



Ottawa, Tuesday, March 21, 1995

**Review No.: RR-94-002**

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the findings of material injury made by the Anti-dumping Tribunal in its report dated August 7, 1984, in Inquiry No. GIC-1-84, continued without amendment by the Canadian International Trade Tribunal on March 16, 1990, in Review No. RR-89-003, concerning:

**SUBSIDIZED CANNED HAM UNDER 1.5 kg PER CAN, ORIGINATING IN OR EXPORTED FROM DENMARK AND THE NETHERLANDS, AND CANNED PORK-BASED LUNCHEON MEAT CONTAINING MORE THAN 20 PERCENT BY WEIGHT OF PORK, IN RESPECT OF WHICH A SUBSIDY HAS BEEN PAID DIRECTLY OR INDIRECTLY BY THE EUROPEAN ECONOMIC COMMUNITY**

**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 findings of material injury made by the Anti-dumping Tribunal in its report dated August 7, 1984, in Inquiry No. GIC-1-84, continued without amendment by the Canadian International Trade Tribunal on March 16, 1990, in Review No. RR-89-003.

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

Arthur B. Trudeau  
Arthur B. Trudeau  
Presiding Member

Raynald Guay  
Raynald Guay  
Member

Lyle M. Russell  
Lyle M. Russell  
Member

Nicole Pelletier  
Nicole Pelletier  
Acting Secretary



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**SUBSIDIZED CANNED HAM UNDER 1.5 kg PER CAN, ORIGINATING IN OR  
EXPORTED FROM DENMARK AND THE NETHERLANDS, AND  
CANNED PORK-BASED LUNCHEON MEAT CONTAINING MORE THAN  
20 PERCENT BY WEIGHT OF PORK, IN RESPECT OF WHICH  
A SUBSIDY HAS BEEN PAID DIRECTLY OR INDIRECTLY  
BY THE EUROPEAN ECONOMIC COMMUNITY**

*Special Import Measures Act* - Whether to rescind or continue, with or without amendment, the findings of material injury made by the Anti-dumping Tribunal in its report dated August 7, 1984, in Inquiry No. GIC-1-84, continued without amendment by the Canadian International Trade Tribunal on March 16, 1990, in Review No. RR-89-003.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	January 23 and 24, 1995
Date of Order and Reasons:	March 21, 1995
Tribunal Members:	Arthur B. Trudeau, Presiding Member Raynald Guay, Member Lyle M. Russell, Member
Director of Research:	Selik Shainfarber
Research Manager:	John O'Neill
Researchers:	W. Douglas Kemp Young-Hak Kim
Economist:	Ihn Ho Uhm
Statistical Officers:	Margaret Saumweber Marcie Doran
Counsel for the Tribunal:	Robert Desjardins
Registration and Distribution Officer:	Margaret J. Fisher

**Participants:**

G.P. (Patt) MacPherson  
Suzette C. Cousineau  
for Canadian Meat Council  
Maple Leaf Foods Inc.  
Gainers Inc.

**(Trade Association/Producers)**

Shawna Vogel  
for Department of Agriculture, Food and  
Rural Development  
Government of Alberta

**(Other)**

Richard S. Gottlieb  
Sharon E. Maloney  
for Midlon Foods Inc.

Robert G. de Valk  
for Broker's Choice Inc.

Jackson K. Shillito  
Shillito's Grocery Brokers &  
Importers Ltd.

**(Importers)**

**Witnesses:**

Larry M. Campbell  
Assistant General Manager/  
Secretary-Treasurer  
Canadian Meat Council

Randy Richards  
Director of Sales  
Gainers Inc. - Grocery Division

Brian Parteno  
Vice-President, Finance  
Gainers Inc.

Colin Farnum  
Technical Director  
Maple Leaf Grocery Products

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Darcy Willis  
Senior Trade Policy Analyst  
Department of Agriculture, Food and  
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Lewis N. Rose  
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Maple Leaf Grocery Products

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Biway Stores  
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Carol A. Hunt  
Vice-President  
Midlon Foods Inc.

Jackson K. Shillito  
President  
Shillito's Grocery Brokers & Importers Ltd.

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Ottawa, Tuesday, March 21, 1995

Review No.: RR-94-002

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the findings of material injury made by the Anti-dumping Tribunal in its report dated August 7, 1984, in Inquiry No. GIC-1-84, continued without amendment by the Canadian International Trade Tribunal on March 16, 1990, in Review RR-89-003, concerning:

**SUBSIDIZED CANNED HAM UNDER 1.5 kg PER CAN, ORIGINATING IN OR EXPORTED FROM DENMARK AND THE NETHERLANDS, AND CANNED PORK-BASED LUNCHEON MEAT CONTAINING MORE THAN 20 PERCENT BY WEIGHT OF PORK, IN RESPECT OF WHICH A SUBSIDY HAS BEEN PAID DIRECTLY OR INDIRECTLY BY THE EUROPEAN ECONOMIC COMMUNITY**

TRIBUNAL:           ARTHUR B. TRUDEAU, Presiding Member  
                          RAYNALD GUAY, Member  
                          LYLE M. RUSSELL, Member

**STATEMENT OF REASONS**

**BACKGROUND**

This is a review, under subsection 76(2) of the *Special Import Measures Act*<sup>1</sup> (SIMA), of the findings of material injury made by the Anti-dumping Tribunal (the ADT) in its report dated August 7, 1984, in Inquiry No. GIC-1-84 (the 1984 findings), continued without amendment by the Canadian International Trade Tribunal (the Tribunal) on March 16, 1990, in Review No. RR-89-003, concerning subsidized canned ham under 1.5 kg per can, originating in or exported from Denmark and the Netherlands, and canned pork-based luncheon meat containing more than 20 percent by weight of pork, in respect of which a subsidy has been paid directly or indirectly by the European Economic Community.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the 1984 findings and issued a notice of review<sup>2</sup> on October 14, 1994. This notice was forwarded to all known interested parties.

