CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR
CANADA

Ottawa, Friday, May 22, 1992

Review No.: RR-91-004

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding of material injury made by the Canadian Import Tribunal on April 30, 1987, in Inquiry No. CIT-1-87, respecting:

FRESH, WHOLE, YELLOW ONIONS, ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA, FOR USE OR CONSUMPTION IN THE PROVINCE OF BRITISH COLUMBIA

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of the finding of material injury made by the Canadian Import Tribunal on April 30, 1987, in Inquiry No. CIT-1-87.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal continues the above-mentioned finding without amendment.

W. Roy Hines
W. Roy Hines
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

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Special Import Measures Act - Whether to rescind or continue, with or without amendment, the finding of material injury made by the Canadian Import Tribunal on April 30, 1987, in Inquiry No. CIT-1-87.

Place of Hearing:	Vancouver, British Columbia
Dates of Hearing:	March 30 and 31, 1992
Date of Order and Reasons:	May 22, 1992
Tribunal Members:	W. Roy Hines, Presiding Member Kathleen E. Macmillan, Member Sidney A. Fraleigh, Member
Director of Research:	Peter Welsh
Research Officer:	Peter Rakowski
Statistical Officer:	Gilles Richard
Counsel for the Tribunal:	Robert Desjardins Cliff Sosnow
Registration and Distribution Officer:	Margaret J. Fisher

Participants:

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Margaret L. Eriksson and
Maria A. Morellato

for B.C. Vegetable Marketing Commission

(The Industry)

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(Importer)

Witnesses:

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B.C. Coast Vegetable
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John Riel
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TRIBUNAL: W. ROY HINES, Presiding Member
KATHLEEN E. MACMILLAN, Member
SIDNEY A. FRALEIGH, Member

STATEMENT OF REASONS

THE BACKGROUND

This is a review under subsection 76(2) of the *Special Import Measures Act* (SIMA) of the above-mentioned finding. In Notice of Expiry No. LE-91-005 dated August 29, 1991, the Canadian International Trade Tribunal (the Tribunal) gave notice that the finding was scheduled to expire on April 29, 1992. The Tribunal requested interested parties supporting or opposing the continuation of the finding to make representations addressing issues relating to: (1) the likelihood of resumed dumping if the finding were to expire; (2) the likely volumes and prices of dumped imports if dumping were to resume; (3) the domestic industry's performance since the finding; (4) the likelihood of material injury to the domestic industry if the finding were allowed to expire; (5) other developments affecting, or likely to affect, the performance of the domestic industry; and (6) any other changes in circumstances, domestically or internationally, including changes in the supply and demand for the subject goods, as well as changes in the level and sources of imports into British Columbia.

On November 29, 1991, on the basis of available information and representations made, the Tribunal decided, pursuant to section 76 of SIMA, to initiate a review of the finding. A notice of review was forwarded to all known interested parties and was published in Part I of the December 14, 1991, edition of the Canada Gazette. A notice of change of date of public hearing was forwarded to known interested parties and was published in Part I of the February 8, 1992, edition of the Canada Gazette.

The Tribunal sent questionnaires to the B.C. Vegetable Marketing Commission (the BCVMC) and to the growers' co-operatives and major importers of the subject goods. From the replies to these questionnaires and other sources, the Tribunal research staff prepared a pre-hearing staff report.

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The record of this review consists of all relevant documents, including the finding, the notice of expiry, the notice of review, replies to the questionnaires, the pre-hearing staff report and all evidence and testimony given at the hearing held in Vancouver, British Columbia. All public exhibits were made available to interested parties. Protected exhibits were provided to independent counsel who had given undertakings respecting the non-disclosure of confidential information.

The BCVMC was represented by counsel at the hearing, submitted evidence and made argument in support of a continuation of the finding. David Oppenheimer and Associates, an importer, was represented by counsel at the hearing, submitted evidence and made argument in support of a rescission of the finding.

THE SUMMARY OF THE FINDING

On April 30, 1987, the Canadian Import Tribunal (the CIT) found that the dumping in British Columbia of fresh, whole, yellow onions, originating in or exported from the United States of America, for use or consumption in the province of British Columbia, except for the period from April 1 to August 15 of each year, had caused and was likely to cause material injury to the production in Canada of like goods.

