does not satisfy the above criteria. The evidence and arguments advanced do not specifically deal with the matter of injury to domestic production. In addition, many points relate, for the most part, to conditions which existed at the time of the injury finding rather than changes which have occurred since that finding. For example, the list of grievances to which the applicants referred pertaining to federal agricultural and transportation policies all predate, with the exception of the "At and East" programme, the injury finding. Moreover, none of these grievances are directly related to the corn countervail. The Tribunal considers that if there are problems with the agricultural and transportation policies affecting Atlantic Canada (and the Tribunal expresses no view on these matters), then the remedy is for the applicants to seek changes to these policies.

The applicants have argued that, insofar as an exemption is concerned, Atlantic Canada has as good a case as British Columbia. The facts do not support this argument. The reality is that the situation of the two regions is not comparable. Atlantic Canada

has always been, and continues to be, a market for domestic corn growers. In contrast, domestic corn growers have not been, and are not likely to become, a significant source of supply to British Columbia which has been required to rely on US imports to meet its corn needs. This situation does not apply to Atlantic Canada.

The applicants have contended that the corn countervail is unnecessary in Atlantic Canada because the FFA already adequately protects the Atlantic corn market for domestic growers. The applicants, however, have also acknowledged that, if an exemption were granted, there might be circumstances where the net price advantage of being able to import US subsidized corn in the Atlantic region would exceed the net freight advantage derived from the FFA and that, in such circumstances, US subsidized corn shipped to the Atlantic region would displace domestic corn in the Atlantic corn market. Thus, the Tribunal cannot accept the proposition that the FFA adequately protects the Atlantic corn market for domestic growers from imports of US subsidized corn.

Finally, the Tribunal has been presented with no evidence that the corn countervail has raised corn prices more in the Atlantic region than in other Canadian regions. In fact, prices to feeders in the Atlantic and elsewhere in Canada have behaved in a similar way as a result of the corn countervail. Therefore, the corn countervail's direct effect on costs in Atlantic Canada is not a basis on which to single out corn users in this region for special treatment (i.e. an exemption) from corn users in other regions.

The Tribunal is not unsympathetic to the competitive difficulties apparently being encountered by the Atlantic livestock and poultry industry. However, it does not appear that in the foreseeable future the corn countervail will be a significant contributor to these difficulties. In this connection, it may be noted that the Tribunal's Grain Corn Public Interest Report (MN-89-002) indicates that, under current and forecast market conditions, the corn countervail should have little or no effect on domestic corn prices.

Consequently, the requests for review are denied.

Robert J. Bertrand, Q.C.
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Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Sidney A. Fraleigh
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