As part of this review, the Tribunal sent questionnaires to domestic producers, importers and purchasers of the subject goods. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports. As part of its research activities, the Tribunal's research staff contacted domestic producers and importers in order to answer any questions pertaining to the questionnaires. In addition, the record of this review consists of all relevant documents, including the 1984 findings, the notice of review and public and confidential replies to the questionnaires.

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

2. Canada Gazette Part I, Vol. 128, No. 43, October 22, 1994, at 4273.

All public exhibits were made available to interested parties, while protected exhibits were provided only to independent counsel who had filed a declaration and confidentiality undertaking with the Tribunal.

Public and *in camera* hearings were held in Ottawa, Ontario, on January 23 and 24, 1995.

On the industry side, the Canadian Meat Council, Maple Leaf Foods Inc. (Maple Leaf) and Gainers Inc. (Gainers) were represented by counsel at the hearing. They submitted evidence and made argument in support of continuing the 1984 findings.

On the importers' side, Midlon Foods Inc. (Midlon) and Broker's Choice Inc. (Broker's Choice) were represented by counsel at the hearing, while Shillito's Grocery Brokers & Importers Ltd. (Shillito) was represented by its president. They submitted evidence and made argument in support of rescinding the 1984 findings.

In addition, the Department of Agriculture, Food and Rural Development of the Government of Alberta was represented by counsel at the hearing who made argument in support of continuing the 1984 findings.

## **PRODUCTS**

The products under consideration in this review are described in the 1984 findings as:

- subsidized canned ham under 1.5 kg per can, originating in or exported from Denmark and the Netherlands; and
- canned pork-based luncheon meat containing more than 20 percent by weight of pork, in respect of which a subsidy has been paid directly or indirectly by the European Economic Community.<sup>3</sup>

Canned ham is made from the hind leg of a pig. It is a pre-cooked, shelf-stable convenience item which has been purchased by consumers for many years. Ham in can sizes under 1.5 kg (about 3.3 lbs) is sold to the retail trade in three sizes: 425 g (15 oz.), 454 g (1 lb.) and 680 g (1.5 lbs). Ham in can sizes of 1.5 kg and over is sold to the food service industry and is not subject to this review.

Canned pork-based luncheon meat<sup>4</sup> is used primarily as a sandwich filler and is sold in oblong 340-g (12-oz.) cans to retail stores. Demand is seasonal in nature, with the lowest volumes sold between the months of June and September.

The domestic producers sell canned ham and canned luncheon meat to retailers under their national premium and second-line brands. Promotions and discounts are offered to retailers on sales of premium brands in order to achieve maximum sales. The difference in price between premium and second-line brands reflects different formulations and lack of advertising support for the second-line brands. The domestic producers may also sell the products under retailers' house brands.

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3. The European Economic Community is hereinafter referred to as the European Union (the EU).

4. Canned pork-based luncheon meat is hereinafter referred to as "canned luncheon meat."

## **DOMESTIC INDUSTRY**

The Canadian Meat Council, on behalf of its members, which included Canada Packers Inc. (Canada Packers) and Gainers, was the complainant in the 1984 inquiry. Burns Meats Ltd. (Burns) and Montalban Enterprises Ltd. (Montalban) supported that complaint. During the period between the 1984 findings and the 1990 review, there were major changes in the composition of the domestic industry; Montalban ceased producing the subject goods, and Canada Packers acquired the Burns canned meat product lines and production equipment in 1984. Another domestic producer of canned ham, F.W. Fearman Company, Limited, ceased production in 1987. Finally, in 1989, Gainers, which had been owned by Pocklington Foods Inc., was purchased by the Government of Alberta.

The domestic industry continued to evolve following the 1990 review of the 1984 findings. Canada Packers merged with Maple Leaf Mills to form Maple Leaf, a company controlled by Hillsdown Holdings PLC of Great Britain. All of Maple Leaf's canned meats are still produced at one facility located in Toronto, Ontario. Its canned meats comprise canned ham, canned picnic, canned luncheon meat and canned flaked meat products. Maple Leaf continues to market canned ham through its own sales force to the retail trade under the brand names of "Maple Leaf," "Maple Leaf Lean and Tender" and "Burns." Its canned luncheon meat brands include "Klik," "Kam," "Spork" and "Roy-All."

In January 1994, a general partnership called Pride of Alberta Meat Processors Company purchased the assets of Gainers' meat division from the Government of Alberta. Burns Foods (1985) Limited is the general partner, with a 90 percent interest. The partnership continues to operate under the trade name of "Gainers." The canning department is located in Edmonton, Alberta, and has been operating in this facility since the late 1930s. Gainers markets canned ham under the brand names of "Swift Premium," "Holiday" and "No-Name." Its canned luncheon meat brands include "Prem," "Co-op," "Holiday" and "No-Name."

In June 1994, T.J. Lipton, A Division of UL Canada Inc. (Lipton), located in Richmond, British Columbia, entered the domestic industry producing canned luncheon meat. It packs the product in 360-g round cans rather than in the conventional 340-g oblong cans and sells it under the brand name of "Ma Ling."

Maple Leaf and Gainers currently account for the vast majority of domestic production of the subject goods.

## **SUMMARY OF THE 1984 REPORT**

The Canadian Meat Council and four major domestic producers of the subject goods, Burns, Canada Packers, Gainers and Montalban, submitted that importers of canned ham, canned picnic<sup>5</sup> and canned luncheon meat from Denmark and the Netherlands had made substantial market share gains in the domestic market and that these gains could not have been achieved without the EU export subsidies. The corresponding losses of market share by the domestic industry were reflected in a reduction of sales and loss of production, employment, gross margins and net profits.

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5. The ADT found no material injury with respect to subsidized imports of canned picnic.