The complainant, the BCVMC, representing the 48 growers of yellow onions in British Columbia, argued that depressed prices for yellow onions, caused by the dumping of the subject goods, had resulted in the cultivation of yellow onions in British Columbia becoming uneconomical and, consequently, in the growers reducing their acreage planted, and experiencing underutilization of capacity, lost sales and profit degradation. It argued that the vulnerability of the B.C. growers to overproduction by the much larger U.S. industry disposed them to future injury during the 1987-88 crop year.

The CIT addressed two preliminary matters. It first found that yellow onions produced in British Columbia were like goods to fresh, whole, yellow onions imported from the United States. Secondly, it found that British Columbia constituted a "regional market" and that onion producers in that province constituted the domestic industry for injury determination purposes.

The CIT found that the depressed domestic price levels that occurred in the 1985-86 crop year were directly linked to similar depressed price levels in the United States. It was clear to the CIT that prices in the B.C. marketplace had adversely affected the profitability of B.C. growers and that they had suffered material injury.

The CIT recognized that the level of U.S. prices fluctuated from year to year depending on supply conditions. As a result, it was difficult to predict prices for yellow onions in the United States and, hence, whether there would be dumping if those prices were below the cost of production. However, expert witnesses predicted a return to weak prices in the United States during the next crop year. Experience for the 1985-86 crop year suggested that, in a better crop year, dumping would occur. As a result, the CIT concluded that the outlook for the foreseeable future was that, in the absence of anti-dumping measures, B.C. yellow onion growers would continue to suffer material injury from dumped imports.

The CIT was also of the opinion that the continuous application of anti-dumping duties was less suitable when the subject goods were perishable in nature, such as agricultural goods. Yellow onions have a storage life of less than one year, and any remedy contemplated under SIMA had to avoid penalizing end users during the period when producers did not require protection because of lack of supply. The CIT therefore excluded, from its finding of injury, imports of the subject goods between April 1 and August 15 of any calendar year.

THE PRODUCT

The goods under review are fresh, whole, yellow onions originating in or exported from the United States of America, for use or consumption in the province of British Columbia. Yellow onions are globe shaped with dry, dark yellow or light brown skins. Although there are many varieties of yellow onions, such as Autumn Spice, Tauras, Rocket, Aries, etc., all varieties are marketed and sold as yellow onions. Most domestic and imported yellow onions are sold for fresh consumption rather than processing.

In Canada, yellow onions are graded, sized and marketed under the *Canada Agricultural Products Standards Act*. In addition to size, grading standards include other requirements covering appearance, brightness and firmness. The subject goods are graded Canada No. 1 or Canada No. 2, with the No. 1 grade being further subdivided into various size categories including "jumbos," which have a minimum diameter of 3 in. Taken overall, grading standards permit a reasonably broad range of quality. According to testimony, B.C. yellow onions that do not qualify as Canada No. 1 are not marketed, but culled.

B.C. growers do not grow jumbo onions as a separate crop, and only a small proportion of onions grown in British Columbia fall into the jumbo category. In contrast, many U.S. growers specialize in the production of jumbo onions. B.C. yellow onions compete with, and have the same characteristics as, U.S. yellow onions, except that a relatively greater proportion of larger U.S. onions are sold in the B.C. market. The view of the Tribunal is that B.C. yellow onions and U.S. yellow onions, including jumbos, are like goods.

THE INDUSTRY

There are now 44, mostly small, growers of yellow onions in British Columbia. Average acreage is less than 10 acres, and average yields on most farms are relatively low compared to those of onion growers in the western states of the United States. Some growers, such as the two who appeared at the hearing, have significantly larger acreage devoted to onion production and achieve much higher yields than the industry average.

Onion growers package, ship and grade through co-operatives in three regions. The B.C. Coast Vegetable Co-operative Association (B.C. Coast) handles produce grown in the lower mainland; the Island Vegetable Co-operative Association covers the Vancouver Island region; and the Interior Vegetable Marketing Agency Co-operative looks after the balance of the province. B.C. Coast sells a large proportion of the yellow onions grown in British Columbia. Not all yellow onions are sold through co-operatives. As much as 20 percent of annual production is sold at roadside.

The BCVMC acts as a co-ordinating body for co-operative agencies. It is composed of farmers from across the province and answers to the B.C. Marketing Board, a provincial body with broad representation.

