



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDERS AND REASONS

Expiry Review No. RR-2004-007

Refined Sugar

*Orders issued
Wednesday, November 2, 2005*

*Reasons issued
Thursday, November 17, 2005*

Canada

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IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the orders made by the Canadian International Trade Tribunal on November 3, 2000, in Review No. RR-99-006, continuing, with amendment, its findings made on November 6, 1995, in Inquiry No. NQ-95-002, concerning:

THE DUMPING OF REFINED SUGAR ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA, DENMARK, THE FEDERAL REPUBLIC OF GERMANY, THE NETHERLANDS AND THE UNITED KINGDOM, AND THE SUBSIDIZING OF REFINED SUGAR ORIGINATING IN OR EXPORTED FROM THE EUROPEAN UNION

ORDERS

The Canadian International Trade Tribunal, under the provisions of subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its orders made on November 3, 2000, in Review No. RR-99-006, continuing, with amendment, its findings made on November 6, 1995, in Inquiry No. NQ-95-002, concerning the dumping of refined sugar originating in or exported from the United States of America, Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom, and the subsidizing of refined sugar originating in or exported from the European Union.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its order in respect of the dumping of refined sugar originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom, and the subsidizing of refined sugar originating in or exported from the European Union, with an amendment to exclude individually wrapped rectangular cane sugar tablets.

Pursuant to subsection 76.04(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal also hereby continues its order in respect of the dumping of refined sugar originating in or exported from the United States of America, with an amendment to exclude individually wrapped rectangular cane sugar tablets.

Ellen Fry

Ellen Fry
Presiding Member

James A. Ogilvy

James A. Ogilvy
Member

Meriel V. M. Bradford

Meriel V. M. Bradford
Member

Hélène Nadeau

Hélène Nadeau
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: September 26 to 28, 2005

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STATEMENT OF REASONS

BACKGROUND

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ of the orders made by the Canadian International Trade Tribunal (the Tribunal) on November 3, 2000, in Review No. RR-99-006, continuing, with amendment, its findings made on November 6, 1995, in Inquiry No. NQ-95-002, concerning the dumping of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the United States of America, Denmark, the Federal Republic of Germany (Germany), the Netherlands and the United Kingdom, and the subsidizing of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the European Union (the subject goods).

2. On February 17, 2005, the Tribunal decided to initiate an expiry review and issued a notice of expiry review.² As part of these proceedings, the Tribunal and the Canada Border Services Agency (CBSA) sent questionnaires to Canadian producers, importers, exporters and foreign producers of refined sugar. These questionnaires and replies thereto formed part of the expiry review records of both the Tribunal and the CBSA.

3. On February 18, 2005, the CBSA initiated an investigation to determine whether the expiry of the orders was likely to result in the continuation or resumption of dumping and subsidizing of refined sugar originating in the subject countries.

4. On June 17, 2005, the CBSA concluded its investigation and determined, pursuant to subsection 76.03(7) of *SIMA*, that the expiry of the orders was likely to result in the continuation or resumption of dumping in Canada of refined sugar from the United States, Denmark, Germany, the Netherlands and the United Kingdom and was likely to result in the continuation or resumption of subsidizing of refined sugar from the European Union.

5. On June 20, 2005, the Tribunal began its expiry review, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the orders was likely to result in injury or retardation to the domestic industry.

6. The record of these proceedings consists of the following: the transcript of the testimony heard during the public and *in camera* portions of the hearing (collectively, the hearing) held in Ottawa, Ontario, from September 26 to 28, 2005; all relevant documents from the CBSA, including its protected expiry review report, statement of reasons, index of background information and related documents; the protected and public replies to the expiry review questionnaires; the orders; the notice of expiry review; and the public and protected pre-hearing staff reports prepared for Review No. RR-99-006, as well as those prepared for these proceedings. All public exhibits were made available to interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of protected information.

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

2. C. Gaz. 2005.I.530.

7. The Canadian Sugar Institute³ (CSI) and the Canadian Sugar Beet Producers' Association Inc. (CSBPA) were represented by counsel at the hearing. They submitted evidence and made arguments in support of a continuation of the orders.

8. Northern Food Blenders Ltd. (NFB), an importer of refined sugar, submitted evidence and represented itself at the hearing. It made a submission in support of amending the orders.

9. American Sugar Refining, Inc. (ASR) was represented by counsel at the hearing and submitted evidence. ASR made argument in support of a rescission of the orders and also requested that the Tribunal grant various product exclusions.

10. Two Tribunal witnesses, Mr. James Yates, from Loblaw Companies Limited, and Mr. Mark Hamelin, from Upper Canada Malt Co., also testified at the hearing.

PRODUCT

Product Definition and Description

11. The product that is the subject of this review is described as refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form.

12. Refined sugar is sold as white granulated, liquid and specialty sugars. Granulated sugar comes in a range of grain fractions (e.g. medium, fine and extra fine). Liquid sugar includes invert sugar. Specialty sugars include soft yellow sugar, brown sugar, icing sugar, demerara sugar and others and may be sold in granulated, liquid or powdered form. Refined sugar is sold to customers in a broad range of shipping and packaging configurations. These include 2-, 4-, 10-, 20- and 40-kg bags and, when sold in bulk, rail-car, truckload and one-tonne intermediate bulk containers (tote bags). Liquid sugar is sold by rail-car, truckload, drum and pail.

13. In Inquiry No. NQ-95-002 and Expiry Review No. RR-99-006, the Tribunal excluded from the findings and orders a number of specialty and generic sugar products. The excluded products are listed in the appendix to these reasons.

Production Process

14. While sugar refined from raw sugar cane and sugar made from sugar beets may generally be viewed as being interchangeable (with the exception that soft yellow or brown sugars cannot normally be made from sugar beets), the production process for each type of refined sugar differs.

Cane Sugar

15. The production of cane sugar usually involves two steps: the production of raw sugar (partially refined) from the sugar cane; and the refining of the raw sugar to the required level of purity. Raw cane sugar, which has the appearance of brown sugar, usually contains between 96 and 99 percent pure sucrose. It is transported in 6,000- to 35,000-tonne cargoes to the domestic industry's refineries located at deep water ports.

3. The Canadian Sugar Institute is the association that represents Rogers Sugar Ltd., Lantic Sugar Limited and Tate & Lyle Canada Ltd.

16. The refining process involves the separation of pure sucrose from raw sugar by affination,⁴ clarification and filtration, crystallization and drying. The product of this process is white granulated sugar. In the initial refining stages, some of the colour- and flavour-producing substances are separated from raw sugar to make specialty soft sugars, such as brown, yellow and demerara sugars.

Beet Sugar

17. The manufacture of refined sugar from sugar beets starts with the slicing of the beets into thin strips called “cossettes”, then the extraction of the sugar by diffusion with water and the purification of the resulting juice. Thereafter, the processes of crystallization, drying and packaging are similar to those used in the cane sugar refining industry. The end product of these processes is also white granulated sugar.

Further Processing

18. For some applications, white granulated sugar produced by cane sugar refineries and sugar beet processing plants is further processed to make products such as liquid sugar, sugar cubes and icing sugar. Liquid sugars include liquid sucrose and liquid invert sugar. Liquid sucrose is refined granulated sugar dissolved in water with a 66 to 68 percent concentration of solids. Liquid invert sugar contains a combination of sucrose, fructose and glucose and can be made at concentrations of 77 percent solids. Sugar cubes are produced by remoistening granulated sugar, which is moulded into cubes in a rotating drum, dried with hot air and packed into boxes. Icing sugar is made by pulverizing granulated sugar and adding up to 3 percent starch to prevent caking.

DOMESTIC PRODUCERS

19. The Canadian industry includes Rogers Sugar Ltd. (Rogers), Lantic Sugar Limited (Lantic) and Tate & Lyle Canada Ltd. (Tate & Lyle). Rogers and Lantic are subsidiaries of Rogers Sugar Income Fund. All these producers are members of the CSI.

Rogers

20. Rogers is the sole producer of refined sugar in Western Canada. It has a cane sugar refinery in Vancouver, British Columbia, and a sugar beet processing plant in Taber, Alberta.

Lantic

21. Lantic operates a cane sugar refinery in Montréal, Quebec. It also has a distribution centre in Toronto, Ontario. Pursuant to a management and services outsourcing agreement, Lantic provides strategic management and project services, and selling, general and administrative services to Rogers.

