



Ottawa, Friday, November 28, 1997

**Review No.: RR-97-002**

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on November 30, 1992, in Inquiry No. NQ-92-001, concerning:

**FRESH ICEBERG (HEAD) LETTUCE ORIGINATING IN OR  
EXPORTED FROM THE UNITED STATES OF AMERICA**

**ORDER**

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of its finding made on November 30, 1992, in Inquiry No. NQ-92-001.

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

Patricia M. Close  
Patricia M. Close  
Presiding Member

Raynald Guay  
Raynald Guay  
Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Michel P. Granger  
Michel P. Granger  
Secretary



Ottawa, Friday, November 28, 1997

Review No.: RR-97-002

**FRESH ICEBERG (HEAD) LETTUCE ORIGINATING IN OR  
EXPORTED FROM THE UNITED STATES OF AMERICA**

*Special Import Measures Act* - Whether to rescind or continue, with or without amendment, the finding made by the Canadian International Trade Tribunal on November 30, 1992, in Inquiry No. NQ-92-001.

Place of Hearing: Vancouver, British Columbia  
Dates of Hearing: October 8 and 9, 1997  
Date of Order and Reasons: November 28, 1997

Tribunal Members: Patricia M. Close, Presiding Member  
Raynald Guay, Member  
Arthur B. Trudeau, Member

Director of Research: Réal Roy

Research Manager: Paule Couët

Economist: Simon Glance

Statistical Officer: Nynon Pelland

Counsel for the Tribunal: Joël J. Robichaud

Registration and Distribution Officer: Joël Joyal

**Participant:** Marvin R.V. Storrow, Q.C.  
Maria A. Morellato  
Jacqueline L. Ott  
for BC Vegetable Marketing Commission

**(Representing BC Growers)**

**Witnesses:**

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General Manager  
BC Vegetable Marketing Commission

Bill Woodley  
General Manager  
Cloverdale Lettuce & Vegetable Co-operative

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Provincial Potato & Fresh Vegetable  
Industry Specialist  
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James Douglas Yue  
Manager  
John Yue Farm Ltd.

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Cloverdale Produce Farms Ltd.

Bill W. Dun  
President  
Premier Produce Inc.

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Manager, Produce Purchasing  
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Ottawa, Friday, November 28, 1997

Review No.: RR-97-002

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on November 30, 1992, in Inquiry No. NQ-92-001, concerning:

**FRESH ICEBERG (HEAD) LETTUCE ORIGINATING IN OR  
EXPORTED FROM THE UNITED STATES OF AMERICA**

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member  
RAYNALD GUAY, Member  
ARTHUR B. TRUDEAU, 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 finding made by the Canadian International Trade Tribunal (the Tribunal), in Inquiry No. NQ-92-001,<sup>2</sup> concerning fresh Iceberg (head) lettuce, originating in or exported from the United States of America, for use or consumption in the province of British Columbia.

In Notice of Expiry No. LE-96-007<sup>3</sup> dated February 28, 1997, the Tribunal informed persons and governments that its finding concerning the above-mentioned goods was scheduled to expire on November 28, 1997. The Tribunal received a submission from the BC Vegetable Marketing Commission (BCVMC) requesting a review. Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of its finding and issued a notice of review<sup>4</sup> on May 9, 1997. This notice was forwarded to all known interested parties. On July 7, 1997, a notice of change of date of public hearing<sup>5</sup> was issued.

As part of this review, the Tribunal sent questionnaires to the BCVMC, sales agencies, growers, importers and purchasers of Iceberg lettuce. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

The record of this review consists of all relevant documents, including the finding in Inquiry No. NQ-92-001, the notice of review and public and confidential replies to the questionnaires for the 1997 review and the public pre-hearing staff report for the 1992 inquiry. All public exhibits were made available to interested parties, while protected exhibits were provided only to independent counsel who had filed with the Tribunal a declaration and undertaking not to disclose confidential information.

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1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.
  2. *Finding*, November 30, 1992, *Statement of Reasons*, December 15, 1992.
  3. *Canada Gazette* Part I, Vol. 131, No. 10, March 8, 1997, at 755.
  4. *Ibid.* No. 20, May 17, 1997, at 1533.
  5. *Ibid.* No. 29, July 19, 1997, at 2067.

Public and *in camera* hearings were held on October 8 and 9, 1997, in Vancouver, British Columbia. The BCVMC was represented by counsel, submitted evidence and made arguments in support of continuing the finding. No other party participated or submitted evidence.

## **SUMMARY OF PREVIOUS FINDING**

### **Inquiry No. NQ-92-001**

On November 30, 1992, the Tribunal found that the dumping in British Columbia of fresh Iceberg (head) lettuce, originating in or exported from the United States, for use or consumption in the province of British Columbia, had caused, was causing and was likely to cause material injury to the production in British Columbia of like goods. An exclusion was made for the periods from January 1 to May 31 and from October 16 to December 31 in each calendar year because BC growers had not traditionally supplied the marketplace during these periods.

