



Ottawa, Monday, July 22, 1991

Review No.: RR-90-006

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding of likelihood of material injury made by the Canadian Import Tribunal on July 25, 1986, in Inquiry No. CIT-2-86, respecting:

BONELESS MANUFACTURING BEEF ORIGINATING IN OR EXPORTED FROM THE EUROPEAN ECONOMIC COMMUNITY IN RESPECT OF WHICH SUBSIDIES HAVE BEEN PAID DIRECTLY OR INDIRECTLY BY THE EUROPEAN ECONOMIC COMMUNITY AND/OR THE GOVERNMENT OF A MEMBER STATE

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 likelihood of material injury made by the Canadian Import Tribunal on July 25, 1986, in Inquiry No. CIT-2-86.

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

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Michel P. Granger

Michel P. Granger
Acting Secretary



Ottawa, Monday, July 22, 1991

Review No.: RR-90-006

**BONELESS MANUFACTURING BEEF ORIGINATING IN OR EXPORTED
FROM THE EUROPEAN ECONOMIC COMMUNITY IN RESPECT OF WHICH
SUBSIDIES HAVE BEEN PAID DIRECTLY OR INDIRECTLY BY THE
EUROPEAN ECONOMIC COMMUNITY AND/OR THE GOVERNMENT OF
A MEMBER STATE**

Special Import Measures Act - Whether to rescind or continue, with or without amendment, the finding dated July 25, 1986, in Inquiry No. CIT-2-86.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: May 21 to 24, 1991
Date of Order and Reasons: July 22, 1991

Tribunal Members: Sidney A. Fraleigh, Presiding Member
Kathleen E. Macmillan, Member
Arthur B. Trudeau, Member

Director of Research: Peter Welsh
Research Manager: Tom Geoghegan
Research Officers: John O'Neill
Douglas Allen
Statistical Officer: Margaret Saumweber

Counsel for the Tribunal: Gilles B. Legault
Registration and Distribution Clerk: Margaret J. Fisher

Participants: Peter Clark and
Chris Hines
for Canadian Cattlemen's Association
Lakeside Packers Ltd., A Division of
Lakeside Farm Industries
and Dairy Farmers of Canada

(The Industry)

and The Government of Alberta
and the Government of Saskatchewan

(Parties Supporting the Industry's Position)

for Bryan Jay Yolles
Australian Meat and Live-stock Corporation

(Party Supporting the Industry's Position)

for Gordon B. Greenwood
CBF - Irish Livestock and Meat Board

(Exporter)

Witnesses:

Dennis Laycraft
General Manager
Canadian Cattlemen's Association

Jas. H. (Jim) Graham
President
Canadian Cattlemen's Association

Len Vogelaar
Director, Canadian Cattlemen's
Association
President, Canada Beef Export
Federation

W.A. (Al) Rogerson
General Manager
Lakeside Packers Ltd.
A Division of Lakeside Farm Industries

Morley Shepherdson
Board Member, Canadian Cattlemen's
Association
Chairman, National Advisory Board for
the Improvement of Beef Cattle

Chris J. Mills
Research and Policy Advisor
Canadian Cattlemen's Association

Mike Hayward
Group Manager - Marketing
Americas, Europe & Middle East
Australian Meat and Live-stock
Corporation

Andrew Irving
Assistant Principal Officer
E/C Trade Division
Dept. of Agriculture and Food
Dublin, Ireland

Dan Browne
Managing Director, Dawn Meats Group
Deputy Chairman, CBF - Irish Livestock
and Meat Board
Chairman, Irish Meat Processors
Association

Owen Brooks
Director
International Markets
CBF - Irish Livestock and
Meat Board

Professor Stanley R. Johnson
Director, Professor of Economics
Center for Agricultural and Rural
Development
Iowa State University

Merritt Cluff
Policy Advisor
Corporate Strategies Division
Policy Branch
Agriculture Canada

Don Guillemette
Beef Chain Sales Manager
F.W. Fearman Company, Limited

Don Armstrong
Trader/Broker
L.N. Reynolds Co. Ltd.

Philip Cola
General Manager
Levinoff Meat Products Ltd.

Address all communications to:

The Secretary
Canadian International Trade Tribunal
20th Floor
Journal Tower South
365 Laurier Avenue West
Ottawa, Ontario
K1A 0G7



Ottawa, Monday, July 22, 1991

Review No.: RR-90-006

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding of likelihood of material injury made by the Canadian Import Tribunal on July 25, 1986, in Inquiry No. CIT-2-86, respecting:

BONELESS MANUFACTURING BEEF ORIGINATING IN OR EXPORTED FROM THE EUROPEAN ECONOMIC COMMUNITY IN RESPECT OF WHICH SUBSIDIES HAVE BEEN PAID DIRECTLY OR INDIRECTLY BY THE EUROPEAN ECONOMIC COMMUNITY AND/OR THE GOVERNMENT OF A MEMBER STATE

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
KATHLEEN E. MACMILLAN, Member
ARTHUR B. TRUDEAU, Member

STATEMENT OF REASONS

BACKGROUND

This is a review, under subsection 76(2) of the *Special Import Measures Act* (SIMA), of the finding of likelihood of material injury made by the Canadian Import Tribunal (the CIT) on July 25, 1986, in Inquiry No. CIT-2-86, concerning boneless manufacturing beef originating in or exported from the European Economic Community (the EEC).