Tate & Lyle

22. On January 1, 2005, Redpath Sugars, formerly a division of Tate & Lyle North American Sugars Ltd., became Tate & Lyle, a wholly owned subsidiary of Tate & Lyle PLC. Tate & Lyle operates a cane sugar refinery in Toronto, Ontario. The firm also has an operation in Niagara Falls, Ontario, that specializes in custom blending and packaging sugar-containing products (SCP).

4. Affination is the process of removing the molasses film from the raw sugar crystals by mixing the crystals with a sugar syrup, then separating the molasses and sugar crystals using centrifugal machines.

FOREIGN PRODUCERS

23. ASR is a co-operative, completely owned by American Sugar Holdings Inc., that refines sugar in the United States for certain Florida-based raw sugar producers. On August 9, 2005, ASR completed the acquisition of C&H Company Inc. (C&H) of Crockett, California. ASR provided the only response to the expiry review questionnaire that the Tribunal sent to foreign producers and exporters.

IMPORTERS

24. The Tribunal sent expiry review questionnaires to 17 importers. Only 1 importer, Acton GT Marketing, of Montréal, Quebec, completed a questionnaire. In the absence of more complete questionnaire responses from the importers, the Tribunal used the volume and value of imports of refined sugar as disclosed by the CBSA in its Facility for Information Retrieval Management reports.

25. The only other importer to participate in these proceedings, as indicated earlier, was NFB.

PRODUCT DISTRIBUTION

26. The domestic industry sells its refined sugar directly through its own sales force to two main customer groups: the retail and industrial segments. The retail segment is composed of grocery retailers, wholesalers and foodservice/institutional customers. Customers in the industrial segment are typically manufacturers that use refined sugar as a raw material for the production of SCP. Most imported refined sugar is purchased by industrial users.

SUMMARY OF PAST PROCEEDINGS

Findings

27. On November 6, 1995, in Inquiry No. NQ-95-002, the Tribunal found that the dumping of refined sugar from the United States, Denmark, Germany, the Netherlands and the United Kingdom, and the subsidizing of refined sugar from the European Union were threatening to cause material injury to the domestic industry. Excluded from the Tribunal's findings were the goods listed in the appendix to these reasons.

Orders

28. On November 3, 2000, in Review No. RR-99-006, the Tribunal continued its findings with an amendment to exclude the goods listed in the appendix to the orders.

POSITIONS OF THE PARTIES

Domestic Industry's Position

CSI

29. The CSI submitted that, in the event that the orders were rescinded, the domestic industry would be faced with unsustainable net margin declines brought on by offers of low-cost refined sugar from the United States and the European Union.

30. The CSI indicated that the European Union's current 7 million tonne surplus of refined sugar is approximately five times the size of the total Canadian refined sugar market. It submitted that political

opposition would likely prevent any substantive reform of the European Union's sugar support regime in the near future.

31. The CSI pointed to barriers to access by other countries to the EU sugar market and to increased refining capacity in traditional EU markets (Middle East and Africa) as evidence that Canada, as a developed country with a very accessible market, is at risk if the orders are not continued. With respect to increased freight rates, the CSI argued that ocean freight increases have driven up the landed cost of raw sugar into Canada and, therefore, Canadian prices. Because the price of EU sugar is not based on the world market price for raw sugar, any increase in freight rates from the European Union will be offset by the related price increases in the Canadian market. Moreover, the CSI indicated that freight rates from Europe have not risen as they have elsewhere because of a surplus of containers in Europe and that the consequent price discounts that will be needed to empty the current EU surplus of sugar would, in any event, overcome any increases in freight rates.

32. It was the CSI's contention that small amounts of the subject goods will have an immediate downward pricing cascade effect when quoted in the Canadian market, in large part because of the concentration of purchasing power in both the retail and industrial segments.

33. With respect to the United States, the CSI submitted that 93 percent of the U.S. beet sugar industry (representing 54 percent of the U.S. sugar production) is vertically integrated and pointed to increased integration in the cane sugar sector. It argued that, because of its sugar support program default guarantees, the U.S. Government has a strong interest in ensuring that U.S. sugar prices do not collapse and that imports continue to be restricted. The CSI submitted that "blocked stocks"⁵ of U.S. beet sugar in storage now and in the future would inevitably find their way into Canada in the event that the orders were rescinded.

34. The CSI submitted that ASR has already demonstrated that it is willing to sell bulk refined sugar to the industrial segment in Canada, notably by way of the Duty Deferral Program,⁶ and that, therefore, its interests go beyond the alleged niche products for which it is requesting exclusions in these proceedings. Similarly, retail and industrial buyers in Canada have demonstrated their willingness to consider foreign sources of supply, given that quality requirements can be met.

35. According to the CSI's submission, any shortage in the U.S. sugar supply caused by the impact of recent hurricane devastation on the coast of the Gulf of Mexico will be short-lived. The CSI argued that the Tribunal should examine circumstances that are likely to occur for a period extending over the next 18 to 24 months.

36. The CSI submitted that the products for which exclusions are being requested are identical to or substitutable for domestic refined sugar and that the Tribunal should take note of the absence of participation of domestic users of these products in these proceedings as indicative of their needs already being met by the domestic industry.

5. Blocked stocks consist of refined sugar produced in excess of overall allotment quantities established by the United States Department of Agriculture as required by the World Trade Organization (WTO) and *North American Free Trade Agreement*. For a broader discussion of blocked stocks, see the description of the U.S. Sugar Program at paras. 61, 62.

6. The Duty Deferral Program, introduced in 1996, aims to improve the competitiveness of Canadian businesses by offering relief from the payment of most duties and taxes on imported goods that are ultimately exported, whether or not further manufactured in Canada. This program covers imported refined sugar when used in the manufacture of SCP.

CSBPA

37. The CSBPA adopted the arguments made by CSI, and similarly opposed the product exclusion requests.

38. The CSBPA argued that the current U.S. supply situation is one of temporary disruption rather than of shortage. It also argued that, in the event that the orders were not continued, U.S. sugar beet acreage would increase because producers would rush to benefit from new Canadian market opportunities.

39. The CSBPA pointed to evidence relative to the presence of C&H brand sugar in areas close to the Canada-United States border as proof that U.S. beet sugar could be readily available in the Western Canada retail market if the orders were rescinded. The CSBPA also argued that the presence of large quantities of blocked stocks of U.S. beet sugar close to the Canada-United States border constituted a threat to Canadian producers and that Canadian retailers would have an interest in accessing U.S. and EU sugar because of its likely lower price.

40. The CBSPA submitted that the rescission of the orders would likely result in the closure of the Rogers plant in Taber, Alberta.

Importer's and Exporter's PositionsNFB

41. NFB requested that refined sugar made in the United States as a tolling operation for raw sugar originating in non-subject countries be exempt from the orders, if they are continued.

ASR

42. ASR requested that the orders be rescinded or, if they were to be continued, that certain product exclusions be granted on the basis that the products for which the requests were made are not identical to or substitutable for domestic refined sugar. These product exclusion requests are for Domino Set & Match icing sugar; medium and standard granulated sugar; confectioner's icing sugar; Domino individually wrapped rectangular cane sugar tablets; and low-colour metal and turbidity granulated sugar.

43. ASR argued that any loss of market share or sales volume and any price erosion that might be suffered by the domestic industry, if the orders were rescinded, would result from introducing competition into the market and not from injury caused by the subject goods.

44. ASR submitted that the United States is facing a supply crisis brought on by an unprecedented combination of the following factors: an already short supply; likely reductions of sugar cane and sugar beet

crops; and the closure of its Chalmette, Louisiana, refinery forced by the damage caused by Hurricane Katrina.⁷

ANALYSIS

45. On June 17, 2005, the CBSA determined that, pursuant to paragraph 76.03(7)(a) of *SIMA*, the expiry of the orders was likely to result in the continuation or resumption of dumping and/or subsidizing of the subject goods. Consequently, the Tribunal is required, pursuant to subsection 76.03(10), to determine whether the expiry of the orders is likely to result in injury or retardation, as the case may be, to the domestic industry. Given that there is currently an established domestic industry, the issue of whether the expiry of the orders is likely to result in retardation does not arise in this expiry review.⁸

46. Therefore, the Tribunal is required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the orders, if it determines that the expiry of the orders is unlikely to result in injury, or continuing the orders, with or without amendment, if it determines that the expiry of the orders is likely to result in injury.