The Tribunal found that British Columbia constituted a separate regional market in accordance with Article 4 of the GATT Anti-Dumping Code<sup>6</sup> because BC growers sold most of their production of Iceberg lettuce in British Columbia and because the demand in British Columbia for Iceberg lettuce was not supplied to any substantial degree by growers located elsewhere in Canada. With respect to the issue of a separate regional industry, the Tribunal concluded that there was a concentration of dumped imports in British Columbia after having examined the results of the application of the density test, the distribution test and its variant, the ratio test.

On the issue of like goods, the Tribunal was of the view that the uses and characteristics of imported and domestically grown Iceberg lettuce closely resembled each other, that the two products competed directly with each other and that they could be substituted for each other. Therefore, the Tribunal concluded that imported and domestically grown Iceberg lettuce were like goods.

The Tribunal was convinced, after carefully reviewing the events which took place in the BC marketplace from 1988 to 1992, that the dumping of US Iceberg lettuce had caused, was causing and was likely to cause material injury to the production in British Columbia of like goods and that all, or almost all, of the BC growers had been and were being materially injured by the dumped imports. The evidence showed that, during crop years 1988-91, the BC market for Iceberg lettuce increased by 47 percent, while the BC industry lost 24 percentage points of market share to US imports, originating primarily in the state of California. The Tribunal found that BC growers' loss of market share resulted from low-priced imports over the period, which were found to have been dumped during crop year 1991. Prior to crop year 1991, the industry had been reducing its financial losses. However, in crop year 1991, there was a collapse of US prices, resulting in the dumping of US Iceberg lettuce in the BC market, which caused an erosion of BC selling prices. This led to severe financial losses for the industry. In response to these losses, a number of BC growers reduced acreage planted in crop year 1992, and others terminated their production of like goods. In crop year 1992, both US and BC selling prices recovered, and the BC industry returned to profitability.

With regard to the future, the Tribunal was of the view that the pattern of frequent periods of low pricing in each crop year during the period of inquiry indicated a likelihood that injurious dumping would continue in the absence of the imposition of anti-dumping duties.

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6. *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*, signed in Geneva on April 12, 1979.

One member disagreed with the majority of the Tribunal that there was a concentration of dumped imports in the BC market and, therefore, dissented on the basis that the concentration requirement for injury in a regional market was not met. The dissenting member also found that future injury was not imminent, as California production trends did not suggest a supply response to the rise in prices in 1992.

## **PRODUCT**

The product under review is fresh Iceberg (head) lettuce, originating in or exported from the United States, for use or consumption in the province of British Columbia. Iceberg lettuce has a large firm head with crisp, brittle and tightly packed leaves. The head of Iceberg lettuce can be torn, shredded or sliced.

Iceberg lettuce marketed in interprovincial or export trade is graded according to sections 65 to 70 of the *Fresh Fruit and Vegetable Regulations*<sup>7</sup> made under the *Canada Agricultural Products Act*.<sup>8</sup> Iceberg lettuce is graded Canada No. 1 or Canada No. 2. The regulations include requirements covering appearance of the product and labeling of the container.

Iceberg lettuce is considered a sensitive crop to grow because of the effect that different growing conditions can have on product quality and yields; it is very sensitive to weather changes and prone to disease. Iceberg lettuce is planted in consecutive plantings<sup>9</sup> so that there is a supply available throughout the season. Planting is done over a 3- to 5-day period. Within 70 to 90 days, the fields are ready to harvest. The first crop of BC Iceberg lettuce is usually available at the beginning of June, and more crops are planted and harvested on cycle until mid-October. Iceberg lettuce matures quickly and must be harvested promptly or destroyed because mature Iceberg lettuce is susceptible to certain viruses that may spread to younger plants and affect subsequent Iceberg lettuce crops. Iceberg lettuce is harvested either by hand or with a mechanical harvesting machine and packed in the field in cardboard cartons. Once harvested, Iceberg lettuce has to be taken to market within a relatively short period of time, since it is highly perishable and not amenable to long-term storage.

In the Lower Mainland, Iceberg lettuce is taken to the Cloverdale Lettuce & Vegetable Co-operative (Cloverdale) for vacuum cooling.<sup>10</sup> Once cooled, Iceberg lettuce is then delivered, by refrigerated truck, either the same day or the next day to the buyer's warehouse. If Iceberg lettuce is not shipped to the buyer on the day of the harvest, it is held in refrigerated storage.

Iceberg lettuce is sold in various carton sizes. The two most popular sizes consist of a waxed carton containing 24 unwrapped heads of Iceberg lettuce and a similar carton containing 24 heads of Iceberg lettuce individually wrapped in cellophane. Iceberg lettuce is also sold in bulk or in bin units which weigh between 800 and 1,000 lbs. Bin units are sold to foodservice companies, while cartons are sold principally to the retail trade.