The B.C. Vegetable Scheme, enacted by Order-in-Council in 1980, under the *Natural Products Marketing (B.C.) Act*, established the BCVMC, which is empowered to promote, control and regulate the production, transportation, packing, storage and marketing of vegetables. The BCVMC delegates certain of its powers regarding yellow onions to the co-operatives acting as sales agents for the producers in their particular area. Each grower is allocated a sales quota earned by consistent delivery over the years. The quota system is not designed to limit production, but to regulate its flow to the market. Those growers which have regularly supplied the market have an allocation which must clear the market before production in excess of quotas can be sold. Co-operatives do not store yellow onions. They are kept on the farm until they are delivered to co-operatives for processing, packaging and sale.

The BCVMC establishes minimum weekly prices in consultation with the co-operatives. They, in turn, establish their price lists on the basis of these minimum prices. Since the finding, the prices set by the BCVMC are a function of the "normal value" set by the Department of National Revenue for Customs and Excise (Revenue Canada) of yellow onions and of the exchange rate on the dollar, as well as of shipping costs and duty. During periods when U.S. selling prices exceed the normal value, these U.S. prices are the basis for establishing B.C. selling prices. Prior to the finding, onion prices in British Columbia were based on U.S. selling prices.

Yellow onions account for approximately 10 percent of vegetable production in British Columbia. The growers also produce other vegetables, and there are few farms, if any, where yellow onions account for a major part of total vegetable or other agricultural production. The three regional co-operatives handle and set delivery quotas and prices for other vegetables in the same way as they do for yellow onions. Although yellow onions are rarely, if ever, a grower's only crop, some large growers can take advantage of economies of scale, particularly with respect to storage facilities.

THE POSITION OF PARTIES

The Domestic Industry

The domestic industry submitted that the 1987 finding should be continued in order to prevent the resumption of injurious dumping of yellow onions exported into British Columbia from the United States. It submitted that British Columbia was a regional market. Counsel rejected arguments that B.C. growers were not the domestic industry for injury determination purposes.

Counsel for the industry said that little had changed since the original finding and that British Columbia remained a regional market. The facts showed that 99 percent of all yellow onions produced in British Columbia were sold in British Columbia and that virtually no yellow onions produced in other Canadian provinces were sold in British Columbia.

Counsel further submitted that, according to Article 4 of the Anti-Dumping Code (the Code), injury may be found to exist if there is a concentration of dumped imports within the regional market and if the dumped imports are causing injury to all or almost all of the producers in that market. Counsel argued that there was and would be a concentration of dumped imports. In terms of the "distribution" test, counsel stated that there was a much larger concentration of dumped imports coming into British Columbia than in Ontario when viewed on a per capita basis. Counsel maintained that because imported U.S. yellow onions comprised over 68 percent of the market in British Columbia, the "density" test was met. Counsel also rejected the argument that not all of the domestic industry would be injured and noted that the importer had provided no evidence to substantiate this allegation.

Counsel argued that, if the finding were rescinded, there would be a resumption of dumping from the United States and that growers in the four western states would target the B.C. market. They stated that production and price levels in the U.S. onion-producing states, particularly the Pacific western states, should be examined in conjunction with the price-setting mechanism in British Columbia. Counsel pointed to the 1987 finding which established the inverse relationship between the size of the U.S. crop and the prices in the marketplace, and they maintained that depressed prices in British Columbia were linked to depressed U.S. prices. Counsel argued that the Tribunal had evidence before it that U.S. onion production rose during the finding as a result of increased acreage and higher yields. Moreover, the industry provided a U.S. Department of Agriculture report that showed that most states would increase plantings for the crop year 1992-93. Furthermore, British Columbia's proximity to U.S. production areas meant that it was inevitable that U.S. producers would view British Columbia as a market of easy access. The increasing market share of U.S. imports, combined with the fact that U.S. prices were, most of the time, below the U.S. cost of production, indicated that there was no question that U.S. yellow onions would be dumped in British Columbia if anti-dumping measures were not taken.

Counsel claimed that if the finding were rescinded, the B.C. onion industry would not survive. They stated that while the number of acres of yellow onions was increasing in the United States, the acreage in British Columbia was decreasing. These two factors, combined with increased imports from the United States, indicated that British Columbia was at the mercy of competitive market forces in the United States. The industry pointed to a declining market share, notwithstanding the existence of an injury finding. Counsel argued that a key factor explaining why the industry had lost market share was that some B.C. importers and U.S. exporters were circumventing the finding by effectively selling below normal values.