In its consideration of material injury, the ADT examined the impact of subsidized imports on the production in Canada of each of the subject goods.

### **Canned Ham**

The ADT noted that the market declined by about 5 percent annually over the 10 years preceding the 1984 findings. This decline in demand and the fluctuations which occurred during the period were a reflection of the product's status as a convenience food that competed in a much wider sandwich filler market, as well as in a food consumption market which was experiencing shifts in consumer tastes. Against this background of falling demand and strong competition, the ADT concluded that, by 1983, the subsidy had created a price gap between the domestically produced goods and the subsidized imported goods that was sufficiently large to offset consumer loyalty for the domestic product.

The ADT found that, in 1983, subsidized imports had prevented the domestic industry from recovering from the unsatisfactory profitability sustained during 1982. As well, this deterioration in profitability continued into 1984. If countervailing measures were not taken, it was concluded that the domestic industry's performance would likely deteriorate further.

On the basis of the evidence, the ADT found that the importation of the subsidized subject canned ham had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

### **Canned Luncheon Meat**

This market also declined by about 5 percent annually over the 10 years preceding the 1984 findings. This decline was attributed to the growing influence of fast food outlets and the widening of the range of substitute products, including deli-type foods.

At the beginning of the 1980s, the domestic producers were a dominant force in the market, with a share of 97 percent. During 1982, with the sharp increase in Canadian pigmeat prices, the price gap between the domestic product and the subsidized Danish and Dutch canned luncheon meat widened. The gap resulted in subsidized imports from these sources gaining a total of 8 percentage points of market share, thereby reducing the domestic producers' share to just under 90 percent.

This situation continued to deteriorate in 1983. The ADT held that, if the price gap were not narrowed by the application of countervailing duties, the domestic industry's sales of premium brand canned luncheon meat, which were of major importance, would decline, and sales by the domestic industry of second-line products would disappear from the market entirely.

Accordingly, the ADT found that the importation of the subsidized subject canned luncheon meat had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

### **SUMMARY OF THE 1990 REVIEW**

Upon review of the 1984 findings, the Tribunal found that imports of both canned ham and canned luncheon meat had decreased substantially in the years subsequent to the 1984 findings and that the domestic



industry had recaptured both the market share and profitability which had been lost in the early 1980s as a result of subsidized imports. However, in the Tribunal's view, the most important factor in the 1990 review was the level of export subsidy available to the two products. The Tribunal was persuaded that there was a direct correlation between the level of export subsidy and the injury which would be suffered by the domestic industry if the findings were rescinded.

### **Canned Ham**

At the time of the 1990 review, the export subsidy on canned ham was \$0.40/lb. (about \$0.88/kg). At that level, it was at least as high as that prevailing at the time of the 1984 findings and represented from 15 to 25 percent of the wholesale selling price of canned ham. In the Tribunal's opinion, the magnitude of the export subsidy would have provided importers with a substantial price advantage in the marketplace if the findings had been rescinded. The Tribunal felt that the impact of a rescission would have been immediate in the case of second-line brands and would have ultimately affected the premium brands, given the erosion of brand loyalty seen in recent years.

Since the level of export subsidy in 1990 was at least as high as that prevailing at the time of the 1984 inquiry, the Tribunal considered that a rescission of the finding relating to canned ham would have led both to a significant reduction in sales and to a significant reduction in profitability for the domestic industry. For these reasons, the Tribunal found that the finding relating to canned ham should be continued without amendment.

### **Canned Luncheon Meat**

The Tribunal found that the domestic industry had also increased its production and sales of canned luncheon meat and had recaptured the market share lost in the 1980s. As a result, profit levels had improved. However, despite the increases in profitability, there had been no significant price increases for canned luncheon meat, reflecting the significant level of competition between the domestic producers.

As in the case of canned ham, the level of export subsidy for canned luncheon meat remained significant in 1990. In fact, the export subsidy on canned luncheon meat, at about \$0.25/lb. (\$0.55/kg), was higher in 1990 than it had been at the time of the 1984 inquiry and was proportionately as important as the export subsidy on canned ham. Referring to evidence provided by a domestic producer, the Tribunal noted that, in the absence of countervailing duties, the export subsidy on canned luncheon meat provided a distinct retail price advantage for imported products. The Tribunal was of the view that such a price spread would have provided a strong incentive for certain retailers to switch product sourcing to the EU countries. This, in turn, would have led to volume losses and a downward pressure on prices resulting in a severe loss of profitability. For these reasons, the Tribunal found that the finding relating to canned luncheon meat should be continued without amendment.

## **POSITION OF THE PARTIES**

### **Domestic Industry**

Counsel for the domestic industry submitted that, while much had changed since the 1990 review, much had also remained the same. The EU continues to bar imported agricultural products from its markets,

and it has not ceased to subsidize its exports to Canada and to other export markets of interest to domestic producers. The amount of subsidizing had changed from time to time, almost disappearing shortly after the 1984 findings, then soaring to record levels in 1992, before declining to its present levels, which are approximately the same as those prevailing in January 1985, a few months after the 1984 findings. Counsel noted that the subsidies were still approximately 10 percent of the average selling price of canned ham and 13 percent of the average selling price of canned luncheon meat. Further, the available subsidies are greater in value than any of the controllable cost components incurred by the domestic producers.

Since the 1990 review, counsel for the domestic industry stated that both major domestic producers had undergone changes in ownership. Maple Leaf, formerly Canada Packers, had rationalized its operations, shed unprofitable components and committed new capital investment to its canned meat business, all with an eye to achieving a satisfactory return on its investment. Counsel pointed to testimony that suggested that prices of canned ham and canned luncheon meat were difficult to increase, even in the face of rising costs. The domestic industry has had little opportunity to increase prices, and, consequently, the margins for these products have been squeezed. Counsel argued that the continuation of the 1984 findings remained acutely important to the well-being of the domestic industry.

