



Ottawa, Monday, November 24, 1997

**Request for Review No.: RD-97-002**

IN THE MATTER OF a request for review, under subsection 76(2) of the *Special Import Measures Act*, of the finding of the Canadian International Trade Tribunal made on March 21, 1997, in Inquiry No. NQ-96-002;

RESPECTING the dumping in Canada of fresh garlic originating in or exported from the People's Republic of China.

**ORDER**

The Canadian International Trade Tribunal hereby concludes that, on the basis of the information filed by the Garlic Growers Association of Ontario, a review is not warranted and, pursuant to subsection 76(3.1) of the *Special Import Measures Act*, makes an order to that effect.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Raynald Guay

Raynald Guay

Member

Charles A. Gracey

Charles A. Gracey

Member

Michel P. Granger

Michel P. Granger

Secretary

Date of Order and Reasons: November 24, 1997

Tribunal Members: Robert C. Coates, Q.C., Presiding Member  
Raynald Guay, Member  
Charles A. Gracey, Member

Research Director: Selik Shainfarber

Counsel for the Tribunal: Joël J. Robichaud  
Heather A. Grant

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IN THE MATTER OF a request for review, under subsection 76(2) of the *Special Import Measures Act*, of the finding of the Canadian International Trade Tribunal made on March 21, 1997, in Inquiry No. NQ-96-002, concerning:

**THE DUMPING IN CANADA OF FRESH GARLIC ORIGINATING IN  
OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
RAYNALD GUAY, Member  
CHARLES A. GRACEY, Member

**STATEMENT OF REASONS**

**BACKGROUND**

On March 21, 1997, the Canadian International Trade Tribunal (the Tribunal) found that the dumping in Canada of fresh garlic originating in or exported from the People's Republic of China (China) had caused material injury to the domestic industry.<sup>1</sup> The finding only applied to fresh garlic imported into Canada from China from July 1 to December 31, inclusive, of each calendar year. The effect of this latter part of the finding is to permit the duty-free entry of Chinese garlic into Canada in the January-June period in each calendar year.

By letter dated August 7, 1997, pursuant to subsection 76(2) of the *Special Import Measures Act*<sup>2</sup> (SIMA), the Garlic Growers Association of Ontario (GGAO) requested a review of the above-mentioned finding. The GGAO asked that the Tribunal immediately review its finding and issue an order amending the finding to impose anti-dumping duties throughout the year.

On September 12, 1997, the Tribunal received a response from the China Chamber of Commerce of Importers & Exporters of Foodstuffs, Native Produce and Animal By-Products (the China Chamber of Commerce) opposing the GGAO's request.

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1. *Fresh Garlic Originating in or Exported from the People's Republic of China*, Inquiry No. NQ-96-002, Finding, March 21, 1997, *Statement of Reasons*, April 7, 1997.

2. R.S.C. 1985, c. S-15.

## **GGAO'S SUBMISSION**

In their submission to the Tribunal, counsel for the GGAO claim that there is evidence of circumvention of the Tribunal's finding which is causing and threatening to cause continued material injury to the Canadian garlic industry. Counsel indicate that the circumvention is in the form of the importation of a very large volume of fresh garlic from China immediately prior to the time period covered by the finding, which undermines the relief provided by the Tribunal to the Canadian garlic industry. In addition, counsel note that, at the time of the finding, the Tribunal considered the circumvention to be a remote possibility and, hence, only made a finding in respect of imports between July 1 and December 31, inclusive. Counsel indicate that the facts now show that circumvention has indeed occurred and is now a certain reality. On the basis of the above, counsel argue that a review by the Tribunal can be expedited and need not require a hearing.

## **CHINA CHAMBER OF COMMERCE'S SUBMISSION**

Counsel for the China Chamber of Commerce argue that the volume of imports of fresh garlic from China during the period from January 1 to June 30, 1997, is not "massive," as the GGAO has suggested. They argue that the Canadian garlic growers have not been and will not be materially injured as a result of the volume of imports of garlic from China between January 1 and June 30, 1997, inclusive, because the anti-dumping duties imposed by the finding will be more than adequate to afford the Canadian garlic growers the opportunity to sell all of their 1997 harvest during the period from July to December 1997 without having to compete with "dumped" garlic from China. Counsel argue that there is no need to amend the finding because the GGAO has not provided any evidence that Canadian garlic growers will be able to serve the Canadian garlic market in the period from January 1 to June 30 in any calendar year. In any event, the GGAO's request is premature, as the Tribunal has not had the opportunity to determine whether the finding has had its desired effect.