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7. C.R.C., Vol. II, c. 285, as amended.

8. R.S.C. 1985, c. 20 (4th Supp.).

9. Growers plant Iceberg lettuce, either seed or transplant, every week or so, on a few acres at a time. There are, on average, about 20 plantings per year.

10. To prevent deterioration, it is imperative that Iceberg lettuce be cooled because, without cooling, it will last only a few days. It is vacuum cooled to about 1°C and must be refrigerated to maintain a crisp, fresh appearance.

## DOMESTIC INDUSTRY

During the period of review, the number of growers of Iceberg lettuce that shipped through sales agencies ranged between 15 and 19. There were 15 growers of Iceberg lettuce in 1996.<sup>11</sup> On average, growers harvested about 22 acres of Iceberg lettuce in 1996.<sup>12</sup> However, a few growers devoted significantly more acreage to Iceberg lettuce than did others. For a number of growers, Iceberg lettuce represents, on average, more than 20.0 percent of their total acreage.<sup>13</sup> It is also common practice for growers of Iceberg lettuce to grow a number of different crops on their farms, using Iceberg lettuce in crop rotation. In 1995, Iceberg lettuce accounted for approximately 2.7 percent of total harvested acres for all vegetables in British Columbia.<sup>14</sup>

More than 98 percent of Iceberg lettuce grown in British Columbia is sold through co-operatives acting as sales agencies, while the remainder is sold at roadside. The sales agencies are appointed by the BCVMC. The sales agencies market the product to wholesalers, retailers or food processors. Growers retain the ownership of the product until the sale is finalized.

The BCVMC is composed of growers from across the province and was established by the B.C. Vegetable Scheme, which was enacted by order-in-council in 1980, under the *Natural Products Marketing (BC) Act*.<sup>15</sup> The BCVMC is empowered to promote, control and regulate the production, transportation, packing, storage and marketing of regulated products grown in British Columbia. The BCVMC has jurisdiction over the entire province for regulated vegetables and, for administrative purposes, the province is divided into three districts. The first district covers the Lower Mainland and the Fraser Valley; the second district encompasses Vancouver Island and the Gulf Islands, and the third district covers the remainder of the province. Currently, Iceberg lettuce is sold by two sales agencies: Cloverdale in the first district and the Island Vegetable Co-operative Association (Island) in the second district.

The BCVMC establishes minimum prices on a weekly basis in consultation with the co-operatives, which, in turn, establish their price lists based on these minimum prices. Since the finding, the prices set by the BCVMC have been a function of the normal values for Iceberg lettuce determined by the Department of National Revenue (Revenue Canada) or the current market prices in California for US Iceberg lettuce, whichever is greater, plus exchange, customs duty and shipping and brokerage costs. In periods when US selling prices exceed normal values, US selling prices become the basis for establishing BC selling prices.

Prior to the finding, BC selling prices were essentially based on US market prices. By factoring in the appropriate duty, freight and other importing costs, as well as the exchange rate, the BCVMC could estimate a landed Vancouver price for US Iceberg lettuce. The final BC selling price would be based primarily on this calculated landed price, adjusted to reflect local supply conditions.<sup>16</sup>

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11. *Public Pre-Hearing Staff Report*, July 24, 1997, Tribunal Exhibit RR-97-002-5, Administrative Record, Vol. 1 at 101.

12. *Ibid.* at 125.

13. *Transcript of Public Hearing*, Vol. 1, October 8, 1997, at 204-5.

14. *Public Pre-Hearing Staff Report*, July 24, 1997, Tribunal Exhibit RR-97-002-5, Administrative Record, Vol. 1 at 101.

15. R.S.B.C. 1979, c. 296.

16. Tribunal Exhibit RR-97-002-1, Administrative Record, Vol. 1 at 9.

**ECONOMIC INDICATORS**

The following table shows selected economic indicators for the Iceberg lettuce industry for the period of the current review.

<b>SELECTED ECONOMIC INDICATORS BC ICEBERG LETTUCE</b>					
<b>Marketing Season</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>
Number of Agency Growers	18.0	19.0	17.0	19.0	15.0
Production <sup>1</sup> by Agency Growers (000 cartons)	228.1	218.7	266.6	300.6	198.7
Harvested Acres	472.0	409.0	459.0	415.0	324.0
Yields (cartons/acre)	483.0	535.0	581.0	724.0	613.0
All BC Grower Sales (000 cartons)	202.8	198.9	224.5	251.6	174.9
Sales from Imports	269.5	265.9	241.7	246.4	268.6
Apparent Market	472.3	464.9	466.2	498.1	443.5
<b>Market Shares (%)</b>					
BC Sales	43	43	48	51	39
Imports	57	57	52	49	61
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Note:					
Totals may not add up due to rounding.					
1. Production is on a calendar year basis.					
Source: <i>Public Pre-Hearing Staff Report</i> , July 24, 1997, Tribunal Exhibit RR-97-002-5, Administrative Record, Vol. 1 at 113 and 125.					