Counsel for the domestic industry noted that the economy or second-line brands represent an increasing proportion of domestic production. This market segment, counsel claimed, behaves in a manner different from the premium segment of the markets. In the economy segment, switching between products can occur quickly, for small amounts of money, and, in many cases, retailers carry only one economy brand of a product. It is the economy segment, counsel submitted, that would be impacted first by the availability of low-priced imports. Consequently, the proportion of the market that is immediately vulnerable to subsidized imports is greater than it was at the time of the 1990 review. In the premium segment of the markets, factors such as brand loyalty and listing costs slow down the switching process in the short term, although price is still an important factor in that segment of the markets. Therefore, counsel submitted, the premium products are also vulnerable to market erosion and longer-term injury from subsidized imports.

Counsel for the domestic industry noted that, in the U.S. market, where there are no countervailing duties or other impediments on the importation of these products, import statistics for canned ham and canned luncheon meat from Denmark and the Netherlands totalled more than twice the entire market for either canned ham or canned luncheon meat in Canada.

In conclusion, counsel for the domestic industry submitted that, in the absence of countervailing duties, it is clearly imminent and foreseeable that a resurgence of subsidized imports into Canada will occur, causing a recurrence of material injury to the production in Canada of like goods. Consequently, counsel maintained that the 1984 findings should be continued without amendment.

### **Government of Alberta**

Counsel for the Government of Alberta submitted argument in support of the domestic industry's position that the 1984 findings should be continued. In counsel's brief, it was argued that the pork-processing industry is an important and growing sector of the agri-food industry in Alberta and is vulnerable to injury caused by the resurgence of subsidized imports of canned ham and canned luncheon meat.

The Government of Alberta is a strong advocate of open global markets generally and the reduction of production- and trade-distorting subsidies in particular. Counsel for the Government of Alberta submitted that the EU export subsidies had not been eliminated or reduced to a point where they would preclude injury. Counsel submitted that export subsidies for processed products, such as canned ham and canned luncheon meat, had implications beyond those normally associated with the subsidizing of primary products, due to heavy investment requirements for production, as well as for market and product development.

In light of these factors, counsel for the Government of Alberta submitted that subsidized imports from the EU should not be allowed unimpeded access to the domestic markets.

## **Importers**

### Midlon Foods Inc.

Counsel for Midlon stated that the question in this review is whether, in the absence of countervailing duties, subsidized goods would be shipped to Canada at such prices or in such volumes as to cause material injury to production in Canada. They submitted that such would not be the case.

Counsel for Midlon noted that the domestic markets are declining and that there are trends toward a wide range of substitute products, which keep prices for the subject goods down. In addition, brand identification with the domestically produced national brands obviates the need for unbranded products at the popular price points. In any case, the price gap between imported and domestically produced goods, found by the ADT in 1984, has not only disappeared, but has reversed. Furthermore, the evidence indicates that one of the domestic producers was always the lowest-priced, most aggressive company in these markets. Counsel cited evidence provided by the domestic industry concerning the prices of European canned ham and canned luncheon meat available for sale in the United States, as well as Midlon's price quotation evidence, as proof that products from Denmark and the Netherlands could not undercut, or be competitive with, Canadian prices.

In the view of counsel for Midlon, the amount of the export subsidy is only relevant if the product is competitively priced with the domestic product. While the Tribunal found that, in 1990, the amounts of the export subsidies were greater than they were in 1984, that situation has changed and export subsidy amounts have declined from the levels found in 1990. Finally, counsel submitted that the export subsidies no longer provided distinct retail price advantages as found by the Tribunal in the 1990 review.

Regarding the U.S. market for similar goods, counsel for Midlon argued that the European products had a relatively small percentage of that market, and their presence in that market has not deterred the domestic producers from targeting the U.S. market for potential export growth.

The domestic industry, counsel for Midlon submitted, is not vulnerable to the resurgence of subsidized imports, but is healthy and able to withstand any competition which may come from the subject countries. Gainers' financial results speak for themselves, while Maple Leaf has restructured and is poised to be a major player in its chosen markets. Both companies expressed confidence in the future and neither asserted that it would cease production or curtail investment if the 1984 findings were rescinded.

Broker's Choice Inc.

Counsel for Broker's Choice submitted that the Tribunal's order in 1990 to continue the 1984 findings was based on four factors: (1) the existence of the export subsidy; (2) the upward trend in Canadian hog prices; (3) the upward trend in the Canadian dollar; and (4) a growing price gap between imported and domestic products. Counsel argued that all four factors had either changed or been eliminated.

With regard to the present situation, first, the export subsidy still exists, but has been reduced and capped by the *World Trade Organization Agreement on Agriculture*<sup>6</sup> (the WTO Agreement), which calls for further reductions over the next six years. In addition, counsel for Broker's Choice strongly doubted that the EU would use the export subsidy to target the subject goods. Second, hog prices in Canada and in the EU have declined in recent periods. Third, the downward trend in the exchange rate between the Canadian dollar and European currencies should not present problems to the domestic producers. Finally, counsel submitted that the price gap between products of like quality had been eliminated.

Brand loyalty has become a more important factor, providing some measure of protection to the domestic producers. In addition, counsel for Broker's Choice argued that price alone was no longer sufficient to maintain or gain market share and that prevailing prices for the domestically produced goods were determined more by substitute products than by the imported subject goods. Further, testimony indicated that importers are more likely to increase their margins than to decrease their selling prices if the 1984 findings are rescinded.

Counsel for Broker's Choice contended that the domestic industry did not present a convincing case of imminent material injury if the 1984 findings were rescinded. There were no claims of significant market share losses or other indicators of material injury.

In conclusion, counsel for Broker's Choice argued that the 1984 findings are no longer preventing injury, but, rather, are giving the domestic producers an edge over imported products and, consequently, should be rescinded.