Like Goods

47. Subsection 2(1) of *SIMA* defines “like goods” in relation to any other goods as: “(a) goods that are identical in all respects to the other goods, or (b) in the absence of any [such] goods . . . , goods the uses and other characteristics of which closely resemble those of the other goods”.

48. In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods, their method of manufacture, their market characteristics and whether the domestic goods fulfil the same customer needs as the subject goods.

49. In its statement of reasons in the original inquiry, the Tribunal stated the following:

...

Counsel and parties to the inquiry were unanimous in asserting that refined sugar from the subject countries, whether in granulated, liquid or powdered form, is fungible with domestically produced sugar. As such, refined sugar produced by the domestic industry and the subject goods have the same

7. At the outset of these proceedings, ASR had opposed the continuation of the orders or, in the event that they were continued, requested that they be amended to provide for certain additional product exclusions, as discussed below. By letters dated August 9 and 26, 2005, ASR indicated that it was limiting its participation in these proceedings to its product exclusion requests. On September 19, 2005, only a week before the commencement of the hearing, ASR wrote the Tribunal to inform it that it was reverting to its position of requesting a rescission of the orders or, in the event that they were to be continued, that they be amended to provide for certain product exclusions, as discussed below. On September 22, 2005, the Tribunal acknowledged the change in the extent of ASR’s participation in these proceedings and instructed it to file a brief. Tribunal Exhibit RR-2004-007-27, Administrative Record, Vol. 1 at 388-89; Tribunal Exhibit RR-2004-007-28 (protected), Administrative Record, Vol. 2 at 32-33; Tribunal Exhibit RR-2004-007-36, Administrative Record, Vol. 1.01 at 59-60; letter from Mr. Christopher J. Kent to the Secretary of the Tribunal dated September 19, 2005, Administrative Record, Vol. 21; letter from the Secretary of the Tribunal to Mr. Christopher J. Kent dated September 22, 2005, Administrative Record, Vol. 21.

8. Subsection 2(1) of *SIMA* defines retardation as the material retardation of the establishment of a domestic industry.

end uses and compete with and, in many applications, can be substituted for one another. Therefore, the Tribunal is of the view that domestically produced refined sugar is like the subject goods.⁹

...

[Footnote omitted]

50. The Tribunal notes that these conclusions were maintained in Review No. RR-99-006 and that, in the current expiry review, it heard no evidence or argument that warrants departing from them. Accordingly, the Tribunal is of the view that the refined sugar produced by the domestic industry that corresponds to the product definition closely resembles (in physical characteristics and end uses) and is substitutable for the subject goods and is therefore like goods to the subject goods.

Domestic Industry

51. Subsection 2(1) of *SIMA* defines “domestic industry” as follows: “. . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods”

52. Rogers, Lantic and Tate & Lyle, taken together, currently account for almost all domestic production of like goods.¹⁰ Therefore, the Tribunal finds that, for the purposes of this expiry review, Rogers, Lantic and Tate & Lyle account for a major proportion of the total domestic production of like goods and, therefore, constitute the domestic industry.

Cumulation

53. In accordance with subsection 76.03(11) of *SIMA*, the Tribunal must make an assessment of the cumulative effect of the dumping or subsidizing of goods from more than one country if it is satisfied that such an assessment would be appropriate, taking into account the conditions of competition between the goods imported from any of the countries and the goods from any other of those countries or the like goods of domestic producers.¹¹

54. If the Tribunal is not satisfied that cumulation would be appropriate, then it must assess the effects of dumping and subsidizing for each country separately.

55. The conditions of competition that the Tribunal has taken into account in the past include price, quality, modes of transportation, distribution channels and geographic markets.

56. The evidence indicates that refined sugar is a commodity and that price is a key driving factor in capturing sales, regardless of the source of the product. Refined sugar of any given quality imported from each subject country is interchangeable, and the evidence indicates that the quality of refined sugar from the various subject countries is similar. In addition, modes of transportation and channels of distribution are similar. The evidence does not indicate that these conditions of competition are likely to change in the near to medium term.

9. (6 November 1995), NQ-95-002 (CITT) at 13.

10. In comparison to the aggregate production of these three companies, small amounts of specialty sugars (that are like goods) are also produced in Canada by other companies, such as Upper Canada Malt Co. and International Sugars Inc. These specialty sugars are often made from sugar from non-subject countries.

11. Subsection 76.03(11) of *SIMA*.

57. The Tribunal notes that, on several occasions, including at the time of the original inquiry into this matter, it has made a cumulative assessment of the injurious effects of both dumped and subsidized goods (“cross-cumulation”).¹² The Tribunal further notes that none of the parties argued that an assessment of the cumulative effect of the dumping and subsidizing of all the subject goods was inappropriate.

58. The conditions of competition discussed earlier are the same for the dumped and subsidized goods. The goods from the named European countries would be both dumped and subsidized. Since the combined effects of dumping and subsidizing are difficult or impossible to distinguish when present together, the Tribunal is satisfied that it would be appropriate to make an assessment of the cumulative effect of the dumping and subsidizing of all the subject goods.

Sugar Regimes in the United States and the European Union

59. There is considerable government intervention in the sugar market in both the United States and the European Union.

United States

60. The supply of sugar in the United States is managed by the Department of Agriculture (USDA). In managing the supply, the USDA attempts to maintain an available domestic inventory of approximately 15 percent of expected domestic usage.¹³ It establishes this stocks-to-use ratio based on the total volume of cane and beet sugar available in the United States as a percentage of historical sales figures.

61. The USDA manages the stocks-to-use ratio through the use of marketing allotments to contain domestic supply in times of potential overproduction, support for domestic prices and tariff rate quotas (TRQs) on imported sugar. Under the *Farm Security and Rural Investment Act of 2002*¹⁴ (the *2002 Farm Act*), the overall quantity of sugar to be allotted for a crop year is determined by subtracting the sum of 1.532 million short tons, raw value (STRV) and carry-in stocks of sugar from the USDA’s estimate of sugar consumption and reasonable carry-over stocks at the end of the crop year. When domestic production exceeds the overall allotment quantity, the excess cannot be sold domestically, must be stored at the processors’ own expense and is known as “blocked stocks”.

62. The USDA’s authority to operate sugar marketing allotments is suspended if the USDA estimates that the import level of sugar for human consumption, not including the re-export programs, will exceed 1.532 million STRV so that the overall allotment quantity would have to be reduced. The marketing allotments would remain suspended until imports were restricted, eliminated or otherwise reduced to or below the 1.532 million STRV level.

63. The Price Support Loan Program guarantees domestic sugar processors a minimum price for sugar by offering loans at a rate established by law. Under this program, the USDA can make loans available to processors of domestically grown sugar cane at a rate of 18 U.S. cents per pound and to processors of domestically grown sugar beets at a rate of 22.9 U.S. cents per pound for refined sugar. The *2002 Farm Act* allows processors to obtain loans for “in-process” sugar and syrups at 80 percent of the loan rate.

12. *Grain Corn* (7 March 2001), NQ-2000-005 (CITT); *Black Granite Memorials* (20 July 1994), NQ-93-006 (CITT), and (19 July 1999), RR-98-006 (CITT); *Refined Sugar* (6 November 1995), NQ-95-002 (CITT); *Hot-rolled Carbon Steel Plate* (27 June 2000), NQ-99-004 (CITT).

13. *Transcript of Public Hearing*, Vol. 1, 26 September 2005, at 19.

14. Public Law 107-171—May 13, 2002.

64. The United States also establishes separate TRQs for imports of raw cane sugar and refined sugar. The United States is obliged to maintain a minimum in-quota import volume of 1.117 million tonnes of raw cane sugar and not less than 22,000 tonnes of other sugars, including refined sugar, under commitments made in Schedule XX of the *General Agreement on Tariffs and Trade 1994*,¹⁵ but this volume can be increased if there is a domestic shortfall.¹⁶ Each year, the government announces the volume of sugar that may be imported at the nominal tariff rate, which currently ranges from zero to 1.66 U.S. cents per pound.¹⁷ Any additional annual volume that is imported is subject to a much higher tariff rate of 16.21 U.S. cents per pound. This would amount to an *ad valorem* duty of approximately 95 percent on imports valued at US\$435 per tonne.