In Notice of Expiry No. LE-90-008 dated December 13, 1990, the Canadian International Trade Tribunal (the Tribunal) informed interested parties of the finding's scheduled expiry date and asked for submissions from interested parties requesting or opposing the initiation of a review. On February 22, 1991, the Tribunal decided to review the finding and a notice of review was forwarded to all known interested parties. The notice was published in Part I of the March 2, 1991, issue of the Canada Gazette.

As part of this review, the Tribunal sent questionnaires to the Canadian Cattleman's Association (the CCA), the Dairy Farmers of Canada, the major domestic packers/processors and the major importers of boneless manufacturing beef. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared a pre-hearing staff report. At the Tribunal's request, Agriculture Canada undertook an econometric study to assess the impact of an assumed resumption of subsidized imports into Canada of boneless manufacturing beef from the EEC on production, prices and trade in the relevant beef sectors. In addition, the record of this review consists of all relevant documents, including the original finding, the Notice of Review, and public and

confidential sections of the replies to the questionnaires. All public exhibits were made available to interested parties, while confidential exhibits were provided to independent counsel only.

Public hearings were held in Ottawa, Ontario, from May 21 to 24, 1991.

The CCA, the Dairy Farmers of Canada, Lakeside Packers Ltd., A Division of Lakeside Farm Industries (Lakeside Packers), the Government of Alberta and the Government of Saskatchewan were represented by counsel at the hearing and made argument for continuing the finding. These parties, with the exception of the Dairy Farmers of Canada, also submitted evidence during the course of the hearing.

The CBF - Irish Livestock and Meat Board (CBF) was represented by counsel at the hearing, submitted evidence and made argument in support of rescinding the finding. The EEC submitted a brief opposing the continuation of the finding.

At the invitation of the Tribunal, Professor Stanley R. Johnson, Director and Professor of Economics at the Center for Agricultural and Rural Development, Iowa State University, attended the hearing and provided comments concerning the study prepared for the Tribunal by Agriculture Canada. He responded to questions from members of the Tribunal and counsel concerning the study as well as the cattle and beef markets in Canada and the United States. Merritt Cluff from Agriculture Canada also appeared to answer questions on the study.

Also at the invitation of the Tribunal, representatives of F.W. Fearman Company, Limited, a buyer and processor of boneless manufacturing beef, L.N. Reynolds Co. Ltd., an importer/broker, and Levinoff Meat Products Ltd., a slaughterer and boner of cows, appeared as Tribunal witnesses to answer questions concerning the production, importation, marketings and prices of boneless manufacturing beef and cattle.

The Australian Meat and Live-stock Corporation (the AMLC), which supported the continuation of the finding, was represented by counsel at the hearing, submitted evidence and responded to questions from counsel and the Tribunal. In addition, the New Zealand Meat Producers Board (the New Zealand Board) submitted a brief agreeing to the continuation of the finding.

SUMMARY OF THE 1986 FINDING, IN INQUIRY NO. CIT-2-86

On July 25, 1986, the CIT found that the importation into Canada of boneless manufacturing beef originating in or exported from the EEC in respect of which subsidies had been paid directly or indirectly by the EEC and/or the government of a member state had not caused, was not causing, but was likely to cause material injury to the production in Canada of like goods.

At the outset of the hearing, the CIT addressed the question of whether the CCA, representing the producers of cattle, had standing to submit a complaint respecting the importation of boneless manufacturing beef. After hearing evidence and argument on this matter, the CIT decided in the affirmative. The CIT viewed the production of boneless manufacturing beef in Canada as a continuous sequential process commencing with the live cattle and ending with the boxed grinding beef. While acknowledging that others were engaged in the production of the subject goods, i.e., the dairy industry,

slaughterers and boners, and packing houses, the CIT was not persuaded that the various elements in the chain of production should be isolated into so-called separate industries in applying the provisions of SIMA. The CIT ruled that the cow-calf and feedlot operators, as represented by the CCA, were a part of the industry concerned with the production of boneless manufacturing beef and that their contribution to the whole was of major proportions.

In its consideration of material injury, the CIT noted that the market for cattle in North America was a continental market with prices being freely determined by the forces of supply and demand. The CIT also noted that the prevailing prices made beef cattle operations in Canada unprofitable and that this situation had persisted for some time. On the basis of the evidence presented, it was clear that prices in Canada did in fact move independently of those in the United States, within certain limits known as the "import ceiling" and the "export floor." However, because the general level of prices was governed by conditions in the U.S. market (itself over 10 times the size of the Canadian market), it was these conditions which, in broad terms, governed the profitability of the Canadian beef cattle industry.

Although the CIT accepted that some price suppression had taken place in association with the presence of subsidized beef in the Canadian market and that some additional exports of culled cows had occurred as a result of the low prices, it was not persuaded that such injury that may have been attributable to the subsidizing could be considered material. Accordingly, the CIT found no past or present injury.

With respect to the future, the CIT had little doubt that, in the absence of an injury finding, exports from the EEC would resume in substantial volume. The CIT noted that the EEC exports of subsidized products to the United States were limited to 5,000 tonnes annually. In 1984, five times that amount entered Canada - a country which is a net exporter of beef, primarily to the United States - precipitating charges in the American Congress that Canada was operating as a backdoor broker for EEC subsidized products. Bills were introduced in the Congress requiring investigation into imports of Canadian beef products, for the express reason, as stated in the preambles of the bills, of EEC backdoor entries.