Shillito's Grocery Brokers & Importers Ltd.

Shillito's representative supported the arguments put forward by counsel for Midlon and counsel for Broker's Choice that the 1984 findings should be rescinded.

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6. Signed at Marrakesh on April 15, 1994.

## **ECONOMIC INDICATORS AND EXPORT SUBSIDY LEVELS**

### **Economic Indicators**

For the purposes of this review, the Tribunal collected and analyzed the relevant statistics for the full years 1989 through 1993 and for the first nine months of 1994.<sup>7</sup>

Between 1989 and 1993, the last full year for which information was available, the volume of the total apparent market for canned ham declined by 10 percent. During the same time period, the volume of the total apparent market for canned luncheon meat declined by 14 percent. Data for the first nine months of 1994, compared to the first nine months of 1993, indicate that these trends are continuing. These downward trends in market volume continue long-term trends identified by the ADT in the 1984 inquiry and by the Tribunal during the 1990 review. Between 1980, the first year for which the ADT collected market data, and 1993, the volume of the total apparent market for canned ham declined by over 20 percent, while the volume of the total apparent market for canned luncheon meat declined by over 30 percent.

The domestic production of canned ham increased between 1989 and 1991, then declined during the subsequent two years to a level approximately equal to that reported in 1989. The domestic production of canned luncheon meat followed a generally declining trend, falling almost 16 percent from 1989 to 1993. The bulk of the production decline was felt by the premium brand of canned luncheon meat, which fell by almost 35 percent. This decline was somewhat offset by increases of almost 19 percent in the production of second-line canned luncheon meat.

The domestic industry's share of the declining market for canned ham decreased during the first two years of the review period from more than 85 percent in 1989 to less than 75 percent in 1991, then increased to reach over 95 percent in 1993 and in the first nine months of 1994. As for the market for canned luncheon meat, the domestic producers held over 95 percent of the market until 1993, when their share declined a few percentage points and stayed at the reduced level during the first nine months of 1994.

Imports of canned ham from the subject countries fluctuated considerably during the review period, but at all times accounted for less than 4 percent of the total apparent market. During the first nine months of 1994, no imports of canned ham from the subject countries were reported. Imports of canned luncheon meat generally followed the same pattern, fluctuating and accounting for less than 4 percent of the total apparent market in all periods, including the first nine months of 1994.

Imports of canned ham from non-subject countries increased between 1989 and 1991, when they accounted for over 25 percent of the market, declined in 1992 and fell to negligible levels in 1993 and in the first nine months of 1994. These non-subject imports of canned ham were primarily from Eastern European countries such as Romania and the former Yugoslavia. Imports of canned luncheon meat from non-subject sources fluctuated between 0 and 5 percent of the total apparent market during the review period. The major

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7. Due to the small number of domestic producers and importers involved in this review, most of the production, import and financial data, even in aggregate form, cannot be precisely disclosed in order to protect the confidentiality of the data. Where possible, the approximate percentage or general range of magnitude will be given.

sources of these non-subject imports of canned luncheon meat were Finland in the early years of the review period and the United States during 1993 and the first nine months of 1994.

During the six fiscal years from 1988-89 to 1993-94, on a combined basis, the domestic industry reported losses on its sales of canned ham in each fiscal year except 1990-91 and 1991-92. During the last two fiscal years, the combined industry lost several hundred thousand dollars, representing almost 3 percent of net sales value for canned ham. In contrast, the financial results for canned luncheon meat show a net income in each of the six fiscal years. The income earned reached over 10 percent of net sales during 1991-92, although, over the past two fiscal years, profitability as a percentage of sales has declined substantially.

Table 1 presents the average market selling prices<sup>8</sup> of canned ham and canned luncheon meat during the period under review.

<b>Table 1</b>						
<b>Canned Ham and Canned Luncheon Meat</b>						
<b>Average Market Selling Prices</b>						
<b>\$/kg</b>						
	<u><b>1989</b></u>	<u><b>1990</b></u>	<u><b>1991</b></u>	<u><b>1992</b></u>	<u><b>1993</b></u>	<u><b>Jan.-Sept. 1994</b></u>
Canned Ham	5.71	5.31	5.43	5.46	5.58	5.16
Canned Luncheon Meat	3.75	3.72	3.91	3.82	3.91	4.03

Source: Replies to questionnaires and Statistics Canada.

Average market selling prices of canned ham fluctuated during the review period and, by 1993, were moderately lower than they were in 1989. During the first nine months of 1994, average market selling prices of canned ham dropped sharply by 7 percent from those reported in 1993.

Average market selling prices of canned luncheon meat fluctuated during the review period, starting at \$3.75/kg in 1989 and ending at \$4.03/kg during the first nine months of 1994, an overall increase of approximately 7 percent.

### **Export Subsidy Levels**

The levels of export refund payments for canned ham and for canned luncheon meat to exporters in the EU have varied considerably since the time of the 1984 inquiry. Table 2 presents the export refund payment amounts, expressed in Canadian dollars, for canned ham and for canned luncheon meat at

8. The average market selling prices represent those of various can sizes and of both premium and second-line brands. These averages may be affected by changes in product mix and other variables. However, the Tribunal considers these average market selling prices to be a reasonable proxy for overall trends in the market.

five points in time: (1) August 1984, the date of the ADT's findings; (2) June 1985, the date showing the lowest amount reported since the 1984 findings; (3) March 1990, the date of the Tribunal's order continuing the findings; (4) October 1992, the date showing the highest amount reported since the 1984 findings; and (5) October 1994, the date showing the most recent information on the record of this review.