Production by agency growers<sup>17</sup> increased by approximately 32 percent between 1992 and 1995, reaching more than 300,000 cartons. In 1996, production declined by 34 percent.<sup>18</sup> The significant decrease in production from 1995 to 1996 reflects the adverse growing conditions in that year. Unfavourable weather conditions delayed and interrupted plantings and affected both the volume and the quality of the crop. Also declining in 1996 were the number of Iceberg lettuce growers and the acreage harvested. While most of the indicators fluctuated from year to year during the period of review, the average yield per harvested acre grew consistently from 1992 to 1995, but declined sharply in 1996.

The United States is, to all intents and purposes, the only source of imported Iceberg lettuce in British Columbia, accounting for 99 percent of all imports throughout the period of review. The state of California is, by far, the largest source of imported Iceberg lettuce, accounting for between 83 and 90 percent

17. Agency growers are growers that ship through sales agencies. They accounted for approximately 99 percent of total production of Iceberg lettuce during the period of review.

18. *Public Pre-Hearing Staff Report*, July 24, 1997, Tribunal Exhibit RR-97-002-5, Administrative Record, Vol. 1 at 106.



of all US imports in each year, while the states of Washington and Arizona accounted for the remainder of the imports.<sup>19</sup>

The marketing season for Iceberg lettuce grown in British Columbia corresponds to the period from the beginning of June to mid-October, the period when the anti-dumping duties are in effect. The apparent market for Iceberg lettuce in British Columbia during the marketing season grew from 472,000 cartons in 1992 to 498,000 cartons in 1995, an increase of 5 percent. Total sales (i.e. through sales agencies and at roadside) by all BC growers grew by 24 percent from 1992 to 1995, from 203,000 to 252,000 cartons. Sales from imports declined by 9 percent from 1992 to 1995, to 246,000 cartons.

The 1996 marketing season was a dismal period for BC Iceberg lettuce growers. Bad weather conditions in the spring delayed planting and, once planted, the crop was affected by heavy rainfall which was followed by very hot weather.<sup>20</sup> These weather conditions affected both the production volumes and the quality of the crop. In addition, a strike that lasted six weeks, a third of the BC marketing season, closed two of the largest retailers in British Columbia and significantly reduced domestic industry sales of Iceberg lettuce. Lower production and market disturbances affected domestic industry sales, which fell by 31 percent to their lowest level during the period of review, while imports of US Iceberg lettuce increased by 9 percent to 269,000 cartons during the same period. However, this increased volume of imports was not sufficient to compensate for lower domestic industry sales, and the total market for Iceberg lettuce declined by 11 percent in 1996 compared to 1995.

Adverse weather conditions continued to affect BC Iceberg lettuce growers in 1997. Sales for the 1997 marketing season are expected to be lower than sales for the 1996 marketing season by more than 25 percent, down to 128,000 cartons.<sup>21</sup>

BC growers gained 8 percentage points of market share between 1992 and 1995, increasing from 43 to 51 percent of the market during the marketing season. However, in 1996, they lost 12 percentage points to imports from the United States, falling to 39 percent, the lowest market share of the review period. The Tribunal notes that, with the exception of 1996 which was an atypical year for BC growers due to factors beyond their control, the domestic industry was able to regain a large part of the market share lost in the 1988-92 period. For example, in 1995, BC growers had almost 51 percent of the market, compared to 50 percent in 1989.<sup>22</sup>

### **POSITION OF THE BCVMC**

Counsel for the BCVMC argued that the fundamental factors underlying the 1992 finding have not changed. They argued that British Columbia is still a regional market. In addition, they argued that dumping is likely to resume if the finding is rescinded and that the resumption of dumping is likely to cause material injury to the Iceberg lettuce industry in British Columbia. They argued that the dumping is likely to be concentrated in the regional market and that the growers of all or almost all of the production of Iceberg lettuce in British Columbia will suffer material injury if the finding is rescinded.

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19. *Ibid.* at 109.

20. *Transcript of Public Hearing*, Vol. 1, October 8, 1997, at 107-8.

21. *Ibid.* at 59.

22. *Public Pre-Hearing Staff Report*, July 24, 1997, Tribunal Exhibit RR-97-002-5, Administrative Record, Vol. 1 at 162.

According to counsel, the evidence showed that domestically grown Iceberg lettuce and imported Iceberg lettuce are like goods. They share the same physical characteristics, consumers do not make a distinction between the two products, and they have the same general use. Counsel argued that the threat of dumping has not changed since 1992. Counsel referred to the evidence which showed that US pricing remained below normal values for extended periods during the review period and that US production levels remained extremely high. Because of British Columbia's relative proximity to the large US Iceberg lettuce growing areas, counsel submitted that the BC market remains vulnerable to US surplus production.