Counsel maintained that, with the finding in place, B.C. growers could remain in business, but would not make a large return. The industry presented as evidence a revised cost of production model that showed that growers' costs had increased during the finding. Without anti-dumping duties, U.S. yellow onions would come in at reduced prices, and the industry would not be able to survive. Finally, counsel noted that the industry had stated that yellow onions were not easily replaceable as a crop, that investments would be lost and that the value of crop rotation would be compromised. Removal of the finding would result in job losses both on farms and in the co-operatives that process, package and sell yellow onions.

The Importer

Counsel for the importer raised the issue of injury to a regional industry. More specifically, he argued that the two requirements spelled out in paragraph 1(ii) of Article 4 of the Code, namely, that there be a concentration of dumped imports into the isolated market and that the dumped imports cause injury to producers of all or almost all of the production within that market, are not met in the present instance. There had not been, and there would not be, a concentration of dumped imports into British Columbia. In addition, the dumped imports had not and would not cause injury to all or nearly all of B.C. production.

Counsel urged the Tribunal to consider whether there was a concentration of dumped imports using two tests: the distribution test and the density test. Concerning the first test, counsel referred to the recreational vehicle entrance doors and fertilizer blending equipment cases where 75 to 100 percent of dumped imports were being sold in the regional market. He noted that, in the case of recreational vehicle entrance doors, the CIT also considered the share of dumped imports in the market. The CIT found that they accounted for a third of the market, but that their share exceeded that of the domestic producer.

Counsel noted that since the finding, importers have paid the normal value to exporters. Thus, there had been only small quantities of dumped goods. Accordingly, concentration could not be determined using this approach. Having made this observation, he stated that prior to, and during, the finding, a relatively small percentage of U.S. exports to Canada of yellow onions were destined for the B.C. market and that there did not appear to be any targeting or any identification of British Columbia as a separate and distinct market.

Counsel argued that dumped imports from the United States would not injure all or nearly all of the B.C. industry. He cited evidence before the Tribunal that growers with large acreage and much higher yields than the industry average were doing well financially and that they would not be injured.

A resumption of dumping would not be a cause of material injury to B.C. growers. Their financial problems were due to the small acreage cultivated by most of the B.C. growers. This led to low yields and poor financial results. Small growers could not match the economies of scale experienced by either the large growers in British Columbia or those in the United States. Counsel argued further that despite the finding and a growing market, the B.C. industry had not increased its market share or significantly improved its financial performance. Counsel maintained that even with an injury finding, acreage remained the same, and the existence of a delivery quota system instituted by the BCVMC perpetuated the existence of small producers who were inefficient. Counsel cited as examples testimony by a witness that this system could result in lost sales for the B.C. industry because it could prevent growers with high-quality onions from making deliveries. He continued by stating that the anti-dumping duty should not be perpetuated to protect an inefficient industry.

Counsel also raised the issue of quality, not to imply that U.S. yellow onions were unlike goods, but rather to point to the fact that the U.S. product was harder and brighter and was grown in superior conditions. This, he stated, became a factor when retailers made purchasing decisions. In other words, with a floor price in place, U.S. onions were gaining market share because they offered better quality at the same price as B.C. yellow onions.

THE ECONOMIC INDICATORS

Yellow onion production in British Columbia increased in the year immediately following the finding and stayed level for the following two years, before declining by 15 percent in the crop year 1990-91. Average annual production in the four years after the finding was much lower than in the four years preceding the finding. There was little change in acres harvested; changes in production levels were largely the result of variations in yields.

The B.C. market for yellow onions was 31 million pounds in 1990-91. During the finding, the market averaged 32.7 million pounds, significantly higher than the four years prior to the finding. B.C. onion growers experienced a decline in both sales and market share when the four years following the finding are compared to the period before the finding.

Despite the injury finding, U.S. imports, particularly those from the western states, rose substantially during the crop years from 1987-88 to 1990-91. Total U.S imports increased from 9.9 million pounds in 1986-87 to 20.3 million pounds in 1988-89. They remained high in the two following years, averaging more than 19 million pounds. They increased their market share from 45 percent in 1986-87 to 63 percent in 1990-91.