**Table 2**  
**Canned Ham and Canned Luncheon Meat**  
**Export Refund Payment Amounts**  
**ECUs<sup>1</sup>/kg and CAN\$/kg**

	<b>August <u>1984</u></b>	<b>Low June <u>1985</u></b>	<b>March <u>1990</u></b>	<b>High October <u>1992</u></b>	<b>October <u>1994</u></b>
<b>Canned Ham (ECU/kg)</b>	<b>0.50</b>	<b>0.06</b>	<b>0.57</b>	<b>0.85</b>	<b>0.35</b>
Denmark (CAN\$/kg)	0.54	0.06	0.92	1.66	0.74
The Netherlands (CAN\$/kg)	0.73	0.11	0.92	1.68	0.74
<b>Canned Luncheon Meat (ECU/kg)</b>	<b>0.26</b>	<b>0.04</b>	<b>0.36</b>	<b>0.36</b>	<b>0.17</b>
Denmark (CAN\$/kg)	0.28	0.04	0.58	0.70	0.36
The Netherlands (CAN\$/kg)	0.39	0.07	0.57	0.71	0.36

Note:

1. ECU = European Currency Unit.

Source: Public Pre-Hearing Staff Report, December 19, 1994, Tribunal Exhibit RR-94-002-5, Schedule 14, Administrative Record, Vol. 1 at 247-54.

As the information in Table 2 indicates, the current levels of export subsidies, expressed in Canadian dollars (as of October 1994), are, in all cases but one, higher than they were at the time of the 1984 findings. In the one instance where the export subsidy is lower than it was in August 1984, it is only marginally lower, \$0.03/kg, or approximately \$0.01/340-g can of luncheon meat.

### **REASONS FOR DECISION**

In deciding whether to continue the 1984 findings, the Tribunal must consider two questions. First, the Tribunal must be satisfied that, if the findings are rescinded, there is likely to be a resurgence of subsidized imports of canned ham or canned luncheon meat in the domestic market. Second, the Tribunal must also be satisfied that, if there is such a resurgence, it is likely to cause material injury to the production in Canada of like goods.

#### **Likelihood of a Resurgence of Subsidized Imports**

The Tribunal notes that, prior to the 1984 findings, the subject imports had made substantial inroads on the domestic market with the aid of export subsidies. When the advantage offered by these subsidies was eliminated by the imposition of countervailing duties, the subject imports quickly declined to relatively insignificant levels, where they have remained for the past 10 years. The Tribunal believes that, if the

advantage offered by the subsidies were reinstated by the rescission of the findings and the elimination of the countervailing duties, there is a significant risk that subsidized imports from the subject sources would become available in the domestic market at low prices and in substantial volumes.

In coming to this conclusion, the Tribunal has examined the available information on the relevant EU subsidy program, the effect that the recent WTO Agreement may have on this program in the near-to-medium term and the magnitude of the actual subsidies paid out under the program in relation to Canadian prices and purchasing decisions. The Tribunal has also looked at the information pertaining to the export capacity of the European sources of the subject goods.

Turning first to the relevant subsidy program, the Tribunal notes that it is part of the EU's Export Refund Program for pigmeat under its Common Agricultural Policy. This program is still in place and will continue to be in place in the foreseeable future.<sup>9</sup> This program provides export refund payments to EU exporters of pigmeat products, including the subject goods. According to the regulations governing this program, the export refund payment amounts are set at least quarterly and may vary according to export destination.<sup>10</sup> The setting of the export refund payment amount is not a mechanical exercise, but is done taking into consideration, among other things, the prices and supplies of pigmeat products in the EU, the prices and supplies of pigmeat products in world markets, the difference in hog feed grain costs in world and EU markets and the competitive conditions in third country markets. Thus, there is flexibility available to the administrators of this program in setting the specific export refund payment amounts for the products covered.

As part of the WTO Agreement, the EU has committed to reducing export subsidies on agricultural products, including pigmeat products. The WTO Agreement calls for reductions of 36 percent in the total value of export subsidies on all pigmeat products and reductions of 21 percent in the total volume of subsidized pigmeat exports, phased in over a six-year period, ending in the year 2000. The starting points for these reductions, however, are base period levels that represent the average annual volume of subsidized exports and the average total value of subsidies that prevailed during the years 1986 to 1990 inclusive.<sup>11</sup>

The Tribunal observes that, during much of the period from 1986 to 1990, the subsidy rates on exports of canned ham and canned luncheon meat were at high levels.<sup>12</sup> Thus, base levels derived from this period, as agreed under the WTO Agreement, appear to reflect a rather high starting point for reductions in the pigmeat sector. Given this starting point, it follows that pigmeat subsidy rates may remain at relatively high levels for a number of years to come, even as they are gradually reduced under the WTO Agreement. Furthermore, the Tribunal notes that the WTO reduction commitments apply to the pigmeat sector in total, not to specific products within the sector. This means that subsidies for certain products within the sector, such as the subject canned ham and canned luncheon meat, may be increased and others decreased, provided that reduction commitments for the sector, as a whole, are met.

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9. Tribunal Exhibit RR-94-002-23A, Administrative Record, Vol. 1A at 23-26.

10. *Ibid.* at 27-30.

11. Public Pre-Hearing Staff Report, December 19, 1994, Tribunal Exhibit RR-94-002-5, Administrative Record, Vol. 1 at 176-79.

12. *Ibid.* at 247-54.



Looking at the significance of the actual subsidy rates on the subject goods, the Tribunal observes that they have fluctuated widely over the last 10 years as set out in Table 2. Most recently, as of October 1994, subsidy rates are comparable, in Canadian dollar terms, to the rates prevailing at the time of the 1984 findings. Moreover, the October 1994 rates are only somewhat under the midpoint of their 10-year range both in Canadian dollars and ECUs/kg. In terms of Canadian selling prices, the subsidies, at their present rates, represent approximately 10 percent of the average wholesale price of canned ham and approximately 13 percent of the average wholesale price of canned luncheon meat. Although these percentages are lower than they were at the time of the 1990 review, in the opinion of the Tribunal, they are still at levels which are substantial enough to make subsidized European products attractive in the domestic market and cause Canadian buyers to switch from domestic to import sources. This is evident from the testimony of a number of witnesses, including a witness for a major mass merchandiser,<sup>13</sup> which reveals that, in the case of both canned ham and canned luncheon meat, the subsidies are larger than the amount that it would take to change suppliers.