65. In addition, under separate *North American Free Trade Agreement*¹⁸ TRQs, Mexico is currently permitted to export duty-free into the United States any of its production that is surplus to its domestic consumption, up to 250,000 tonnes per year. Above this volume, unlimited quantities of Mexican sugar may enter the U.S. market on payment of an above-quota tariff of 4.5 U.S. cents per pound in 2005 and 3 U.S. cents per pound in 2006. The surplus production requirement and all duties will be phased out by 2008.¹⁹ Also, under the provisions of the *Central America-Dominican Republic-United States Free Trade Agreement (CAFTA-DR)*, signed into law on August 5, 2005, the separate annual sugar TRQs for sugar imports from the five Central American parties²⁰ and the Dominican Republic were immediately increased to 109,000 tonnes and will increase to 153,140 tonnes annually after 15 years, and by a further 2,640 tonnes annually thereafter.²¹

66. As well, the USDA operates two re-export programs to help U.S. sugar refiners and manufacturers of SCP compete in world markets. First, the Refined Sugar Re-Export Program, which was recently expanded to include sugar refined from sugar beets,²² establishes a licence under which a company may import raw sugar at world prices for refining and sale to replace sugar in the domestic market that has been exported as refined sugar or as an ingredient in SCP. Second, the Sugar-Containing Products Re-Export Program allows U.S. participants to import sugar from raw-sugar-producing countries at world prices for use in products that will be sold on the world market. For ease of reference, both programs will be referred to in this text as the “Sugar Re-export Program”. Raw cane sugar imports under these two programs are not subject to the sugar TRQs. The *2002 Farm Act* specifies that all refined sugar derived from either sugar beets or sugar cane is substitutable under these programs.

67. The result of all these measures is to seriously restrict imports into the United States and to encourage the export of any surpluses generated by domestic production.

15. This agreement includes notably the provisions in the *General Agreement on Tariffs and Trade 1947*.

16. *Transcript of Public Hearing*, Vol. 1, 26 September 2005, at 18-19.

17. Tariffs on in-quota (tier I) refined sugar range from zero, which applies to countries such as Canada and Mexico that have preferential trading arrangements with the United States, to 1.66 U.S. cents per pound, which is the maximum rate that applies to sugar imported from the European Union, among other sources. Tariffs on over-quota (tier II) imports are 16.21 U.S. cents per pound. Foreign Producer’s Exhibit D-04 at 5, Administrative Record, Vol. 13.

18. *North American Free Trade Agreement Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994) [*NAFTA*].

19. Producer’s Exhibit A-03 at 998, Administrative Record, Vol. 11B.

20. El Salvador, Guatemala, Honduras, Nicaragua and Costa Rica.

21. Foreign Producer’s Exhibit D-04 at IV-30, Administrative Record, Vol. 13.

22. Producer’s Exhibit A-03 at 17, Administrative Record, Vol. 11.

European Union

68. The EU sugar regime includes guaranteed high internal prices for refined sugar, production quotas limiting the amount of sugar benefiting from price guarantees, protection of the internal market against low world market prices through high import tariffs, export refunds to bridge the gap between EU and world prices for sugar within the production quota and imports of tariff-free raw sugar for refining from the African, Caribbean and Pacific Group of States.²³

69. This regime has remained largely unchanged since 1968.²⁴ In 2004, after exports of EU sugar produced outside the quotas (C-sugar) were found by the WTO to be benefiting from export subsidies and hence contravening the European Union's WTO obligations, the European Union indicated that the current sugar regime, which expires at the end of 2006, would be reformed in order to make it more compliant with WTO obligations. The proposed reforms, announced in June 2005, include incentives to reduce production, in the form of price cuts combined with restructuring aid to EU sugar factories and changes in the compensation provided to farmers. If adopted, these reforms would be implemented over a four-year period.

Likelihood of Injury

70. Subsection 37.2(2) of the *Special Import Measures Regulations*²⁵ enumerates a number of factors that the Tribunal may consider in addressing the question of likelihood of injury. These factors are discussed below under the following general headings: likely volumes of dumped and/or subsidized goods; likely prices of dumped and/or subsidized goods; likely performance of the domestic industry and likely impact of dumped and/or subsidized goods.

71. In making its assessment of the likelihood of injury, the Tribunal has consistently taken the view that its focus must be on circumstances that can reasonably be expected to exist in the near to medium term, generally 18 to 24 months.²⁶

Likely Volumes of Dumped and/or Subsidized Goods

72. As discussed below, on the basis of the evidence, the Tribunal finds it likely that there will be a significant increase in the volume of dumped and subsidized refined sugar from the subject countries if the orders are rescinded.

73. The evidence before the Tribunal indicates that there have been surplus volumes of sugar, which are expensive to store, in both the United States and the European Union, at least since 1994.²⁷ In the Tribunal's view, this suggests that demand in existing open markets has not been sufficient to absorb these surpluses. This is consistent with the evidence that indicates that the borders of many countries, particularly developed countries, are effectively closed to imports of sugar²⁸ due to widespread government intervention. Japan, for example, has a 71 percent tariff on imports of refined sugar, while Mexico has a 172 percent tariff; Russia, 50 percent; and China, 75 percent.²⁹ According to the Organisation for Economic Co-operation and Development, developed countries have on average a 59 percent tariff on imports of refined sugar, while

23. Tribunal Exhibit RR-2004-007-25.02, Administrative Record, Vol. 1 at 281.

24. Tribunal Exhibit RR-2004-007-10.27, Administrative Record, Vol. 1.2A at 130.

25. S.O.R./84-927.

26. *Preformed Fibreglass Pipe Insulation* (17 November 2003), RR-2002-005 (CITT).

27. Tribunal Exhibit RR-2004-007-05, Administrative Record, Vol. 1A at 82-83; Tribunal Exhibit RR-2004-007-08, Administrative Record, Vol. 1.1 at 152, 156.

28. Tribunal Exhibit RR-2004-007-13.01, Administrative Record, Vol. 3 at 110.

29. Foreign Producer's Exhibit D-04 at 45, Administrative Record, Vol. 13.

developing countries have an average tariff of 14 percent.³⁰ Furthermore, on average, the price received by producers in the developed countries, expressed as a percentage of the world price, has grown from 171 percent in 1994 to 237 percent in 2003.³¹ This is a further indication that the sugar markets in these countries are closed and that competition there from imported sugar is not a significant issue.

74. The Tribunal accepts the evidence of the domestic industry that a high level of throughput is essential to sugar refiners, given the capital-intensive nature of the industry. The Tribunal considers that this requirement for refiners to maintain a high level of throughput provides the United States and the European Union with an incentive to produce surplus sugar and to export their sugar at low prices.

75. Moreover, although Canadian sugar prices are lower than those in the United States and the European Union, Canadian prices are above world prices and, consequently, Canada would present an attractive export market opportunity for producers of surplus sugar, relative to many other markets, if the orders were rescinded.³²

76. Furthermore, in the Tribunal's opinion, the structure of the domestic industry that manufactures SCP has become more conducive to the use of imported sugar from the United States since the last review. There has been significant consolidation since 2000, with large multi-national acquisitions such as those of PepsiCo acquiring Quaker Oats, Trebor/Cadbury purchasing Adams Brands and Kraft Foods acquiring Nabisco Brands. Such foreign-controlled enterprises, which have plants located in Canada, account for the majority of industry shipments of SCP.³³ Many of these firms have long-standing commercial relationships with sugar producers in the United States and the European Union and make their purchasing decisions in the United States and, to a lesser extent, in the European Union. In the absence of anti-dumping and countervailing duties, such decisions could involve supplying the Canadian branch of the corporation³⁴ with sugar sourced from the country in which the headquarters of the company is located.

– European Union

77. The European Union currently produces about 20 million tonnes of refined sugar a year, a volume nearly 15 times larger than the entire Canadian market for refined sugar. Since 1994, the total supply of refined sugar in the European Union has grown considerably, especially with the accession of 10 new countries to the European Union in 2004.³⁵

78. The total volume of sugar consumed in the European Union has also increased over the period, growing from about 14.7 million tonnes in 1994-95 to about 17.8 million tonnes in 2005-2006,³⁶ but at a somewhat slower pace than production, while exports decreased slightly, averaging about 5.4 million tonnes a year. With domestic supply rising more quickly than both domestic consumption and exports, the volume of ending stocks has nearly tripled since 1994, leading to a substantial increase in the European Union's stocks-to-use ratio in recent years.³⁷

30. Tribunal Exhibit RR-2004-007-13.01, Administrative Record, Vol. 3 at 110.

31. Tribunal Exhibit RR-2004-007-12, Administrative Record, Vol. 3 at 109.

32. Producer's Exhibit A-03, para. 49, Administrative Record, Vol. 11.

33. Producer's Exhibit A-03 at 88, 97, Administrative Record, Vol. 11.

34. Producer's Exhibit A-18 (protected) at 5, Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 1, 26 September 2005, at 202.