The CIT was persuaded that, in the absence of measures to limit EEC imports into Canada, the threat of U.S. retaliation against Canadian exports to that country would be such as to approach the probable. The CIT had little doubt that, should retaliatory action take place, the result for the Canadian beef industry in general, and the cow-calf and feedlot operators in particular, would be devastating. The "export floor," which provided a safety net below which Canadian beef-cattle prices could not fall, and which in large part insulated the domestic industry in the past from the adverse effects of the low-cost, subsidized imports, would probably be destroyed. Given these realities, the CIT found that the continued subsidizing of EEC boneless manufacturing beef entering Canada was likely to cause material injury to the production in Canada of boneless manufacturing beef.

PRELIMINARY MATTERS

1. Participation of the Australian Meat and Live-stock Corporation and the New Zealand Meat Producers Board

Prior to the hearing, the CBF - Irish Livestock and Meat Board (CBF) opposed the participation of the Australian Meat and Live-stock Corporation (the AMLC) and the New Zealand Meat Producers Board (the New Zealand Board). The submission filed on May 9, 1991, provided that Australia and New Zealand did not participate in the original inquiry; that they did not have direct knowledge of, or interest in any question of, whether there was material injury to the production in Canada of like goods; that they were not producers in Canada nor did they represent the Canadian industry producing the goods in issue; that they did not have any connection with the country against which the original complaint was filed; and, finally, that to allow their participation would create a precedent of allowing the participation of a wide range of third parties, which would increase the time and expense of the review.

At the hearing, counsel representing CBF also referred to section 41 of the *Special Import Measures Regulations*¹ which defined the words "person interested" and section 3 of the *Canadian International Trade Tribunal Regulations*² which defined the words "other interested party." With respect to the latter definition, counsel argued that its purpose was to ensure that the Tribunal received the information that was relevant to the issue within its jurisdiction, that is, the determination of the likelihood of material injury to the production in Canada of like goods. Information submitted by the AMLC and the New Zealand Board pertained to their own situation and it did not fall within the Tribunal's mandate to protect the interests of other foreign entities.

Counsel representing the CCA and parties in favor of the continuation the finding supported the participation of the AMLC and the New Zealand Board. Counsel representing the AMLC also provided arguments in favor of his client's participation as an interested party.

The Tribunal ruled first, that the AMLC and the New Zealand Board were associations which fall within the meaning of the word "person" as defined in section 2 of the *Special Import Measures Act*,³ and, second, that, according to rule 2 of the *Canadian Import Tribunal Rules*,⁴ they both had a sufficient interest that entitled them to be heard by the Tribunal before it disposed of the review.

2. Qualification of the Canadian Cattlemen's Association (the CCA) as a Part of the Production in Canada of Like Goods

In the Notice of Review issued on February 22, 1991, the Secretary gave notice that the Tribunal would consider the question as to whether the CCA represented production in Canada of like goods. The Tribunal received submissions from the EEC and CBF, which outlined their interpretation of the Canadian obligations under the

1. SOR/84-927, 22 November, 1984.

2. SOR/89-35, 27 December, 1988.

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

4. SOR/85-1068, 7 November, 1985.

Subsidies Code.⁵ In their submissions, they relied on the panel report to the GATT Committee on Subsidies and Countervailing Measures Canada - Imposition of Countervailing Duties on Imports of Manufacturing Beef from the EEC, dated October 13, 1987.

Counsel for CBF also submitted argument at the hearing supporting the lack of "standing" of the CCA. Counsel contended that, according to Canadian law, statutes must be interpreted in conformity with international obligations. Counsel also relied on the Federal Court of Appeal decision in *National Corn Growers Association v. Canadian Import Tribunal*⁶ in which it is said that if the law is not clear, the language of the relevant agreement can be used to interpret the statute.

Counsel added that the CIT's decision recognized the existence of different industries. Finally, counsel argued that statistics gathered since the last finding show that the economic interdependency or integration between the packers and processors and the CCA had declined considerably. Therefore, the facts established that the CCA had no status to represent the Canadian producers of boneless manufactured beef.

Counsel representing the CCA and other interested parties objected to CBF's last argument because it was based on facts that related to the injury issue, and that these facts had not been tested at this stage of the review.

Counsel also recalled that with respect to the interpretation of the Canadian obligations under the Subsidies Code, the Tribunal has only a statutory jurisdiction as established in *The Deputy Minister of National Revenue for Customs and Excise v. Unicare Medical Products Inc.*⁷ decision. Counsel relied on an excerpt from that decision where the Tribunal stated that "It only has the authority conferred explicitly or implicitly by its own enabling statute or other federal statutes that give it jurisdiction."

Counsel for the CCA contended that the determination of material injury with respect to subsidies is different from the determination made in a case of dumping. Comparing the rights and obligations set forth in both the Anti-dumping⁸ and the Subsidies Codes in this regard, they noted that the Subsidies Code set out a distinct criterion with respect to agriculture. An increased burden on Government support programs is considered a criterion in the injury determination in the Subsidies Code and is incorporated in subsection 2(1) of SIMA with respect to material injury in case of subsidizing.

Relying also on the *National Corn Growers Association*⁹ case, counsel argued that the Tribunal should not incorporate terms or concepts from agreements or treaties when clear language, as in the case at point, has been used by Parliament. Finally, counsel

5. Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, Geneva, 1979.

6. [1989] 2 F.C. 517.

7. Canadian International Trade Tribunal, Appeal Nos. 2437, 2438, 2485, 2591 and 2592, April 30, 1990, and reported in (1990) 1 T.S.T. 1428, at 1433.

8. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, Geneva, 1979.