During the B.C. yellow onion season, which lasts seven and a half months, B.C. growers supply more than half of the B.C. market. During the same period of the year, the western states, primarily Washington and Oregon, supply the remainder of the market. During the rest of the year, other states, such as California, and other countries supply the B.C. market. Other countries did not increase their relatively small share of the B.C. yellow onion market during the finding.

In the four years following the finding, average unit selling prices improved significantly and growers' revenues increased. The average annual sales of B.C. growers during the finding were $1.9 million. Prices of yellow onions followed a pattern. When U.S. prices were below the normal value, prices for yellow onions in British Columbia were equal to the normal value plus an amount added for duty, freight and exchange into Canadian funds. Of the few times that U.S. prices were above normal values, B.C. prices trended upward with U.S. prices. In fact, according to testimony and the evidence, U.S. market prices were usually lower than normal values. The normal value became a floor price, as B.C. onion growers did not seek to increase their market share by pricing below the normal value. B.C. growers sold all of their production at either the same price as U.S. imports or at a slightly higher price.

The B.C. and Canadian Industries

Total Canadian consumption of yellow onions averaged 217 million pounds over the five years ended in 1990. Canadian production declined over the period, and Canadian yellow onion growers' share of the Canadian market fell from 60 percent to 53 percent. The United States are the largest exporter to the Canadian market. A large portion of U.S. exports to Canada originated in the western states. U.S. imports climbed over the years from 1986 to 1989 and captured an increasing share of the Canadian market, rising from 38 to 51 percent. Although their share fell in 1990, U.S. imports still captured 43 percent of the Canadian market.

British Columbia accounted for 14 percent of the Canadian yellow onion market in 1990, up from 10 percent in 1986. Unloads of U.S. yellow onions in Canada increased by 11.8 million pounds in the years 1986 to 1990, of which 8.5 million pounds, or 72 percent of the increase, went into the B.C. market. U.S. exports of yellow onions to British Columbia as a percentage of total exports to Canada increased from 15.3 percent in 1986 to 22.5 percent in 1990.

The large increase in B.C. consumption was due to the combined effects of two factors. Firstly, there was an increase in per capita consumption of yellow onions in British Columbia relative to other consuming provinces. Per capita yellow onion consumption in the provinces of Alberta, Ontario and Quebec combined had decreased from 17.0 lbs in 1986 to 15.6 lbs in 1990. Per capita onion consumption in British Columbia rose from 15.5 lbs to 19.6 lbs. Secondly, British Columbia's population has been growing more rapidly than that of the rest of Canada.

<u>The U.S. Industry</u>

Production of yellow onions in the United States rose from 41.6 million cwt. in 1982 to 53.6 million cwt. in 1990. This trend was particularly evident for the western states exporting yellow onions to British Columbia (i.e., Washington, Oregon, California and Idaho). In the four years ended in 1990, production for these states averaged 27.9 million cwt., an increase of 20 percent over the previous five-year period. Exports to both British Columbia and other Canadian provinces from these states represent a small percentage of their combined production.

Higher production in the United States was the result of both increases in acres planted and higher yields. This was particularly true for the western states which substantially increased their acres planted over the four-year period ended in 1990. These four states also recorded increased yields. Moreover, average yields were significantly higher than those of other U.S. growing areas and British Columbia.

REASONS FOR DECISION

In considering whether to continue a finding, the Tribunal needs to decide whether there is a likelihood of resumption of dumping and, if so, whether there is a likelihood of material injury. The Tribunal has also addressed the issue raised by counsel for the importer in relation to the question of injury to the regional industry. In responding to this question, the Tribunal notes that paragraph 1(ii) of the Code requires a two-part analysis.

First, producers within a particular geographic market may be considered as a regional industry where:

1) they sell all or almost all of their production of the product in that market; and

2) the demand in the regional market is not, to any substantial degree, supplied by producers located outside that market.

Second, where a regional industry exists, injury may be found to exist provided that: (i) there is a concentration of dumped imports into the isolated market; and (ii) the dumped imports are causing injury to producers of all, or almost all, of the production within that market.

The Tribunal notes that counsel for the importer has not questioned the existence of a separate regional industry in the present case. The Tribunal heard evidence that 99 percent of B.C. production was sold in the province, and Agriculture Canada unload reports indicated that there was very little product originating from other provinces. Consequently, these two conditions remain satisfied. In fact, British Columbia's trade with the rest of Canada decreased during the finding. There were virtually no shipments of yellow onions from the rest of Canada to British Columbia, and B.C. sales to other provinces declined from 10 percent in 1986-87 to practically nil in 1991-92.