35. Tribunal Exhibit RR-2004-007-08, Administrative Record, Vol. 1.1 at 156; Tribunal Exhibit RR-2004-007-08, Administrative Record, Vol. 1.A at 82.

36. *Ibid.*

37. *Ibid.*

79. Similarly, data on annual sugar balances published by F.O. Licht demonstrate that, from 2000-2001 to 2003-2004, ending stocks, as a percentage of domestic disappearance³⁸ in Denmark, Germany, the Netherlands and the United Kingdom, were significant, ranging from an average of 14 percent for the United Kingdom to 211 percent for the Netherlands.³⁹ In each case, ending stocks have shown considerable growth, both absolutely and as a function of domestic disappearance.

80. During the period of review, the European Union and the named countries in the European Union exported significant proportions of their production.⁴⁰ However, although the volume of sugar exported by the European Union and by the named countries in the European Union remains large, data compiled by F.O. Licht indicate that export volumes have dropped slightly, since 2000, both in volume and as a proportion of total production, contributing to the growth in ending stocks discussed earlier.⁴¹ The Tribunal attributes this drop in export volumes in part to the fact that export opportunities for EU sugar refiners and processors have decreased in recent years. In the Middle East, for example, key sugar markets have declined as a result of the establishment of considerable new sugar-refining capacity in that region.⁴² According to F.O. Licht, the new refining capacity could mean an annual loss to the European Union of up to 3 million tonnes of refined sugar exports in the near to medium term.⁴³

81. In the Tribunal's view, the existing oversupply situation in the European Union will not be corrected in the near term, and the pressure to export refined sugar from the European Union will be felt in the Canadian market. The Tribunal believes that, even if the previously mentioned reforms planned by the European Union are implemented, the evidence on the record does not indicate that overcapacity is likely to decrease significantly within the next 24 months.

82. The Tribunal is aware that the United States International Trade Commission (USITC) recently revoked its countervailing duty order on sugar from the European Union and its dumping findings on sugar from Belgium, France and Germany on the ground that the removal of the order and findings would not lead to a continuation or recurrence of material injury to the industry in the United States within a reasonable foreseeable time.⁴⁴ In the Tribunal's view, this USITC decision is not persuasive in the Canadian context, since the USITC based its decisions on market conditions and evidence that are not necessarily analogous to those in Canada. In this instance, the Tribunal notes in particular that, in its view, the USITC's primary consideration was that U.S. TRQs and over-quota rates of duty on imports of refined sugar from the European Union were more than sufficient to offset the economic incentive for EU refiners and processors to serve the U.S. market.⁴⁵

83. The Tribunal also considered whether escalating ocean freight costs had reached levels at which it would not be economical to ship sugar from the European Union to Canada if the orders were rescinded.⁴⁶ The evidence before the Tribunal concerning ocean freight indicates that freight rates for both raw and refined sugar have gone up significantly since the date of the original findings, both in Canada and the

38. Testimony indicated that "sugar disappearance" is sugar that is sold on the market. *Transcript of Public Hearing*, Vol. 1, 26 September 2005, at 74, 75.

39. Tribunal Exhibit RR-2004-007-13.01, Administrative Record, Vol. 3B at 136-39.

40. *Ibid.*

41. *Ibid.*

42. Producer's Exhibit A-03 at 38, Administrative Record, Vol. 11.

43. Producer's Exhibit A-03 at 1025, Administrative Record, Vol. 11.

44. Foreign Producer's Exhibit D-04 at 2, Administrative Record, Vol. 13.

45. Foreign Producer's Exhibit D-04 at 5, Administrative Record, Vol. 13.

46. Foreign Producer's Exhibit D-04 at 24, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 3, 28 September 2005, at 480-81.

United States, largely as a result of the considerable increases in the price of fuel oil, combined with the additional demand of bulk cargo merchandise from China.⁴⁷ The Tribunal is of the view, however, that the increased cost of freight for refined sugar would be counteracted, at least in part, by increases in the Canadian price for refined sugar, which incorporates a flow-through for increases in raw sugar freight costs during the same time frame. Moreover, although Canadian refined sugar prices are among the lowest in the world, they are above world residual prices, a fact that the Tribunal believes may help offset the impact of increasing freight rates.⁴⁸

84. Furthermore, the data indicate that, in 2005-2006, with a surplus of nearly 4.9 million tonnes of refined sugar, the European Union could satisfy the entire domestic market's demand for refined sugar by exporting about 30 percent of its surplus to Canada.⁴⁹ In the Tribunal's view, with significant and growing exportable surpluses of refined sugar present in the European Union, and with a limited number of markets open to its refined sugar, Canada presents a convenient market to which the European Union would inevitably direct a significant amount of its exportable surplus of refined sugar, should the Tribunal rescind the orders.

85. Further encouraging exports of refined sugar from the European Union to Canada would be the fact that such exports do not face restrictive TRQs, unlike the situation in many other markets, and that Canada's Most-Favoured-Nation Tariff rate, at CAN\$30.86 per tonne, is less than 10 percent of the U.S. over-quota tariff of US\$357 per tonne and significantly lower than the applicable tariffs in other markets. Both Tribunal witnesses testified that they expected EU sugar to re-enter the Canadian market if the orders were rescinded.⁵⁰

– United States

86. From the evidence on the record, it is clear to the Tribunal that refined sugar producers in the United States are interested in the Canadian market.⁵¹ This was acknowledged in the testimony of the witness for ASR.⁵² ASR also demonstrated interest by organizing information meetings in both Canada and the United States to discuss the impact of the potential rescission of the orders.⁵³ Evidence presented during the review also demonstrated that refined sugar from the United States has been present in the Canadian market since 1994, through exports of products that are not subject to anti-dumping duties. There was also evidence that a number of larger processors that are currently supplying the Canadian market have plants close to the border, which could readily increase their supply of refined sugar to their Canadian customers.⁵⁴

87. For the most part, the presence of U.S. product has manifested itself in the form of sugar exported to Canada with the support of the Sugar Re-export Program. During the first half of 2005, the volume of refined sugar imported from the United States was more than 400 percent higher than the volume that entered Canada from the United States in the first half of 2004.⁵⁵ The evidence indicates that at least 60 percent of this sugar was sold to the industrial segment to a major Canadian producer of SCP. The SCP

47. *Transcript of Public Hearing*, Vol. 1, 26 September 2005, at 135; Tribunal Exhibit RR-2004-007-14.02 (protected), Administrative Record, Vol. 4 at 89.

48. Tribunal Exhibit RR-2004-007-13.01, Administrative Record, Vol. 11 at 12, 103, 104.

49. Tribunal Exhibit RR-2004-007-05, Administrative Record, Vol. 1A at 34, 82.

50. *Transcript of Public Hearing*, Vol. 2, 27 September 2005, at 276, 326.

51. Tribunal Exhibit RR-2004-007-04 (protected), Administrative Record, Vol. 2 at 9.

52. *Transcript of Public Hearing*, Vol. 3, 28 September 2005, at 496.

53. *Ibid.* at 439.

54. Producer's Exhibit A-03 at 27, Administrative Record, Vol. 11.

55. Tribunal Exhibit RR-2004-007-06A (protected), Administrative Record, Vol. 2A at 128.

segment, which has grown considerably since 2002,⁵⁶ consistently accounts for a large percentage of the domestic producers' sales volumes.⁵⁷

88. The Tribunal is of the view that the Sugar Re-export Program is one of the major means by which, in the absence of the orders, considerable volumes of refined sugar from the United States would enter Canada. The Tribunal believes that, because the Canadian SCP industry currently uses production supported by the Sugar Re-export Program as a source of refined sugar for the portion of the products that it ultimately exports, U.S. producers would also be a natural competitive source of refined sugar for all production of SCP if there were no anti-dumping duties. Given that refined sugar from the United States has already exerted downward pressure on the price paid by the SCP industry for the sugar in the products that it currently exports, the Tribunal believes that this would likely be the case for the prices of refined sugar used in all production of SCP should the orders be rescinded.