9. *Supra*, footnote 6.

contended that the CIT interpretation was reasonable and that the panel report had no relevance nor had it been adopted by the Committee on Subsidies and Countervailing Measures.

In considering the question of standing, the Tribunal's first observation is that it was open to parties, at the time of the original inquiry, to bring this question for review by the Canadian judicial system. Instead, the EEC decided to verify through the Subsidies Code whether the decision was in accordance with an agreement reached by different countries, including Canada.

In the Tribunal's view, the panel report submitted to the Committee on Subsidies and Countervailing Measures has no legal value nor can it have any bearing on the Tribunal determination in this case. The Tribunal is an independent entity from the Government. It has to apply the law as the law stands and believes that Parliament would have amended the Act had it found the law inconsistent with the international obligations contracted by the Government.

Turning now to the second line of argument raised by counsel for CBF, the Tribunal is of the view that the purpose of a review pursuant to subsections 76(2) and 76(5) is to determine whether a finding should remain in place. In other words, the Tribunal has to consider whether the production in Canada of like goods would suffer material injury if the finding were rescinded. The Tribunal will not question further the qualification of a party within the production in Canada of like goods unless facts establish that there was a change in circumstances to warrant such review. The facts in this case do not warrant, in the Tribunal's view, a re-examination of the question of production in Canada of like goods. Consequently, the Tribunal finds that the evidence and the argument opposing the CCA's standing are not sufficient to exclude the CCA from the production in Canada of boneless manufactured beef.

POSITION OF PARTIES

The Industry and Supporting Parties

The CCA, the Dairy Farmers of Canada, Lakeside Packers, the Government of Alberta and the Government of Saskatchewan all took the position that the finding made by the Canadian Import Tribunal on July 25, 1986, in Inquiry No. CIT-2-86, should be continued. Their counsel argued that EEC export subsidies continue unabated and, in fact, are increasing; EEC stocks of boneless manufacturing beef are growing and only the discipline of countervailing duties has prevented EEC exports of subject goods to Canada since the time of the finding made in Inquiry No. CIT-2-86. If the finding were rescinded, counsel submitted, imports of subsidized subject goods would re-occur in significant volume; Canadian beef producers would experience lower prices for cows, feeder calves and fed cattle, as well as other forms of injury; and the injury to the Canadian industry would be seriously exacerbated if Canadian access to the U.S. market were restricted.

The CCA submitted that injury would be in the form of market share disruption, increased exports of fed cattle, cows and boneless manufacturing beef to the United States, actions by the United States to restrict exports of Canadian cattle and beef, and further rationalization and shrinkage of the Canadian packing industry.

Counsel argued that there is a surplus of beef in the EEC and, even though intervention stocks cannot be exported to Canada, new production could be diverted to the Canadian market. Also, the export restitution program in the EEC allowed producers to export at lower prices and potentially still make a greater return than on their sales within the EEC.

Counsel further argued that the Canadian industry was more vulnerable to material injury caused by a renewal of imports from the EEC than it was at the time of the original finding. Counsel stated that it was clear from the evidence that price suppression in the Canadian beef and cattle markets caused by subsidized imports would in itself cause material injury, even if Canadian producers had access to the U.S. market. If access to the U.S. market were restricted in any way, the damage would be multiplied many times.

In its written submission, the Government of Alberta stated that its effort to open international markets and to improve the meat industry of the province would be jeopardized by subsidized beef imports from the EEC. Further, during the hearing, counsel argued that rescinding the injury finding would undermine Alberta's policy responses to the EEC's interventions in the grain and oil seed sectors by permitting disruptive influences by the EEC at yet another level of the beef-grain production continuum. The unimpaired imports of heavily subsidized EEC beef into Canada would undermine the policy thrust of the Government, escalate program costs and depress returns to the cattle and beef industry.

The written submission of the Government of Alberta also stated that the hog and pork countervailing cases have placed Canada's livestock and meat sectors under more vigilant scrutiny by the United States. The intensity of the scrutiny has heightened with Canadian exports of live cattle at record levels, and the United States will not easily accept further product diversion caused by EEC imports.

The Government of Saskatchewan submitted that the finding made in Inquiry No. CIT-2-86 should be extended until such time as the EEC discontinues its disruptive and injurious export subsidizing of boneless manufacturing beef. Counsel stated that EEC storage stocks are reaching record levels and the EEC will be looking to minimize storage and subsidy costs and that several plants in Ireland and Denmark could be licensed to ship beef to Canada within months of the removal of countervailing duties.

The Australian Meat and Live-stock Corporation (the AMLC) submitted a written brief arguing that the finding made in Inquiry No. CIT-2-86 should be continued. The AMLC stated that, in the event that the finding were rescinded, imports of boneless manufacturing beef from the EEC into Canada would resume in significant quantities. These imports, it claimed, would cause material injury to the Canadian beef industry. Further, the large volumes of imported EEC beef would displace Canadian and third-country beef into the U.S. market. This surge of beef imports, it was submitted, would cause retaliatory action under the U.S. *Meat Import Act of 1979*¹⁰ against third-country and Canadian beef. The submission claimed that the Canada-United States Free Trade Agreement (the FTA) would not protect the Canadian beef industry from the threat of retaliation, and that the threat is as probable now as it was in 1986.

10. 19 U.S.C. 2253 note.