The two other criteria set out in the Code address the issue of whether injury has been caused to the B.C. onion industry. The first, which is known as the concentration requirement, provides that there be a concentration of "dumped imports" into the regional market. In a review such as in the current case, the Tribunal is faced with a situation where there has been little or no dumping during the period of the finding. Counsel for the importer has argued that, in this circumstance, the Tribunal lacks a condition precedent for a determination of injury to production in British Columbia. While fully understanding these concerns, the Tribunal cannot concur.

A review is concerned not with the past developments, but with likely ones in the future. Given the nature of anti-dumping actions, it would be surprising to expect dumping to occur to any extent during the period of the finding. The legislator, in providing for reviews, did not distinguish a regional market situation from any other review case since all relate to future developments rather than past actions. Accordingly, in the view of the Tribunal, a decision relating to the likelihood of injury to Canadian production in a regional market must reflect the best judgment as to likely developments in that market if the finding were to be rescinded, including whether there is likely to be a concentration of dumped imports into that market.

Before addressing the question of concentration, the Tribunal has considered the likelihood of a resumption of dumping. The evidence before the Tribunal makes it clear that this question primarily relates to the price at which yellow onions from the United States would enter British Columbia, if the finding were rescinded. To reach a conclusion on what prices are likely to be in British Columbia in the absence of a finding, the Tribunal examined developments in the U.S. onion industry and market over the last decade. Both acreage and yields of yellow onion producers in the United States increased during the period of the injury finding. This was particularly true for the four western states which are the largest exporters to British Columbia. Barring a major crop failure, there is nothing to suggest that there is any likelihood of an imminent decline in production levels or major changes in the factors affecting price levels in the United States. Moreover, witnesses provided evidence that U.S. onion growers planned to maintain and, in some states, increase acreage planted for onion production in 1992. There is no indication that the general level of onion prices observed in the United States in recent years is likely to increase significantly in the future.

The evidence before the Tribunal is that, in all but a few instances, U.S. prices have been below normal values since the beginning of the finding. The Tribunal also heard considerable evidence concerning the effects that surpluses in the United States had on prices in the onion markets of Canada and the United States. Witnesses testified that there was an inverse relationship between the supply and prices in the market at any particular time. These characteristics are not peculiar to onions, but are generally evident in respect of most perishable commodities.

As a result of these market forces, there are frequent and sometimes large variations in the home market sales prices of these goods. In the case of yellow onions and other similar products, Revenue Canada, in accordance with Canadian legislation and the Code, has used cost of production models to establish normal values. Proceeding in this way gives rise to normal values which will frequently exceed the exporter's domestic price and, in effect, become floor prices for the period during which they apply.

The Tribunal believes that it is important to make two observations regarding this situation. Firstly, dumping will always exist where market forces in the exporting country dictate prices lower than the floor price (i.e., normal values), and this is likely to be the case on many occasions during the marketing period of a perishable commodity. The evidence before the Tribunal indicates that this pattern of commercial behavior applies to onions. Secondly, in such circumstances, the Tribunal has little choice but to conclude that dumping is likely to recur if the existing finding is rescinded. Given the situation of production and pricing in the United States and in the absence of evidence to the contrary, the Tribunal anticipates that U.S. prices are likely, on many occasions, to be lower than the normal values established by Revenue Canada. Thus, the Tribunal is of the opinion that dumping is likely to recur if the finding is rescinded.

With regard to whether there is likely to be a concentration of such dumped imports into the B.C. market, the Tribunal has considered the distribution of the subject imports within the context of consumption of subject goods in British Columbia relative to the Canadian market. In so doing, the Tribunal has examined Agriculture Canada unload reports which show yellow onion shipment trends for Canadian regions. The Tribunal has also examined evidence on demographic developments in Canada. These data can serve as an indication of likely trade and consumption patterns if the finding were rescinded. British Columbia's consumption of yellow onions increased more than elsewhere in Canada, rising from a 10-percent share of the Canadian market in 1986 to 14 percent in 1990. Higher levels of B.C. consumption of yellow onions resulted from the combined effects of growth in both per capita consumption and population that was greater than elsewhere in Canada. The rise in consumption was supplied largely from U.S. imports as B.C. production declined during the finding. U.S. exports to Canada rose during the review period, with over 70 percent of the increase going to British Columbia. Its share of these exports, as a percentage of the Canadian total, increased from 15.3 percent in 1986 to 22.5 percent in 1990. This increase in imports led to a substantial rise in British Columbia's per capita consumption of yellow onions from the United States. The Tribunal has already concluded that there is a likelihood of a resumption of dumping if the finding were rescinded. Given the high level of U.S. imports into British Columbia and recent trends which indicate that this is likely to continue, the Tribunal concludes that there would be a likelihood of a concentration of dumped imports into British Columbia if the finding were rescinded.