Turning to European export capacity, the Tribunal observes that there has been no evidence to indicate that European production, productive capacities or export capacities for the subject goods have declined during the period under review. The evidence available to the Tribunal, in the form of U.S. import statistics for the tariff codes which include canned ham and canned luncheon meat, for the period from 1990 to July 1994, indicates significant levels of shipments from Denmark and the Netherlands to the United States.<sup>14</sup> Indeed, the annual quantities shipped from those two countries were generally more than twice the total domestic market for either canned ham or canned luncheon meat. These figures indicate, in the Tribunal's view, substantial capacity to continue supplying the subject goods to export markets, including Canada.

Counsel for Midlon argued, in effect, that there is not likely to be a resurgence of subject imports since, currently, they are not price competitive with domestically produced canned ham or canned luncheon meat, even in the absence of countervailing duties. In support of this contention, counsel submitted wholesale price quotations from three suppliers of EU products, that were requested in early January 1995, covering two brands of canned ham and three brands of canned luncheon meat. According to these quotations, import prices, even without countervailing duties, were higher than Canadian wholesale prices for canned ham and canned luncheon meat.<sup>15</sup> At these prices, counsel contended, these products could not currently be sold at the popular retail price points.

The above evidence does not convince the Tribunal that there would not be a resurgence of subsidized imports of canned ham or canned luncheon meat if the findings were rescinded. First, the import prices cited by counsel for Midlon are based on a very small product sample,<sup>16</sup> and it is not clear to the Tribunal how representative these prices are of import prices generally. According to the evidence, there is a wide range of canned ham and canned luncheon meat products available from Danish and Dutch sources.

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13. Transcript of Public Hearing, January 23 and 24, 1995, at 120-21; and Transcript of In Camera Hearing, January 23 and 24, 1995, at 50-51.

14. Manufacturer's Exhibit A-1B, Administrative Record, Vol. 7.

15. Importer's Exhibits D2, D3.1, D3.2 and D3.3 (protected), Administrative Record, Vol. 10.

16. Price quotations for one brand of canned ham from each of two suppliers and for one brand of canned luncheon meat from each of three suppliers, for a total of five individual brands of product.

Second, these import prices represent supplier quotes, not actual sales. As such, they may reflect opening offers that could be subject to further negotiation rather than final transaction prices.

In any event, these import price quotations reflect conditions that prevailed at a specific moment in the recent past, namely, January 1995. These conditions included a very low value of the Canadian dollar against the U.S. dollar, as well as against both Dutch and Danish currencies. Indeed, the U.S. value of the Canadian dollar has hovered near its all-time lowest levels over the past few months. These low values of the Canadian dollar are reflected in higher prices of imports, including the January 1995 price quotations for the subject canned ham and canned luncheon meat submitted by counsel for Midlon. However, the Tribunal considers these prices to be transient in nature. This becomes evident if one goes back to 1993 and 1994, when, according to the data available to the Tribunal, the subject imports were sold in Canada at competitive prices, even after the imposition of countervailing duties.<sup>17</sup>

Moreover, looking to the future, it is apparent that, if the Canadian dollar were to strengthen from its current levels, the price of the subject goods could quickly fall, in Canadian dollar terms, and any present gap between domestic prices and those of subsidized imports could be rapidly eliminated, in whole or in part. While the future value of the Canadian dollar will, of course, be subject to the vagaries of the international money markets, it is known that the EU's Export Refund Program is designed to provide subsidies at a rate sufficient to move product into export markets, taking into consideration changes in market variables.

In sum, given the purpose of the EU's Export Refund Program and its disruptive effect on the Canadian market prior to the imposition of countervailing duties, the continued existence of that program and ongoing significance of the relevant subsidy rates, as well as the apparent ample EU supply available for export markets, the Tribunal is satisfied that there is a significant risk that a resurgence of subsidized imports of canned ham or canned luncheon meat into the domestic market would occur if the findings were rescinded.

### **Likelihood of Material Injury**

The Tribunal is of the view that the availability of uncountervailed, subsidized canned ham or canned luncheon meat will be materially injurious to the production in Canada of like goods. This view is based on an examination of current market conditions, the growing importance of the highly price-sensitive, commodity segment of the markets for these products in Canada, as well as the financial conditions and challenges facing the domestic industry.

Looking first at market conditions, it is clear that, in a shrinking market, subsidized imports are likely to have an especially destabilizing effect on the domestic industry's market share and domestic prices. In this connection, the Tribunal observes that the domestic markets for canned ham and canned luncheon meat have been on a generally declining trend for the past 15 years or so. This trend was identified at the time of the 1984 findings and of the 1990 review of those findings. The evidence available to the Tribunal in the present review confirms that, between 1989 and 1993, the market for canned ham declined by 10 percent, while the

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17. Public Pre-Hearing Staff Report, December 19, 1994, Tribunal Exhibit RR-94-002-5, Administrative Record, Vol. 1 at 254; Tribunal Exhibit RR-94-002-12.5C (protected), Administrative Record, Vol. 6 at 85; and Protected Pre-Hearing Staff Report, December 19, 1994, Tribunal Exhibit RR-94-002-6 (protected), Administrative Record, Vol. 2 at 108.

market for canned luncheon meat fell by 14 percent.<sup>18</sup> According to industry witnesses, this decline stems from a number of factors, including changing consumer preferences and the availability of an increasingly wide range of fresh and prepared meat and non-meat substitutes for the subject goods, all of which basically compete with each other as “sandwich fillers.”<sup>19</sup>

Declining markets and substitute products have meant highly competitive conditions for canned ham and canned luncheon meat and prices that are under constant downward pressure, even in the absence of substantial imports. According to industry witnesses, this pressure is exerted by grocery retailers and mass merchandisers that seek to market these goods at certain popular retail price points,<sup>20</sup> such as \$2.99/454-g tin of canned ham. These retail price points were very “sticky,” as exemplified by the difficulty that the industry has had, over the past few years, to get retailers to abandon the long-standing \$0.99/340-g tin price point for canned luncheon meat. The Tribunal is of the view that, in these circumstances, the availability of subsidized imports in substantial volumes at significant subsidy rates will cause losses in the domestic industry’s market share, as well as price erosion and suppression, especially in the price-sensitive, economy segment of the markets.