In its written brief to the Tribunal, the New Zealand Meat Producers Board (the New Zealand Board) submitted that the CIT's finding in Inquiry No. CIT-2-86 concerning boneless manufacturing beef from the Republic of Ireland and Denmark should continue. The New Zealand Board stated that the Canadian market is vitally important to the economy of New Zealand as well as the vitality of the New Zealand meat industry and beef farmers. Unsubsidized exporters like New Zealand, who trade without unfair competitive advantage, will be adversely affected. The brief also stated that the EEC has demonstrated a propensity for vigorous export activity. There has been a tendency for the EEC to increase the level of export subsidies to stimulate exports and reduce the volume of beef being sold into intervention stocks.

The Exporter

The CBF-Irish Livestock and Meat Board (CBF) and the Delegation of the Commission of the European Communities (the Delegation) took the position that the finding should be rescinded.

CBF submitted that the threat of retaliatory action, which was fundamental to the CIT's original consideration of material injury, no longer exists in light of the FTA between Canada and the United States. It was pointed out that the United States did not retaliate when Nicaragua, after being barred from the U.S. market, increased its exports of boneless manufacturing beef to Canada during 1989 and 1990, which resulted in increased exports of Canadian beef to the United States. Counsel further argued that the FTA protects the Canadian producers from retaliatory action. The agreement provides for consultations prior to any retaliation and stipulates that quantitative restrictions could only be imposed for such a period as is necessary to prevent frustration of a U.S. action.

Counsel argued that there was no evidence to back up the CCA's allegations that the Irish producers would resume exporting boneless manufacturing beef to Canada in high volumes and at low prices. Further, counsel pointed out that during the original inquiry, when there was a recent history of substantial imports from the EEC, the CIT found only moderate price suppression and did not find past or present material injury.

Counsel submitted that there is a limit to Irish production of subject goods and that, during 1988, 1989 and 1990, Irish producers had sold all of their production of boneless manufacturing beef on the open market and that cow, bull and heifer beef was not eligible to be sold into intervention stocks in Ireland. Even if this meat could be sold into intervention stocks, these stocks cannot be sold to Canada and, therefore, do not threaten Canadian production of like goods.

Counsel further argued that Irish producers would sell their product wherever they could get the best return, which was not necessarily in Canada. In fact, sales to other markets such as Eastern Europe and the Middle East can result in higher returns to the exporter. The export restitution program, it was submitted, does not necessarily result in higher returns for export sales and, indeed, may result in lower returns than would be available in the EEC market.

CBF submitted that there is a North American market for subject goods which is distinctly segmented into two sub-markets, fresh and frozen boneless manufacturing beef. The fresh segment of the market is served by domestic production while the frozen

segment is served, for the most part, by imports. Therefore, imports do not have a great impact on the fresh market. Further, counsel argued that the prospects appear good in the North American beef market and the timing differences between the U.S. cattle cycle and the Canadian cattle cycle have a moderating effect on the fluctuations of supply and demand in this North American market.

Counsel argued that if the finding were rescinded and imports from the EEC did resume and cause problems for the industry, the CCA would have access to assistance through Agriculture Canada under the *Meat Import Act*,¹¹ and action would be undertaken if necessary.

The brief from the Delegation submitted that, since the finding, imports of boneless manufacturing beef into Canada from sources other than the EEC have more than replaced EEC imports, and have not resulted in a disruption in the Canadian market or, indirectly, in the U.S. market. The Delegation submitted that this proves the threat of likelihood of injury based on quantities of imports, as was foreseen in the CIT's finding, was unfounded.

THE PRODUCT AND THE INDUSTRY

Beef is the primary product resulting from the slaughter of cattle. The secondary products are hides, used for leather, and parts of the animal which are unfit for human consumption but have other uses. There are two types of beef; high-quality beef, derived from heifers and steers, and boneless manufacturing beef, derived primarily from cows culled from the cow-calf and dairy sectors. Boneless manufacturing beef is also derived from the carcass trimmings of heifers and steers.

The total Canadian cattle herd including bulls, cows, heifers, steers and calves is currently 11.2 million head. The Canadian cow-calf sector is comprised of over 100,000 operations, 60 percent of which are located in Western Canada. In 1990, the beef cow herd totalled 4.4 million head. The principal product of the cow-calf sector is weaned calves. When cows become less productive they are culled from the herd and sold for slaughter. Cow-calf operators may keep some weaned calves for backgrounder operations,¹² but they sell most weaned calves to feedlot operations where they are fed high-energy rations until they acquire the proper amount of finish in fat cover required by the market. They are then slaughtered, yielding mainly high-quality beef for the retail table trade.

There are about 14,000 feedlot operations in Canada with 49 percent of such operations being located west of the Ontario/Manitoba border while a high proportion of the balance is situated in Ontario and Quebec. Western operations are generally larger than those in the east, resulting in considerably larger total marketings of fed cattle in the west. The feeder calf herd totalled 3.6 million head in 1990.

There are 257,000 dairy farms in Canada, the majority being located in Eastern Canada, primarily Quebec and Ontario, where 73 percent of the dairy herd is located.

11. R.S.C., 1985, c. M-3.

12. Backgrounders are weaned calves that are fed low-energy rations stimulating growth. They are then sold to feedlots for final finishing.

The dairy herd totalled 2.1 million cows and heifers in 1990. Milk is the primary product, and calves produced in the dairy sector are the main source of veal sold in Canada. Cows are culled from the dairy herd when their milk production declines to unprofitable levels. As with cows from the cow-calf sector, these cows are slaughtered for the production of boneless manufacturing beef.