Finally, counsel argued that the threat of material injury is also unchanged. As in 1992, the dumping of US Iceberg lettuce would result in material injury of the nature experienced by BC growers between 1988 and 1991. Counsel argued that, absent dumping, BC growers are competitive. They referred to the evidence which showed that their market share and production levels increased during the last five years, notwithstanding the difference in the scale of production between the domestic and US industries. Counsel also referred to the evidence which showed that growers are applying new technologies, investing large capital sums and making advances through research and marketing efforts. They argued that, absent anti-dumping duties, these efforts would be very seriously damaged, thereby underscoring the very real threat of material injury. The injury would be in the form of lost profitability, market share, investments and employment.

## **ANALYSIS**

In deciding whether to continue or rescind the finding, the Tribunal first considered whether a regional industry for Iceberg lettuce continues to exist in British Columbia. More particularly, the Tribunal considered whether the two conditions set out in subsection 2(1.1) of SIMA remain satisfied, that is, whether (a) the producers in the market sell all or almost all of their production of like goods<sup>23</sup> in the market and whether (b) the demand in the market is not, to any substantial degree, supplied by producers of like goods located elsewhere in Canada.

The Tribunal is of the opinion that the two conditions in subsection 2(1.1) of SIMA are met and that a regional industry for Iceberg lettuce continues to exist in British Columbia. The evidence shows that, during the period from 1992 to 1996, more than 85 percent of the sales of Iceberg lettuce by agency growers from BC production was destined for consumption in British Columbia. Agency growers exported negligible volumes of Iceberg lettuce and shipped between 8 and 15 percent of BC production to markets elsewhere in Canada.<sup>24</sup> The evidence also shows that Iceberg lettuce grown in other provinces is not sold to any extent in British Columbia.<sup>25</sup>

The Tribunal will only continue the finding if it finds that there is a likelihood of resumption of dumping in the regional market and that the resumption of dumping is likely to cause material injury to the Iceberg lettuce industry in British Columbia. In a decision relating to likelihood of injury to production in a regional market, a finding will not be continued unless the Tribunal finds that the dumping is likely to be

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23. The Tribunal found, in Inquiry No. NQ-92-001, that imported and domestically grown Iceberg lettuce were like goods.

24. *Public Pre-Hearing Staff Report*, July 24, 1997, Tribunal Exhibit RR-97-002-5, Administrative Record, Vol. 1 at 112.

25. *Ibid.* at 113.

concentrated in the regional market and that injury is likely to be caused to the growers of all or almost all of the production of like goods in the regional market.<sup>26</sup>

### **Likelihood of Resumption of Dumping**

After reviewing the evidence in this case, the Tribunal is of the view that dumping is likely to resume if the finding is rescinded. This conclusion is based on the fact that British Columbia is a traditional export market for Iceberg lettuce for the US western states such as California, Washington and Arizona, the largest exporters of Iceberg lettuce to British Columbia, that these states, especially California, have an enormous production capacity for Iceberg lettuce, that the BC market is a price taker with regard to Iceberg lettuce and that US Iceberg lettuce prices have been under normal values on a regular basis since the finding.

The Tribunal recognizes that California and other western states are the source of many agricultural commodities for the BC market during the BC growing season and throughout the year and that Iceberg lettuce is one of several commodities being shipped from California to British Columbia. Imports of Iceberg lettuce from the United States have been playing an important role in meeting the BC market demand during the marketing season. The data show that, since 1989, imports from the United States accounted for between 50 and 63 percent of the BC market, except for 1995 when it accounted for 49 percent<sup>27</sup> of the market. Even with anti-dumping duties in place, US exporters were able to maintain their market share at more than 50 percent during the growing season. Evidence also shows that the BC market is not fully met by domestic production during the growing season<sup>28</sup> and, of course, that there is no BC supply outside the marketing season. The Tribunal is of the opinion that this situation is not likely to change in the near future. In addition, evidence from some importers indicates that they will continue to import Iceberg lettuce from the United States because their clients request US-grown Iceberg lettuce.<sup>29</sup> The Tribunal also heard from witnesses for two large retailers that, although they try to purchase Iceberg lettuce from domestic sources whenever possible during the marketing season, they import small volumes of Iceberg lettuce from California during this time to protect themselves from short supply from domestic sources or from poor quality or lack of supply due to weather conditions.<sup>30</sup> The Tribunal also recognizes that the marketing in British Columbia of US Iceberg lettuce is facilitated by the fact that the variety of Iceberg lettuce grown in British Columbia is also grown in California, that the sources of seed are the same and that growers in both regions produce the same or a similar variety of Iceberg lettuce.<sup>31</sup> In short, all the evidence heard by the Tribunal leads it to believe that British Columbia will continue to be a destination for US Iceberg lettuce,

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26. See, for example, *Fresh, Whole, Yellow Onions, Originating in or Exported from the United States of America, for Use or Consumption in the Province of British Columbia*, Canadian International Trade Tribunal, Review No. RR-91-004, *Order and Statement of Reasons*, May 22, 1992, at 9; and subsection 42(5) of SIMA.