As noted under “Economic Indicators,” although the markets for canned ham and canned luncheon meat, as a whole, have declined over the past several years, the production of economy brands of canned luncheon meat has actually grown by 19 percent since 1989, increasing its share of domestic production by about 14 percentage points.<sup>21</sup> What these figures reveal is a pronounced shift in consumer demand from high-priced, premium-quality products that are heavily promoted under widely recognized national brands to lower-quality products that sell essentially as commodities, primarily on the basis of price.

The Tribunal notes that, according to the 1984 findings, the principal injury suffered by the domestic industry from the subsidized subject imports was in its second-line products.<sup>22</sup> Given that the industry finds itself with a large and growing proportion of its business in this segment of the market, it appears to be even more vulnerable to subsidized imports today than it was 10 years ago. This vulnerability is heightened by the fact that, in the low end of the market, large grocery retailers and mass merchandisers, which account for the vast majority of industry sales, tend to carry product from only one supplier.<sup>23</sup> Given the price sensitivity of these important buyers and their inclination to single-source, there is a real risk that the domestic industry could find itself shut out of certain large volume accounts in favour of subsidized imported second-line brands.

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18. Protected Pre-Hearing Staff Report, December 19, 1994 (revised January 19, 1995), Tribunal Exhibits RR-94-002-6 and 6A (protected), Administrative Record, Vol. 2 at 38 and 126.

19. Transcript of Public Hearing, January 23 and 24, 1995, at 26, 47, 50 and 71; and Manufacturer’s Exhibit B-1, Administrative Record, Vol. 7.

20. Transcript of Public Hearing, January 23 and 24, 1995, at 25, 27 and 116; and Transcript of In Camera Hearing, January 23 and 24, 1995, at 84.

21. Protected Pre-Hearing Staff Report, revised January 19, 1995, Tribunal Exhibit RR-94-002-6A (protected), Administrative Record, Vol. 2 at 123.

22. Report of the Anti-dumping Tribunal, Inquiry No. GIC-1-84, August 7, 1984, at 12.

23. Transcript of Public Hearing, January 23 and 24, 1995, at 46, 59 and 122.

The Tribunal considers that the domestic industry continues to be financially vulnerable to the volume and price effects that are likely to ensue from a resurgence of subsidized imports, if the findings are rescinded. In terms of volume effects, the production costs of canned ham and canned luncheon meat are sensitive to volume changes,<sup>24</sup> and the domestic industry requires high capacity utilization levels to remain competitive. The reduced economies of scale resulting from lost sales to subsidized imports would have a direct effect on the margins earned on the remaining sales. Similarly, if, as is likely, prices are eroded or suppressed by a resurgence of subsidized imports, the domestic industry's margins would be adversely affected because there is little flexibility to reduce costs in order to maintain those margins. In this connection, the evidence indicates that, on a per kilogram basis, the subsidy rates applicable in October 1994, for both canned ham and canned luncheon meat, were greater than most of the major cost components of the products, such as labour and factory overheads.<sup>25</sup>

The Tribunal notes that the industry's financial performance has been uneven over the last six fiscal years. More specifically, the combined industry has reported losses on its sales of canned ham in all but two of those years. Indeed, during the last two fiscal years, the combined industry lost several hundred thousand dollars, representing almost 3 percent of net sales value. While its sales of canned luncheon meat have been generally profitable over the six-year period, net income, as a percentage of sales, is down substantially over the past two fiscal years. This uneven performance has occurred despite the fact that, since the 1990 review, the domestic industry has made substantial efforts to cut costs and rationalize and modernize its production. These measures are continuing, and substantial investments have been made or are planned to improve the efficiency and competitiveness of the industry. The industry representatives stated that these efforts will continue regardless of the outcome of these proceedings.

It is clear to the Tribunal that the domestic industry has faced, and will continue to face, many challenges in its drive to enhance its immediate and long-term competitiveness and to improve its profitability on sales of the subject goods, whether or not the findings are continued. However, it is equally clear that, without the protection from subsidized imports afforded by countervailing duties, the improvements and gains made by the domestic industry, over the past several years, could be quickly dissipated, and the challenges facing the industry would be substantially more difficult to overcome.

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24. Tribunal Exhibit RR-94-002-9.1 (protected), Administrative Record, Vol. 4 at 152.

25. Manufacturer's Exhibit B-2 (protected), Administrative Record, Vol. 8; and Protected Pre-Hearing Staff Report, December 19, 1994, Tribunal Exhibit RR-94-002-6 (protected), Administrative Record, Vol. 2 at 95 and 97.

**CONCLUSION**

For the foregoing reasons, the Tribunal is of the view that the finding relating to subsidized canned ham under 1.5 kg per can, originating in or exported from Denmark and the Netherlands, should be continued without amendment, and that the finding relating to canned pork-based luncheon meat containing more than 20 percent by weight of pork, in respect of which a subsidy has been paid directly or indirectly by the European Economic Community, should also be continued without amendment.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Lyle M. Russell

Lyle M. Russell  
Member