89. Turning to the issue of the volume of sugar available in the United States for export to Canada, the Tribunal notes that the United States produces approximately 7.3 million tonnes of refined sugar a year,⁵⁸ a volume nearly 5.4 times the size of the Canadian market. Moreover, the evidence on the record demonstrates that, historically, the United States has always had significant surpluses of refined sugar. Although supply has been tight in 2005-2006, largely as a result of an unexpected increase in demand, combined with the negative impact that bad weather has had on the raw sugar crop, the volume of surplus sugar in the United States has continued to be significant, ranging from a low of about one half the size of the Canadian market to a high of over 1.2 times the size of the Canadian market.⁵⁹

90. There was also considerable evidence on the record concerning the impact that recent hurricanes and other factors have had on the production of sugar in the United States.⁶⁰ The evidence indicated that the market for sugar in the United States has progressively tightened in 2005 due to unexpectedly strong demand, combined with reduced crops of both sugar cane and sugar beets, resulting from adverse weather conditions.⁶¹ In addition, in August 2005, Hurricane Katrina forced the closure of two sugar refineries in Louisiana, which account for about 25 percent of total U.S. refining capacity.⁶²

91. While the combined effect of the unexpected increase in demand and the weather-related damage to sugar crops and certain sugar refineries will, no doubt, reduce the supply of refined sugar available in the United States, the Tribunal is of the opinion that the impact is not likely to be long-lasting. With respect to the closure of the two refineries in Louisiana, the evidence indicates that one of them suffered no substantial damage to its production or warehouse facilities from Hurricane Katrina.⁶³ With respect to the other refinery, a witness acknowledged that it likely would be back in operation in less than two years.⁶⁴ In the Tribunal's opinion, while the output of the two refineries will likely be temporarily reduced, the problems that they face should be overcome in the short run and certainly within the Tribunal's normal time frame of 18 to 24 months.

56. *Ibid.* at 138.

57. *Ibid.* at 139.

58. Tribunal Exhibit RR-2004-007-05, Administrative Record, Vol. 1A at 81.

59. *Ibid.* at 34, 81.

60. Tribunal Exhibit RR-2004-007-25.08, Administrative Record, Vol. 1 at 383.2-383.15.

61. *Ibid.* at 383.6-383.7.

62. *Ibid.* at 383.4.

63. Foreign Producer's Exhibit D-06 at 6, Administrative Record, Vol. 13.

64. *Transcript of Public Hearing*, Vol. 3, 28 September 2005, at 494-95.

92. With respect to the potential impact on sugar supplies arising from the damage to crops, the Tribunal heard testimony that the USDA typically waits until later in the fall to estimate yields. Once the new production year is underway, it then has a better understanding of annual production volumes.⁶⁵ For example, if the USDA determines later in the production year that domestic sugar beet and sugar cane production will remain low, as was argued would likely be the case in crop year 2005-2006, it will then increase the allowed volume of imports of raw and refined sugar.

93. In response to tightening supplies of refined sugar in mid-August 2005, the evidence indicates that the USDA took steps to free up sugar by increasing domestic producers' allocations and thereby unblocking stocks of refined sugar.⁶⁶ As a result of these steps, and despite the tight supplies and weather-related damage to the sugar crop, the stocks-to-use ratio for the 2004-2005 crop year was increased to 14.9 percent by the end of August 2005, only 0.1 percent below the USDA target of 15 percent.⁶⁷

94. Consequently, in the Tribunal's view, the USDA will, on average, be able to continue to maintain its refined sugar stocks-to-use ratio at or near the 15 percent target level. Should production levels remain low due to hurricane-related damage to sugar crops or sugar refineries, supplies will be increased either through the opening up of producers' allotments or through an increase in the volume of imports of raw and refined sugar. The increased volumes of imports of refined sugar from Mexico, the Dominican Republic and the Central American countries, which are now provided for under *NAFTA* and *CAFTA-DR*, as discussed earlier, should assist in this regard. The Tribunal notes that the mere fact that allotments exist in the United States suggests that, under normal circumstances, the refiners are not operating at full capacity. As demonstrated by the evidence, major refineries in the United States increased production to operate at full capacity in August 2005, in response to the unexpectedly tight market conditions, which indicates to the Tribunal that they previously had unutilized capacity.

95. On the basis of the foregoing, the Tribunal is of the opinion that there will continue to be considerable inventories of refined sugar in the United States that will be available for export to Canada. Further encouraging exports of this refined sugar held in inventory would be the fact that the Canadian market is very accessible, given the absence of restrictive TRQs and the application of the Most-Favoured-Nation Tariff rate, which, as previously indicated, is lower than the rate applicable in many other markets. Moreover, given that refined sugar from the United States is currently being imported into Canada by a number of multi-national firms through the Sugar Re-export Program and under Canada's Duty Deferral Program, and given that channels of distribution within Canada are already in place, the Tribunal believes that increased volumes of exports through these channels would be easily achieved.

Likely Prices of Dumped and/or Subsidized Goods

96. Refined sugar is a commodity and both U.S. and EU sugar is comparable in quality to that produced by the Canadian refiners and processors. Since the major sugar producers in the United States and the European Union are capable of providing refined sugar that meets the product requirements of the Canadian market, new entrants could readily gain market share in the absence of the anti-dumping and countervailing duties simply by quoting a lower price. The evidence of a representative of a major domestic grocery retailer indicates that there is no particular brand loyalty to Canadian refined sugar.⁶⁸

65. *Transcript of Public Hearing*, Vol. 1, 26 September 2005, at 24-26.

66. Tribunal Exhibit RR-2004-007-25.08, Administrative Record, Vol. 1 at 383.3.

67. *Transcript of Public Hearing*, Vol. 1, 26 September 2005, at 23.

68. *Transcript of Public Hearing*, Vol. 2, 27 September 2005, at 278-79.

97. The Tribunal believes that, because of the factors discussed earlier under “Likely Volumes of Dumped and/or Subsidized Goods”, the United States and the European Union have a strong incentive to sell their surplus refined sugar at low prices in the Canadian market, as occurred at the time of the original findings.⁶⁹ The Tribunal also believes that, faced with the degree of concentration that has taken place in the industrial segment of the market since 1994, this incentive has grown.⁷⁰ It is the Tribunal’s view that, if the orders are rescinded, it is inevitable that prices of dumped sugar from the United States and dumped and/or subsidized sugar from the European Union will significantly undercut prices of domestic like goods, depress those prices or suppress them by preventing price increases that would normally occur.

98. With respect to the likely prices of refined sugar from the United States, as noted earlier, most of the sugar imported from the United States over the period of review entered Canada under conditions where it was free of anti-dumping duties.⁷¹ The evidence indicates that refined sugar imported from the United States through the Sugar Re-export Program is priced below Canadian domestic prices at minimum sustainable net margins for the U.S. refiners and processors⁷² and that these prices decreased steadily over the period of review, falling from CAN\$566 per tonne in 2002 to CAN\$457 per tonne in the first half of 2005.⁷³ Thus, there is a history of price reductions on the part of U.S. sugar refiners over the Tribunal’s period of review. Since, as discussed earlier, most export markets, including the U.S. market, are essentially closed to imports of Canadian sugar, the domestic refiners must compete with this lower-priced sugar by lowering their prices to levels where their net margins become considerably lower than the net margins that they normally achieve on sales of refined sugar that is not in competition with sugar imported from the United States under the Duty Deferral Program.⁷⁴ The Tribunal believes that the prices of these imports, which are free of anti-dumping duties, provide a reasonable approximation of the prices that would be widely available in the marketplace, should the orders be rescinded, and of the likely trend in the pricing of imports from the United States. The Tribunal also notes that, despite the fact that most imported refined sugar is consumed by the industrial segment, declining prices in that segment have had a negative impact on refined sugar prices in the retail segment.⁷⁵

99. Further, the evidence indicates that the majority of contracts in the industrial segment are for durations of between 3 months and 3 years and, accordingly, a number will be up for renewal in the next 24 months. This is supported by the evidence of one of the domestic refiners that indicated that its contracts with 10 of its top industrial customers will expire by December 2007.⁷⁶ Therefore, existing contracts with the domestic industry would not likely be a significant barrier to entry by low-priced imports.