With regard to the requirement laid down in paragraph 1(ii) of Article 4 of the Code that injury be caused to the producers of all or almost all of the production within the regional market, the importer argued that only the least efficient growers would be injured and that the larger growers would not be materially injured by a resumption of dumping from the United States. The Tribunal is of the opinion that the magnitude of the reduction in prices that would occur if the finding were rescinded would be materially injurious to the B.C. industry's production of yellow onions.

Counsel for the industry argued that, although the industry had performed better financially during the finding, it remained vulnerable. Removal of the finding would mean the end of onion production in British Columbia. In support of this argument, the industry referred to its cost model as presented in the staff report, which it revised during the hearing. In its view, this model and information provided in the staff report showed that the industry had improved its financial performance during the finding, but that it was not sufficiently profitable to finance new investments.

Counsel for the importer told the Tribunal that the B.C. industry's performance during the finding showed that the problems faced by the industry were due to other factors. The effects of these other factors would far outweigh any effects from a resumption of dumping of onions in British Columbia.

The Tribunal agrees that other factors have had an impact on the industry's performance and would continue to affect the industry's performance if the finding were rescinded. Most of the B.C. onion industry consists of small farms. Their average acreage is small, and average yields are lower than those in the United States. In addition, the Tribunal cannot exclude the possibility that other factors such as soil conditions and climate may put some B.C. growers at a competitive disadvantage. It might have been expected that growers would have taken advantage of the finding to increase production and capture an increasing share of a growing B.C. yellow onion market. In this context, the Tribunal does not agree that the alleged circumvention of the finding is a relevant consideration in this review. Growers have sold all of their onion production at prices based upon, or higher than, normal values.

Although recognizing these other factors, the Tribunal considers that dumped imports into British Columbia would cause material injury. In reaching its decision, the Tribunal has examined the price effects that would ensue from a resumption of dumping and the consequential adverse financial impact on domestic producers. Counsel for the industry have suggested that the Tribunal make this assessment using a fully allocated cost model. While such models can be a proxy for actual cost information where none is readily available, the Tribunal considers that they are not the most appropriate basis for determining whether a resumption of dumping would be materially injurious. One of the problems that the Tribunal has with these models is the way in which fixed costs are allocated on multi-product farms. Another is that the cost structure can vary significantly from one farm to another, depending upon the size of the farm and a range of other factors. Furthermore, these models were not designed to determine actual profits of individual farms. Some of these shortcomings could be overcome if the models were limited to providing estimates of the variable costs incurred by growers, as was done in the Tribunal's recent inquiry into the competitiveness of the Canadian fresh and processed vegetable industry.

The Tribunal has thus focused its attention on price changes and their effects on revenues as the major indicators of injury. The selling price of yellow onions in British Columbia has reflected the imposition of normal values. The B.C. industry has enjoyed price stability and predictability as the normal value became a floor price. Overall revenue gains during the finding have been due exclusively to higher prices, as the industry has not increased production.

If the finding were rescinded, onion prices in British Columbia would be established on the basis of U.S. market prices. As already noted, the Tribunal has concluded that U.S. prices have, most of the time, been below the floor price established by normal values. Rescinding the finding would result in a decline in prices to the B.C. industry. If price developments over the last 10 years in the United States are a guide, and the Tribunal believes they are, the magnitude of the decline would be significant. This price decline would result in material injury in the form of price erosion and reduced revenues to B.C. onion growers irrespective of the industry's cost structure or its relative efficiency.

CONCLUSION

The Tribunal concludes that the B.C. yellow onion industry is likely to be materially injured from the resumption of the dumping which would arise from a rescission of the finding. Therefore, this finding is continued without amendment.

W. Roy Hines
W. Roy Hines
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member