The domestic packer sector slaughters all types of cattle. In the case of high-quality cattle, that is heifers and steers, packers may slaughter, chill and process carcasses or they ship carcasses to further processors who produce what is called boxed beef. Boxed beef is simply carcasses broken down into primal cuts thus reducing the amount of labor required by the end user to turn these primal cuts into saleable product, namely, steaks and roasts. In Canada, there continue to be significant numbers of high-quality beef carcasses that are shipped directly from the packer to the retail trade.

In the case of culled cows, the packer again may slaughter and fully process these carcasses into boneless manufacturing beef. However, there are significant numbers of cow carcasses that are sent to further processors (boning plants) for the manufacture of boneless manufacturing beef. This beef is sold to food processors, retail outlets and patty manufacturers for further transformation into a variety of meat products such as hamburger, sausages/weiners, deli roast beef, smoked meats and prepared meats. A small percentage of beef from culled cows is suitable for direct sale to retail, mainly as loins and strips.

The industry standard for boneless manufacturing beef, which is to be ground into hamburger, is 85 percent chemical lean (fat content is 15 percent). The required lean content is achieved by blending the lean meat from culled cows with trimmings from heifer and steer carcasses containing specified fat content. Final products may have a lower or higher lean content depending on the requirements of the end user.

Beef accounts for about 40 percent of meat consumption in Canada, exceeding both pork and poultry, the other major meats making up the Canadian diet. The domestic producers' Canadian market for beef was estimated to be close to \$2.0 billion in 1990 of which almost \$500 million consisted of boneless manufacturing beef.

Boneless manufacturing beef is a commodity and is very price sensitive. The main buyers in the market are a small number of food processors and brokers who also import from many sources directly for sale in Canada. There is relatively little buyer loyalty, and changes in sources of supply are common for price differences of as little as 0.5¢/lb. with a significant impact on the volume of beef produced in Canada or imported from the various foreign sources. Although domestic boneless manufacturing beef is sold primarily in the fresh state and offshore product enters Canada in the frozen state, some buyers will switch from fresh to frozen if the price gap between the two becomes too wide. In Canada, fresh usually commands a higher price than frozen product.

DEVELOPMENTS AND ECONOMIC INDICATORS

The Tribunal heard testimony and considered evidence on developments in the Canadian beef industry and its recent performance. It reviewed structural developments during the 1980s and trends in production, markets, prices and trade since the 1986 finding. It also heard testimony and considered evidence on prospects for the industry in the 1990s.

Developments

The Tribunal found that there had been various developments and structural changes in the production and trade of beef and cattle. The domestic market for high-quality beef has been stagnant since 1986. However, the market for subject goods declined. There was a consensus among witnesses at the hearing that the overall market for beef will be flat, at best, in the future. This supports the projections for the 1990s in the study Agriculture Canada prepared for the Tribunal.

The Canadian packing sector has undergone and continues to undergo significant restructuring. There have been numerous plant closures in Eastern and Western Canada, and a much smaller number of firms now slaughter and process beef. While industry capacity has declined, utilization rates remain low. Many of the firms remaining in operation are unprofitable. Moreover, the industry has shifted to the west. Statistics collected by staff suggest that over half of Canada's beef packing capacity is now located in the west, primarily in Alberta.

The national cattle herd declined from 12.2 million head in 1981 to 10.6 million head in 1986. Since then it has been rebuilding. The total beef cow and feeder calf herds reached 4.4 million and 3.6 million head, respectively, in 1990, which is close to their levels in 1981. In contrast, the dairy herd declined by 400,000 head over the decade to 2.1 million head. According to evidence, the dairy herd can be expected to continue to decline for a variety of reasons, including improved productivity and slow growth in demand for milk.

The number of feedlot operations has declined since 1986. Feedlots have increased in size and there has been a shift in feeding operations from Ontario and Manitoba to Alberta. Over the decade, fed cattle marketings declined from 2.6 million to 2.4 million head.

Economic Indicators

The Tribunal found that domestic high-quality beef production declined by 6 percent from 1986 to 1990, while production of boneless manufacturing beef fell 16 percent over the same period.

Imports of high-quality beef increased from about 34 million lbs in 1986 to just over 100 million lbs in 1990. Imports of boneless manufacturing beef continued to increase after the 1986 finding and, by 1990, reached 131 million lbs, up about 30 million lbs from the level recorded in 1986.

Since 1986, domestic packers have faced a stagnant market for high-quality beef and a declining market for boneless manufacturing beef. Although they held a high-percentage share of the high-quality beef market in 1990 (about 90 percent) their share was nevertheless down about 7 percentage points from 1986. With respect to the boneless manufacturing beef market, the domestic packers' market share fell from about 80 percent in 1986 to just over 70 percent in 1990. Packers have partially offset their reduced production of high-quality and boneless manufacturing beef for the Canadian market by increased exports to the United States.

Nearly all high-quality beef imports originate in the United States. The recent large increase has been in what the trade calls "no-roll" beef, i.e., ungraded beef. Australia and New Zealand are major suppliers of boneless manufacturing beef to Canada. In 1988, however, imports from Nicaragua appeared on the scene in significant volume and, by 1989, they held about 10 percent of the domestic market. Although Nicaraguan imports declined in 1990, this decline was more than offset by increased imports from Australia, whose imports surged by over 50 percent over the previous year to reach more traditional levels.

Testimony by several witnesses and data on price movements have convinced the Tribunal of the price sensitivity of boneless manufacturing beef. Continuing import penetration since the finding was combined with stiff price competition, especially in 1990, when Australian imports regained market share from Nicaraguan imports. Price declines in frozen imported boneless manufacturing beef in 1990 were followed by lower prices for fresh product.