100. The likelihood of low-priced imported U.S. and EU sugar is further supported by the testimony of a representative of a major food retailer concerning its annual contract negotiations with the domestic sugar refiners for supplies of refined sugar. The witness indicated that, when negotiating prices with the domestic refiners, the latter would generally be aware of any options for the retailer to buy sugar from offshore, including prices in the industrial segment. Given this knowledge, the retailer was able to negotiate the refiners’ price down.⁷⁷ The witness also indicated that the low prices of re-exported U.S. sugar imported under the provisions of the Canadian Duty Deferral Program were having some impact on sugar prices in

69. Tribunal Exhibit RR-2004-007-10.02, Administrative Record, Vol. 1.2 at 111.

70. Producer’s Exhibit A-18 (protected) at 4-5, Administrative Record, Vol. 12.

71. Tribunal Exhibit RR-2004-007-03A, Administrative Record, Vol. 1 at 200-201.

72. Producer’s Exhibit A-09 at 4, Administrative Record, Vol. 11C.

73. Tribunal Exhibit RR-2004-007-05A, Administrative Record, Vol. 1A at 130.

74. Producer’s Exhibit A-08 at 8, Administrative Record, Vol. 11.

75. Tribunal Exhibit RR-2004-007-06A (protected), Administrative Record, Vol. 2A at 142.

76. Tribunal Exhibit RR-2004-007-14.04 (protected), Administrative Record, Vol. 4B at 132.

77. *Transcript of In Camera Hearing*, Vol. 2, 27 September 2005, at 93-94.

the retail segment. Furthermore, when asked what his firm would do if the orders were rescinded, especially since its current contracts with the domestic producers are likely to be open for negotiation in 18 to 24 months, the witness indicated that, if his firm were offered alternatives, it would look at those as well, particularly if its competitors were found to be offering refined sugar at lower prices.⁷⁸

101. Given the established links between producers of SCP in Canada and their parent firms in the United States and the European Union, as discussed earlier, the Tribunal finds no reason to believe that exports of low-priced refined sugar from the United States and the European Union would not be offered to Canadian producers of SCP in volumes adequate to supply their entire needs, not simply the volume of refined sugar needed to manufacture products that are subject to the Duty Deferral Program. Moreover, the considerable consolidation that has taken place in the industrial segment significantly increases the volume of sugar covered by any single contract.⁷⁹ Consequently, any reduction in margins resulting from reduced prices in only a single contract can have a significant impact on a refiner's overall financial performance.⁸⁰ Since the markets for refined sugar in the European Union and the United States are, for the most part, closed to imports of Canadian refined sugar, the domestic industry would be forced to lower its prices in response to dumped and/or subsidized imports in order to sell its product and to maintain market share, as occurred during the period of review with respect to low-priced imports from the United States.

102. Therefore, the Tribunal is of the view that, should the orders be rescinded, the price of refined sugar imported from the United States and the European Union would be set at levels that would drive Canadian prices down and suppress price increases that would normally occur, as increased volumes of imported refined sugar are imported by the SCP industry. As a direct result of the price competition that these imports would generate in the industrial segment, the Tribunal believes that prices in the other market segments would fall correspondingly, thus reducing the refiners' net margins generally.

Likely Performance of the Domestic Industry and Likely Impact of Dumped and/or Subsidized Goods

103. As discussed earlier, in the Tribunal's view, given the current levels of supply that exist in both the European Union and the United States, the necessity for the refiners to maintain throughput, the substantial rationalization of production in the industrial segment and the commodity nature of refined sugar, there is little doubt that, in the absence of anti-dumping and countervailing duties, exporters in the United States and the European Union would export refined sugar to Canada at prices below the Canadian domestic price. They would set these prices at levels sufficiently low to take the desired sales volume from the Canadian producers.

104. The evidence before the Tribunal indicates that, from 2002 to 2004, the average unit value of the domestic industry's sales dropped each year. Only in the first half of 2005 did the unit value increase, but only to somewhat less than the average unit value achieved in 2003. The lowest unit values were accounted for by the sales of bulk granulated sugar in the industrial segment, which accounted for 94 percent of all the subject goods imported into Canada in 2004⁸¹ and over 40 percent of the domestic industry's sales in the domestic market during the Tribunal's period of review. Moreover, according to the evidence, sales of bulk granulated sugar provided the lowest net margins on sales of products in the industrial segment during the

78. *Transcript of Public Hearing*, Vol. 2, 27 September 2005, at 276-78.

79. Producer's Exhibit A-03 at 12, Administrative Record, Vol. 11.

80. *Ibid.*

81. Tribunal Exhibit RR-2004-007-04 (protected), Administrative Record, Vol. 2 at 23.

Tribunal's period of review.⁸² The Tribunal also notes that, while the producers' refining margins⁸³ on sales to the retail segment and to the foodservice/industrial segment exhibited some growth during the period, the average net refining margin on sales of bulk granulated sugar generally declined from 2002 to 2004, with only minimal growth displayed in the first half of 2005.⁸⁴

105. Canadian bulk granulated sugar prices did not increase to the same extent as the world price of refined sugar, which increased throughout 2004 and in the first two quarters of 2005.⁸⁵ The Tribunal is persuaded that the predominant factor influencing domestic prices in the industrial segment of the sugar market has been the declining unit prices of refined sugar imported from the United States.⁸⁶ The evidence shows that, between 2003 and 2004, the average price of refined sugar from the United States declined by 22 percent and then increased by 10 percent in the first half of 2005.⁸⁷ The Tribunal notes that, during the same period, the world price of refined sugar grew by a significantly higher percentage than did the average price of imports from the United States. The Tribunal believes that, if the orders were rescinded, these trends would be seen in all parts of the Canadian refined sugar market and would be influenced by low prices of imported sugar from the European Union and the United States.

106. Furthermore, the evidence indicates that the demand for refined sugar in the Canadian market will likely remain stable over the next 18 to 24 months.⁸⁸ Therefore, the Tribunal believes that increased demand is unlikely to mitigate, to any significant degree, the injury from U.S. and EU imports.

107. In summary, it is clear to the Tribunal that, in the absence of anti-dumping and countervailing duties, the price of dumped refined sugar imported from the United States and the price of dumped and subsidized sugar from the European Union will have a profound, negative impact on the price of the domestic refiners' sugar. Although it is not clear whether increased volumes of imported refined sugar or decreased and suppressed domestic prices will have the greater impact on the domestic industry, the Tribunal believes that the injury caused by these two factors will be material. The Tribunal is persuaded that, should the orders be rescinded, the industry will be forced to compete with dumped and subsidized sugar from the United States and the European Union across the breadth of its product lines and that the consequent negative impact on the industry's sales, profits, cash flow, market share, capacity utilization and return on investment would be significant.

EXCLUSIONS

108. ASR requested product exclusions for the following five products:⁸⁹

- Domino Set & Match icing sugar
- Medium and standard granulated sugar
- Confectioner's icing sugar
- Domino individually wrapped rectangular cane sugar tablets
- Low-colour metal and turbidity granulated sugar

82. Tribunal Exhibit RR-2004-007-06A (protected), Administrative Record, Vol. 2A at 150; Producer's Exhibit A-08, para. 31, Administrative Record, Vol. 11.

83. The net refiner's margin is the difference between the refiner's selling price of refined sugar to the customer and its cost of raw sugar.

84. Tribunal Exhibit RR-2004-007-06A (protected), Administrative Record, Vol. 2A at 150.

85. Tribunal Exhibit RR-2004-007-06 (protected), Administrative Record, Vol. 2A at 54, 59.

86. Tribunal Exhibit RR-2004-007-06A (protected), Administrative Record, Vol. 2A at 130.

87. *Ibid.*

88. *Transcript of Public Hearing*, Vol. 2, 27 September 2005, at 269.

89. A detailed description of these products may be found at Tribunal Exhibit RR-2004-007-29.01, Administrative Record, Vol. 1.01 at 5, 15, 26, 37, 47.

109. In *Stainless Steel Wire*,⁹⁰ the Tribunal summarized its views on the matter of product exclusions as follows:

...

It is well established that the Tribunal has the discretion to grant product exclusions under subsection 43(1) of *SIMA*. The fundamental principle is that the Tribunal will grant product exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry. The Tribunal has granted product exclusions for particular products in circumstances when, for instance, the domestic industry does not produce those particular products. The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods, whether the domestic industry is an “active supplier” of the product or whether it normally produces the product or whether the domestic industry has the capability of producing the product.

...

[Footnotes omitted]

110. The Tribunal notes that the witness for ASR, the requester of the product exclusions, indicated that ASR does not currently sell any of these products in Canada and is not aware of an importer that sells any of these products from another source.