27. *Public Pre-Hearing Staff Report*, July 24, 1997, Tribunal Exhibit RR-97-002-5, Administrative Record, Vol. 1 at 162.

28. *Transcript of Public Hearing*, Vol. 1, October 8, 1997, at 240 and 254; and *Public Pre-Hearing Staff Report*, July 24, 1997, Administrative Record, Vol. 1 at 113.

29. Tribunal Exhibits RR-97-002-27.1 (protected), RR-97-002-27.2A (protected), RR-97-002-27.11 (protected) and RR-97-002-27.14 (protected), Administrative Record, Vol. 6 at 4, 14, 78 and 107 respectively; and Tribunal Exhibit RR-97-002-29.3, Administrative Record, Vol. 5.1 at 42.

30. *Transcript of Public Hearing*, Vol. 1, October 8, 1997, at 271-74 and 279-81.

31. *Transcript of Public Hearing*, Vol. 1, October 8, 1997, at 106.

especially from California, and that such imports could be dumped during a significant portion of the marketing season, as will be discussed later.

The Tribunal acknowledges that California is, by far, the largest growing area of Iceberg lettuce of all growing areas in both the United States and Canada, and it believes that, due to its production volume, California continues to be the price setter for Iceberg lettuce in these two countries. It also notes that, barring any unforeseen turn of events, such as an unlikely wide-ranging crop failure, annual levels of production of Iceberg lettuce in the western states, especially the states serving the BC market, are unlikely to decline drastically. In any event, the Tribunal is of the view, based on evidence presented, that a production decline in one of these states could be compensated by an increase in production in other growing states.<sup>32</sup> While there were no hard data presented on the production of Iceberg lettuce in California for the period corresponding to the BC marketing season exclusively, evidence on acreage in California for Iceberg lettuce for that period was available. This evidence shows that acreage of Iceberg lettuce planted and harvested during the period from June to September, in California alone, varied slightly from year to year during the period of review, reaching a high of 49,000 acres in 1994 and dropping to a low of 45,000 acres in 1996. In addition, the forecasted acreage assigned to Iceberg lettuce for the same period in 1997 was 49,000 acres.<sup>33</sup>

The Tribunal is convinced that the BC industry, due to its size compared to that of the California industry, will remain a price taker for Iceberg lettuce. The Tribunal notes that, in 1995, the best year in terms of production for the BC industry, the annual volume of Iceberg lettuce grown in California alone was more than 200 times the volume grown in British Columbia.<sup>34</sup> In 1995, the 47,000 acres of Iceberg lettuce harvested in California alone for the period from June to September was approximately 110 times larger than the total acreage harvested in all of British Columbia in the same period.<sup>35</sup>

The Tribunal heard evidence that prices for Iceberg lettuce may vary considerably and rapidly due to changes in supply, a factor that is closely linked to both growing and harvesting conditions and to the highly perishable nature of the product. Adverse changes in weather conditions easily produce poor quality harvests and short supplies which, in turn, lead to price increases. These higher prices may trigger future increases in production and subsequent large supplies. Growers facing excessive supplies of a non-storable agricultural commodity would then have to reduce prices to sell their crops. These characteristics are generally evident for most perishable commodities and especially for commodities for which prices in Canada are based on US selling prices.

The evidence before the Tribunal shows that, during the period of review from 1993 to 1996, FOB export prices<sup>36</sup> for Iceberg lettuce were below normal values calculated by Revenue Canada for most of the period and that significant anti-dumping duties were collected. The evidence shows that, for Iceberg lettuce sold in cartons of 24 cello-wrapped heads, FOB export prices were below normal values more than

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32. *Public Pre-Hearing Staff Report*, July 24, 1997, Tribunal Exhibit RR-97-002-5, Administrative Record, Vol. 1 at 132.

33. Manufacturer's Exhibit A-3, Appendix "B," Administrative Record, Vol. 11; and *Transcript of Public Hearing*, Vol. 1, October 8, 1997, at 122.

34. *Public Pre-Hearing Staff Report*, July 24, 1997, Tribunal Exhibit RR-97-002-5, Administrative Record, Vol. 1 at 106 and 132.

35. *Ibid.* at 125.

36. FOB export prices for US Iceberg lettuce to Canada are determined weekly by Revenue Canada on the basis of the prevailing market prices in California.

60 percent of the time<sup>37</sup> or 43 out of a total of 71 weeks of marketing seasons between 1993 and 1996. In 1993, FOB export prices for Iceberg lettuce were below normal values more than half of the time, 67 percent in 1994, 35 percent in 1995 and 89 percent in 1996.<sup>38</sup> The pattern of FOB export prices below normal values was similar for unwrapped Iceberg lettuce during the same period. On a yearly basis, this resulted in the collection of anti-dumping duties which fluctuated from more than \$185,000 in 1993 to almost double that amount in 1994, to \$55,000 in 1995 and to \$310,000 in 1996.<sup>39</sup> The Tribunal finds that these amounts substantiate the likelihood of resumed dumping if the anti-dumping duties were to be removed.