## **ANALYSIS**

SIMA provides the Tribunal with the power to review an order or a finding at the request of a person or government. Specifically, subsection 76(2) of SIMA provides as follows:

At any time after the making of an order or finding described in any of sections 3 to 6 [of SIMA], the Tribunal may, on its own initiative or at the request of the Deputy Minister or any other person or of any government, review the order or finding and, in the making of the review, may re-hear any matter before deciding it.

Subsection 76(3) of SIMA provides that the Tribunal shall not initiate a review at the request of a person or government unless that person or government satisfies the Tribunal that a review is warranted. In deciding whether an "interim" review, as opposed to an "expiry" review,<sup>3</sup> is warranted, the Tribunal considers whether there is a reasonable indication that the conditions which gave rise to the original order or

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3. An "expiry" review is conducted in the final year of a five-year finding in order to determine whether the finding should be rescinded or continued, with or without amendment.

finding have changed to such an extent that the continued validity of the order or finding is brought into question. Such changes normally relate to one of the essential elements underpinning the order or finding.<sup>4</sup>

The Tribunal has initiated interim reviews in cases where there was a reasonable indication that the domestic industry in question had ceased to produce or had substantially reduced production of some or all of the goods which were the subject of the finding.<sup>5</sup> In Review No. RR-94-001,<sup>6</sup> for example, the Tribunal initiated a review after having received information which provided a reasonable indication that British Columbia was no longer a regional market for beer, as had been determined in the original finding.

In this case, the GGAO has raised the issue of “circumvention” of the Tribunal’s finding in the form of the importation of a large volume of fresh garlic from China prior to the time period covered by the finding and the impact that the entry of those goods into Canada will have on the Canadian garlic industry. More specifically, the GGAO contends that, from January to June 1997, compared to the same period in 1996, the volume of fresh garlic imports from China more than doubled, from about 8 percent of annual Chinese import volumes to about 19 percent of annual import volumes. The year-over-year increase during this six-month period was basically attributable to a tenfold increase in imports in a single month, namely, June 1997 (660,000 kg), compared to June 1996 (66,000 kg).

The Tribunal appreciates the GGAO’s concerns and considers that any change in the pattern and volume of Chinese fresh garlic imports, over the six-month period during which the finding does not apply, that is continued on a sustained basis, is a matter to be taken very seriously. However, although the increase of about 600,000 kg is important on a month-over-month basis, this amount is less significant when considered in terms of monthly domestic fresh garlic consumption or of the overall size of the Canadian market and total Chinese import volumes. Specifically, the 600,000 kg represent only about three quarters of one month’s consumption, about 6 percent of the Canadian market and 10 percent of Chinese imports, all based on 1996 data.

While the Tribunal acknowledges that, in its statement of reasons dated April 7, 1997, it did address counsel for the GGAO’s argument concerning the possible circumvention of its finding by China, the Tribunal is of the view that this alone does not justify conducting a review of its finding.

Overall, the Tribunal is not persuaded that any of the essential elements which underpin its finding have changed. The Tribunal does not find that there have been any fundamental structural changes in the dynamics of the Canadian or Chinese garlic industry.

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4. See, for example, *Bicycles, Assembled or Unassembled, with Wheel Diameters of 16 Inches (40.64 cm) and Greater, and Frames Thereof, Originating in or Exported from Taiwan and the People’s Republic of China*, Request for Review No. RD-93-001, *Order and Statement of Reasons*, September 17, 1993.

5. See, for example, *Notice of Review of Injury Findings on Certain Induction Motors*, Review No. RR-93-004, February 11, 1994.

6. *Malt Beverages, Commonly Known as Beer, of an Alcoholic Strength by Volume of not Less Than 1.0 Percent and not More Than 6.0 Percent, Packaged in Bottles or Cans not Exceeding 1,180 mL (40 oz.), Originating in or Exported from the United States of America by or on Behalf of Pabst Brewing Company, G. Heileman Brewing Company Inc. and The Stroh Brewery Company, their Successors and Assigns, for Use or Consumption in the Province of British Columbia*, *Order and Statement of Reasons*, December 2, 1994.

**CONCLUSION**

In light of the foregoing, the Tribunal is not satisfied that a review is warranted at this time and hereby makes an order to that effect under subsection 76(3.1) of SIMA.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Presiding Member

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