111. The Tribunal grants a product exclusion for individually wrapped rectangular cane sugar tablets.⁹¹ The Tribunal notes that, while there is domestic production of sugar cubes from cane sugar, none of these cubes are individually wrapped. In the Tribunal’s view, unwrapped sugar cubes are not substitutable for individually wrapped sugar tablets. These are distinct high-end products whose packaging and appearance offer a particular cachet that is not found in the individual unwrapped sugar cube that is produced and packaged in bulk quantity, retail-ready boxes by the domestic industry.⁹²

112. The remaining product exclusion requests are denied for the reasons that follow.

113. With respect to Set & Match icing sugar and medium and standard granulated sugar, the Tribunal notes that, although it was claimed that these products are in demand by manufacturers of commonly available goods, such as glazed doughnuts, iced cakes and candy, the evidence did not indicate that they are currently being used in Canada.⁹³ This supports the position of the domestic industry that it makes acceptable substitutable products⁹⁴ and, hence, would be injured were such exclusions to be granted. Accordingly, these exclusion requests are denied.

114. The Tribunal further notes that the domestic industry manufactures identical⁹⁵ or similar products to both the confectioner’s icing sugar and the low-colour metal and turbidity granulated sugar for which ASR is requesting product exclusions. These domestic products, like the domestic alternatives to Set & Match icing sugar and medium and standard granulated sugar, have been satisfying demand in Canada.

90. (30 July 2004), NQ-2004-001 (CITT) at 22.

91. Rectangular sugar tablets closely resemble, in form and size, two sugar cubes that are fused together.

92. *Transcript of Public Hearing*, Vol. 1, 26 September 2005, at 231-32.

93. *Transcript of Public Hearing*, Vol. 3, 28 September 2005, at 491-92; *Transcript of Public Hearing*, Vol. 2, 27 September 2005, at 360.

94. The use of domestic products was also confirmed by the witness from International Sugars Inc. *Transcript of Public Hearing*, Vol. 2, 27 September 2005, at 360-61; *Transcript of Public Hearing*, Vol. 1, 26 September 2005, at 228-31.

95. *Transcript of Public Hearing*, Vol. 1, 26 September 2006, at 232-33; *Transcript of Public Hearing*, Vol. 3, 28 September 2005, at 526.

Accordingly, the domestic industry would be injured if these exclusion requests were granted, and the requests are therefore denied.

115. Finally, NFB requested an exclusion for refined sugar made in the United States as a tolling operation from raw sugar originating in non-subject countries. The Tribunal notes that all refined sugar produced in the United States from raw cane sugar, whether it is made from sugar cane grown in the United States or elsewhere, is subject to the CBSA's finding of likelihood of resumed dumping. It is the Tribunal's view that to grant this request would likely undermine the efficacy of its order against the United States, thus injuring the domestic industry. Accordingly, the request is denied.

CONCLUSION

116. Based on the foregoing, the Tribunal believes that the expiry of the orders will likely result in material injury to the domestic industry in the near to medium term.

117. Pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal continues its order in respect of the dumping of refined sugar originating in or exported from Denmark, Germany, the Netherlands and the United Kingdom, and the subsidizing of refined sugar originating in or exported from the European Union, with an amendment to exclude individually wrapped rectangular cane sugar tablets.

118. Pursuant to subsection 76.04(1) of *SIMA*, the Tribunal also continues its order in respect of the dumping of refined sugar originating in or exported from the United States, with an amendment to exclude individually wrapped rectangular cane sugar tablets.

Ellen Fry
Ellen Fry
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

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

APPENDIX**GOODS EXCLUDED FROM THE FINDINGS MADE BY THE CANADIAN
INTERNATIONAL TRADE TRIBUNAL IN INQUIRY NO. NQ-95-002**

1. *Co-crystallized products* - For greater clarity, these products are comprised of sugar syrups or liquid sucrose blends and one or more non-sucrose ingredients combined through a co-crystallization process to form a dry solid structure in granulated or powder form.
2. *Pearl sugar* - For greater clarity, pearl sugar is hard granulated sugar, pellet-formed by subjecting sugar syrup to intense heat. The pellet, which is the size of a pea, is shaped like a football. It is coarser than coarse sugar, i.e. confectioners' sugar.
3. *Bottler's floc-free beet sugar* - Imported by McNeil Consumer Products Company for use in pharmaceutical preparations.
4. *Lyle's Golden Syrup* - Produced by Tate & Lyle PLC.
5. *Lyle's Pouring Syrup* - Produced by Tate & Lyle PLC.
6. *Daddy brand wrapped sugar dominoes in 1-kg boxes* - For greater clarity, these are sugar cubes which are wrapped in illustrated paper wrappings, each of which contains two sugar cubes.
7. *Daddy brand wrapped sugar cubes in 5-kg boxes containing 960 portion* - For greater clarity, each portion contains two sugar cubes which are wrapped in illustrated paper wrappings.
8. *Saint Louis brand pre-cut brown cane sugar lumps in 1-kg boxes* - For greater clarity, these are rough-shaped sugar lumps comprised of brown cane sugar.
9. *Daddy brand shaped white sugar pieces in 500-g boxes* - For greater clarity, these sugar pieces are pre-cut into diamond, heart, spade and club shapes.
10. *Daddy brand brown or blond "Vergeoise" sugar in 500-g cases.*
11. *Comptoir du Sud brand brown and white sugar pieces in 1-kg and 500-g boxes.*
12. *Daddy brand brown coffee sugar in 500-g box packets* - For greater clarity, this is a large granule brown sugar.
13. *Demerara sugar cubes* - Produced by Tate & Lyle PLC.
14. *Amber sugar crystals* - Produced by Tate & Lyle PLC. For greater clarity, these are large sugar crystals in varying shades of brown.
15. Low-colour liquid sucrose with a colour no higher than 10 maximum ICUMSA (International Commission for Uniform Methods of Sugar Analysis) colour units and distiller's grade liquid sucrose imported by Gilbey Canada Inc. for use as ingredients in its production process.

**GOODS EXCLUDED BY THE ORDERS IN REVIEW NO. RR-99-006 FROM
THE FINDINGS MADE BY THE CANADIAN INTERNATIONAL TRADE
TRIBUNAL IN INQUIRY NO. NQ-95-002**

1. Bottler's floc-free beet sugar imported for use in pharmaceutical preparations where it is established by the importer that floc-free beet sugar from Canadian sources does not meet the applicable product specifications.
2. Golden, pouring and other table syrups imported in retail-ready packaging in containers not exceeding 3 L.
3. Subject to the exception below, specialty wrapped sugar cubes, each individual wrapping containing not more than 3 sugar cubes, imported in retail-ready packages not exceeding 5 kg in weight. This exclusion does not include generic wrapped white sugar cubes (i.e. where the illustration consists of primarily a trade-mark, trade name, company name or other commercial identification as opposed to a unique illustration).
4. Pre-cut specialty shaped sugar pieces, imported in retail-ready packaging, in packages not exceeding 1 kg in weight. For greater clarity, these include diamond-, heart-, spade- and club-shaped sugar but do not include cube- or domino- (i.e. rectangular) shaped sugar.
5. Rough-shaped lumps and pieces, in lumps or pieces weighing between 3 and 10 g on average, imported in retail-ready packaging, in individual packages not exceeding 1 kg in weight.
6. Very large crystal sugar, in crystals exceeding 0.05 g in weight on average, imported in retail-ready packaging, in individual packages not exceeding 1 kg in weight.
7. Specialty sugar cubes and dominoes (i.e. rectangles), made from demerara, brown, yellow or any other non-white sugar, imported in retail-ready packaging, in packages not exceeding 1 kg in weight. For greater clarity, this does not include any sugar cube or domino made from white granulated sugar.
8. Low-colour liquid sucrose with a colour no higher than 10 ICUMSA (International Commission for Uniform Methods of Sugar Analysis) colour units and distiller's grade liquid sucrose imported for use in the production of distilled spirits where it is established by the importer that low-colour liquid sucrose and distiller's grade liquid sucrose from Canadian sources do not meet the applicable product specifications.
9. Organic sugar meeting the requirements of the Canadian General Standards Board standard No. CAN/CGSB-32.310-99 (Organic Agriculture), the U.S. *Federal Organic Foods Production Act of 1990* or any rules adopted under that act, or the European Union EN2092/94 (Organic Regulation), where it is accompanied by a transaction certificate affirming compliance with the standard signed by an ISO Guide 65 accredited certifying authority.