The evidence in the record also shows that US prices for Iceberg lettuce during the 1997 marketing season were much higher than the normal values for most of the period.<sup>40</sup> However, the Tribunal heard that 1997 was not a typical year for prices for US Iceberg lettuce and that prices were much higher than anticipated. One witness for the domestic industry testified that demand exceeded supply for two months and that prices stayed generally much higher for the whole season, particularly from June through September.<sup>41</sup> Three reasons were advanced to explain this situation: (1) shipments from California in June and July were lower than expected, based on the acreage forecasted at the beginning of the year; (2) there were indications that some growing areas of California experienced unusual growing conditions, such as pest infestation and very hot weather in July; and (3) other smaller growing areas in the eastern United States experienced planting difficulties, thereby reducing the supply used to supplement California shipments during the summer.<sup>42</sup> The Tribunal believes that the particular conditions experienced by US growers in 1997 were principally caused by climatic conditions that are not likely to persist in the future. Consequently, the price trend shown during 1997 is unlikely to continue in future years.

Given the current and expected situation of production and pricing in the United States, and in the absence of evidence to the contrary, the Tribunal anticipates that US prices are likely to be lower than the normal values established by Revenue Canada for a large portion of future growing seasons and that dumping is likely to resume if the finding is rescinded.

### **Likelihood of Material Injury**

The next issue that the Tribunal considered is whether the resumption of dumping is likely to cause material injury to the Iceberg lettuce industry in British Columbia. The Tribunal also examined whether the dumping is likely to be concentrated in the regional market and whether injury would occur to all or almost all of the BC growers of Iceberg lettuce.

After reviewing the evidence, the Tribunal concludes that, if the finding were rescinded, the resumption of dumping would likely cause material injury to the Iceberg lettuce industry in British Columbia. In this regard, the Tribunal examined the sensitivity of BC Iceberg lettuce prices to dumped US imports and

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37. *Public Pre-Hearing Staff Report*, July 24, 1997, Tribunal Exhibit RR-97-002-5, Administrative Record, Vol. 1 at 127.

38. *Ibid.* at 128.

39. *Public Pre-Hearing Staff Report*, July 24, 1997, Tribunal Exhibit RR-97-002-5, Administrative Record, Vol. 1 at 105.

40. Manufacturer's Exhibit A-13, Administrative Record, Vol. 11.

41. *Transcript of Public Hearing*, Vol. 1, October 8, 1997, at 124.

42. *Ibid.* at 122-24.

reviewed the profitability of the industry over the period of review and the current condition of the BC Iceberg lettuce industry.

With respect to the sensitivity of BC prices to US Iceberg lettuce prices, the Tribunal notes that the large share of the BC market occupied by US imports of Iceberg lettuce and the overwhelming evidence that the BC market is a price taker with regard to California Iceberg lettuce mean that US prices are the major point of reference for BC prices. But for the existence of anti-dumping duties, domestic Iceberg lettuce prices would be established primarily on the basis of US market prices, as the industry would use the same methodology for price setting as it did before the finding and would be forced to meet US selling prices.

As already noted, the Tribunal has concluded that US prices have been, for most of the period of review, below the floor price established by the normal values. It is the Tribunal's opinion that, without the protection afforded by the finding in the past five years, BC growers would have experienced depressed prices during most of the period. The Tribunal is of the view that, if dumping were to resume in the future without having a finding in place, prices would decline to US-based prices and that BC growers would likely suffer material injury in the form of price erosion and reduced revenues.

The evidence is clear that the 1992 finding has provided a certain level of stability to the industry, especially during periods where US prices for Iceberg lettuce were below normal values. Revenue gains were experienced during the review period due to the combination of higher prices and higher sales volumes. The average selling price per carton for Iceberg lettuce sold in British Columbia increased from \$11.58 in 1992, the year before the finding was put in place, to \$11.72 and \$12.25 in 1993 and 1994 respectively. It declined slightly to \$12.00 per carton in 1995, but was still 4 percent higher than at the beginning of the period of review.<sup>43</sup> In 1996, the average selling price declined to its lowest level of the period of review to \$10.86 per carton. This decline is due to a combination of lower US selling prices and lower-quality domestic production, in terms of Iceberg lettuce head sizes,<sup>44</sup> because of growing conditions which resulted in a higher volume of Iceberg lettuce being sold in bin units. Prices for Iceberg lettuce sold in bin units are considerably lower than those for Iceberg lettuce, either cello-wrapped or unwrapped, sold in cartons.<sup>45</sup> Sales of Iceberg lettuce also increased during the period of review. After a decline of less than 2 percent in 1993 compared to 1992, sales increased by more than 12 percent in both 1994 and 1995, to reach 252,000 cartons.<sup>46</sup> As previously noted, domestic sales of Iceberg lettuce fell dramatically in 1996 due to unforeseen circumstances.