Developments in production, prices and trade in boneless manufacturing beef since 1986 have had repercussions for Canadian supply of fed steers and heifers, feeder calves and cows. Total marketings of culled cows dropped from 782,000 head in 1986 to 725,000 head in 1990. A large part of the decline in marketings of culled cows can be attributed to the rebuilding of the herd, which has been observed in the latter part of the 1980s. Further, a much larger proportion of marketings were shipped to the United States, starting in 1988. By 1990, 24 percent of total culled cow marketings were shipped to the United States, up from 17 percent in 1988 and just 5 percent in 1986. Thus, a smaller number of cows were slaughtered in Canada. As noted a number of factors contributed to this development. There were fewer animals marketed and an increasing share of marketings were sold in the United States. In addition, packers faced a declining domestic market and increased import competition.

Trends in marketings and exports of feeder cattle changed drastically in 1990 when just over 200,000 head were exported to the United States due to aggressive competition from U.S. packers. This development led to higher feeder cattle costs for Canadian feedlots and resulted in a reduction in profitability.

In examining price trends for beef, cows, fed cattle and feeder calves, the Tribunal notes that prices increased in 1987 and have remained relatively stable since that time. The Tribunal recognizes that cattle prices in the United States determine price levels in Canada and that Canadian prices track U.S. prices over time. In this regard, the Tribunal heard testimony that the U.S. cattle cycle is lagging about two years behind the Canadian cycle. This development could be expected to keep prices firm in the United States, and through price linkage, also keep Canadian prices firm over the medium term. This will in turn ensure continued demand for Canadian cattle. However, as the U.S. industry moves further into the cattle cycle, beef production in the United States will increase and prices will soften, and the repercussions will be felt in Canada. Beyond a softening of prices, Canadian producers will face reduced demand for beef and live animals in the U.S. market. The study carried out by Agriculture Canada tends to support this scenario into the 1990s.

As packers have been caught in a cost-price squeeze, they have been increasingly unable to bid competitively for animals to maintain adequate kill levels due to aggressive competition by U.S. packers for live animals. In addition, continuing import penetration

in a declining market has put pressure on their market share, which in turn has reduced profitability and affected their demand for live animals. The Tribunal considers that increased price differentials between Canadian and U.S. markets are at the origin of the increased exports to the United States.

REASONS FOR DECISION

In a review, the Tribunal considers two criteria to determine whether a finding should be continued. First, the evidence must satisfy the Tribunal that there is likely to be a resumption of subsidized imports if the finding is rescinded. Second, the Tribunal must be able to conclude from the evidence that the resumption of subsidized imports will be such as to likely cause material injury to the domestic production of like goods.

Resumption of Subsidized Imports

To assess the likelihood of a resumption of subsidized imports from the EEC, the Tribunal examined EEC support programs, production and markets in Ireland and the EEC. It considered, in particular, evidence provided by the parties and the testimony of witnesses for the exporter and for domestic producers.

The evidence indicates that the major European agricultural programs in existence at the time of the 1986 finding still remain in place. The Tribunal notes that the general effect of these programs is to generate beef production in excess of EEC demand and subsidize its storage or its exports to other countries. Beef intervention stocks, which have grown steadily and were reported to total 710,000 tonnes at the end of March 1991, approached the record level reached at the end of 1987.

The Tribunal accepts the submissions of counsel for CBF that intervention stocks cannot be sold to Canada. However, the Tribunal is of the view that these large stocks can have a significant effect on the EEC's overall export potential. Such stocks could easily be used to satisfy demand of existing customers of Irish and Danish boneless beef producers and hence free up, for export sales, current production which otherwise would be destined for traditional EEC markets. It is therefore possible to conclude that current and future production of boneless manufacturing beef by Irish and Danish producers could be easily diverted from traditional or existing customers and exported to Canada.

Based on the continued existence of the EEC agricultural support programs and the high intervention stock levels, the Tribunal concludes that the EEC has substantial export capacity and, consequently, would be easily capable of supplying the Canadian market with subsidized imports of boneless manufacturing beef that would reach or even exceed the volumes sold in 1984.

Likelihood of Material Injury

In examining whether a resumption of subsidized imports of boneless manufacturing beef from the EEC was likely to cause material injury to domestic producers, the Tribunal's primary focus was their potential impact on prices and volumes of boneless manufacturing beef and cows sold in Canada as well as the volume of feeder and fed cattle production in Canada. Testimony and factual developments since the 1986 finding have led the Tribunal to conclude that a resumption of subsidized

imports of boneless manufacturing beef from the EEC would likely cause material injury to domestic producers.

The Tribunal recognizes that there is a continental market for beef and cattle in North America. This means, in particular, that prices in the Canadian market are largely determined by supply and demand in the U.S. market. Another consideration is the nature of the product. Testimony and evidence were unanimous in considering boneless manufacturing beef to be a commodity. This means that, as a result of small changes in beef prices, there can also be relatively greater changes in the volume of beef, cows and steers produced and sold in the Canadian market.

Counsel for the CCA submitted that lower beef and cattle prices resulting from subsidized imports from the EEC would displace Canadian beef and cattle from the Canadian market into the U.S. market. This displacement would result in a lower domestic market share for the subject goods by Canadian producers. While the producers would likely be able to sell their cattle in the U.S. market, the net return to the producers would fall proportionately to the distance the cattle would have to be moved to be marketed into the United States.