The Tribunal recognizes that other factors such as weather, growing conditions and overall increases in expenses for material and labour had an impact on the industry's financial performance during the period of review and may continue to affect it, regardless of dumping. However, the Tribunal is of the opinion, based on the evidence presented, that resumed dumping in British Columbia would significantly affect the financial performance of the growers and would cause material injury to the industry. As part of their evidence, BC growers demonstrated the impact of the protection afforded to the industry<sup>47</sup> by the finding during the period of review. In comparing the net grower returns with and without the anti-dumping duties in

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43. *Ibid.* at 126.

44. The witness for Cloverdale stated that variances in head size are not permissible in the retail trade.

45. *Transcript of Public Hearing*, Vol. 1, October 8, 1997, at 56, 80 and 169.

46. *Public Pre-Hearing Staff Report*, July 24, 1997, Tribunal Exhibit RR-97-002-5, Administrative Record, Vol. 1 at 113.

47. Manufacturer's Exhibit A-14, Administrative Record, Vol. 11.

place, it was shown that grower returns, without anti-dumping duties, would have been reduced annually by between 8 and 50 percent during the period from 1993 to 1996, with an average reduction, over the entire period, of 25 percent. The Tribunal concludes that the magnitude of the likely reduction in grower returns, but for the continuation of the finding, would be significant and would materially affect the profitability of the industry.

The Tribunal further notes that, since the finding, BC growers, through Cloverdale, have made significant efforts to remain competitive and to meet the demands of the market by investing in equipment and in trained personnel. During the review period, Cloverdale purchased harvesting machinery in Salinas, California, in order to cello wrap Iceberg lettuce in the field to respond to major retailers' demands for cello-wrapped Iceberg lettuce. This equipment has also allowed the growers to reduce harvesting time and handling and bruising of the Iceberg lettuce, thereby improving its general quality. In addition, in 1994, in order to reduce costs, Cloverdale purchased the vacuum cooling and refrigeration equipment from West Coast Cooling, a private company operating on the site.<sup>48</sup> Individual growers also invested in their operations during the period of review, purchasing machinery and irrigation and other agricultural equipment. Witnesses testified that these investments made their operations more efficient and improved the overall quality of the product.<sup>49</sup> Some growers also invested in greenhouse operations,<sup>50</sup> in order to grow transplants, and in research,<sup>51</sup> to try different varieties of Iceberg lettuce. The Tribunal notes that, even though some of these investments were not directly and entirely related to the growing and harvesting of Iceberg lettuce, they show the importance to the growers of growing Iceberg lettuce and demonstrate efforts by the growers to increase their competitiveness not only in growing Iceberg lettuce but also in improving overall agricultural operations.

The Tribunal believes that the growers were able to invest in their agricultural operations by taking advantage of the protection allowed by the anti-dumping duties. They consequently increased their production and their yields, improved the quality of their Iceberg lettuce and augmented their revenues. Such investments would be, in large part, at risk if dumping were to resume as a result of the finding being rescinded.

With regard to the requirement that the dumping be concentrated in the regional market, while the evidence shows that the concentration levels of imports decreased during the period of review, this is to be expected in a period of anti-dumping protection.<sup>52</sup> If the finding were rescinded, the Tribunal is of the view that the levels of concentration would revert to at least what they were in 1992, given the high level of US imports into British Columbia and recent trends which indicate that this is likely to continue. The Tribunal is, therefore, of the view that the dumping would likely be concentrated in the regional market if the finding were rescinded.

With regard to the requirement in a regional industry case that injury be caused to the producers of all or almost all of the production of like goods within the regional market, there is no evidence to suggest that some growers would be less susceptible to injury than others, should the anti-dumping duties be

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48. *Transcript of Public Hearing*, Vol. 1, October 8, 1997, at 79 and 300.

49. *Transcript of Public Hearing*, Vol. 1, October 8, 1997, at 221-22.

50. *Ibid.* at 212.

51. *Ibid.* at 207 and 212.

52. *Public Pre-Hearing Staff Report*, July 24, 1997, Tribunal Exhibit RR-97-002-5, Administrative Record, Vol. 1 at 131.

removed. Several witnesses testified that the injury would be widespread and would significantly affect the industry as a whole. The Tribunal is, therefore, of the view that, if the finding were rescinded, all or almost all of the growers of Iceberg lettuce in British Columbia would suffer material injury.

### **CONCLUSION**

For the foregoing reasons, the Tribunal continues, without amendment, its finding in respect of fresh Iceberg (head) lettuce, originating in or exported from the United States, for use or consumption in the province of British Columbia.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Raynald Guay  
Raynald Guay  
Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member