Counsel for CBF submitted that exports to Canada would compete in the frozen segment of the boneless manufacturing beef market, a segment of the market that is not served to any major degree by the domestic producers. A resumption of imports from the EEC would not affect domestic producers. Counsel also submitted that the CIT's 1986 decision did not find past or present injury based on 1984 import levels.

The Tribunal notes that, in 1989 and 1990, net exports of cattle to the United States increased because of the prevailing market situation in the two countries. This resulted in domestic packers being unable to obtain sufficient quantities of cattle in order to compete in the Canadian market. In addition, the competition between Nicaragua and Australia intensified and, by the second quarter of 1990, prices of frozen boneless manufacturing beef fell by 9¢/lb. This decline led to a drop in fresh boneless manufacturing beef in the following quarter. Although prices stabilized in early 1991, the Tribunal concludes that not only does the price of frozen influence the price of fresh boneless manufacturing beef but, when the price spread between the two becomes too wide, purchasers will switch from fresh to frozen product. Therefore, it is abundantly clear that the fresh product, which is sold by the domestic producer, is affected directly by the price of frozen product, which is predominantly imported.

A witness who testified at the hearing indicated that, in 1984, EEC beef was shipped to Canada in much larger quantities than the market required, which resulted in market disruption and price declines. The witness stated that if EEC imports resumed, annual importations of 30 to 40 million lbs would be highly disruptive and prices could fall by more than 5¢/lb. Price declines of this magnitude, according to the witness, would reduce demand for cows in Canada and would lead to increasing exports of cows to the United States. It was also suggested that exporters of boneless manufacturing beef from other countries supplying Canada would reduce their prices to meet increased EEC competition in order to maintain their market share. This would further reduce domestic prices for boneless manufacturing beef.

The Tribunal considers that the boneless manufactured beef market is very price sensitive. To re-enter the market, EEC imports will need to be, and will be, priced below

current Canadian price levels. A key issue will be how other suppliers and the domestic industry will respond to a resumption of EEC imports.

It is clear from the evidence that some exporters will price to maintain their market share. This has occurred in the last five years as total imports increased significantly. Thus, the structure of the boneless beef market has changed since 1986. The Tribunal believes that exporters would continue to respond to competition from a resumption of EEC imports, seeking to maintain their presence in the Canadian market. Submissions by the AMLC indicate that, Australia in particular, which has a very large share of the U.S. import market, is unlikely to divert its beef shipments to that market because of concerns about the probable invocation of the U.S. *Meat Import Act of 1979*.¹³ The Tribunal is of the view that domestic suppliers of boneless manufacturing beef would likely be directly affected as domestic prices followed import prices down.

The Tribunal notes that the domestic packing industry is going through a very difficult period. Beef packing is in a major restructuring phase with many firms rationalizing their operations. There is evidence that the industry is in a weak financial position, and given the tight margins under which it operates, may not be able to respond to increased price competition. Under these circumstances, the industry would abandon significant market share and, consequently, production of boneless manufacturing beef, as well as demand for cattle, would be reduced. Even assuming that the financial performance of the industry were stronger, packers would have, in the face of further increased import competition and lower prices, the option of responding by lowering their prices. Such price reduction would lead to unsatisfactory margins. The evidence is clear that since the mid-1980s all the growth in imports was directly translated in reduced domestic production. It is therefore logical to conclude that any further market penetration by imports would directly affect domestic production.

The effects of lower prices caused by imports of boneless manufacturing beef would be transmitted through each of the sectors of the industry. If domestic packers chose to reduce their prices to compete with subsidized imports of EEC boneless manufacturing beef, they would find it more difficult to be competitive in purchasing cattle. Once packers' margins are reduced to the point where they would have to forego sales because of lack of profits, they would reduce production of boneless manufacturing beef and hence demand for domestic cows. Feedlot operators would be faced with lower price offerings from domestic packers. This would lead to lower profit margins and would, in turn, make it more difficult for them to compete against U.S. feedlots for feeder calves. Cow-calf operators would receive lower prices from domestic feedlots as domestic packers would be unable to match U.S. prices for fed animals.

With respect to revenues of cattle producers, the Tribunal notes that an expert witness estimated that a resumption of subsidized EEC beef imports in the range of 50 million lbs annually would result in a decline in revenue of as much as 8 percent. The Tribunal considers this decline to be significant and, combined with other market factors, it would have a material detrimental effect on Canadian producers.

The Tribunal reached these conclusions without considering the impact, on the industry, of retaliation by the United States against Canadian exports of live cattle or

13. *Supra*, footnote 10.

beef. In the Tribunal's view, domestic producers would likely suffer material injury from a resumption of subsidized imports from the EEC even if market access to the United States remains unchanged. It was not necessary, therefore, to consider the likelihood of U.S. trade action or its relevance to this review finding.

CONCLUSION

Based on the evidence before it, the Tribunal concludes that if the finding were rescinded, imports of subsidized boneless manufacturing beef would resume in substantial quantities. Subsidies will allow EEC exports to re-enter the market at price levels that will ensure that they capture market share. In the Tribunal's view, imports from the EEC would magnify the difficulties already facing the domestic industry as a result of growing imports from other sources and stagnant market conditions. If EEC imports resume, the Tribunal is convinced that domestic packers will either abandon market share or incur financial losses, and suppliers of live animals will face reduced sales in Canada. Accordingly, the Tribunal continues the finding of the Canadian Import Tribunal without amendment.

Sidney A. Fraleigh

Sidney A. Fraleigh

Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan

Member

Arthur B. Trudeau

Arthur B. Trudeau

Member