Ottawa, Friday, November 3, 2000

Review No.: RR-99-006

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on November 6, 1995, in Inquiry No. NQ-95-002, concerning:

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

ORDERS

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the findings in respect of the dumping of the above-mentioned goods originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom, and the subsidizing of the above-mentioned goods originating in or exported from the European Union, with an amendment to exclude the goods listed in the Appendix.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal also hereby continues the finding in respect of the dumping of the above-mentioned goods originating in or exported from the United States of America, with an amendment to exclude the goods listed in the Appendix.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Patricia M. Close
Patricia M. Close
Member

James A. Ogilvy
James A. Ogilvy
Member

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Ottawa, Friday, November 3, 2000

Review No.: RR-99-006

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

Special Import Measures Act — Whether to rescind or continue, with or without amendment, the findings made by the Canadian International Trade Tribunal on November 6, 1995, in Inquiry No. NQ-95-002.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	September 11 to 15, 2000
Date of Orders and Reasons:	November 3, 2000
Tribunal Members:	Pierre Gosselin, Presiding Member Patricia M. Close, Member James A. Ogilvy, Member
Director of Research:	Sandy Greig
Researchers:	W. Douglas Kemp Simon Glance
Economist:	Dennis Featherstone
Statistical Officers:	Joël J. Joyal Shawn Jeffrey
Counsel for the Tribunal:	Gerry Stobo Philippe Cellard Eric Wildhaber
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Marius Sonnen
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Margaret Bullock
International Sugars Inc.

(Purchasers/Importers/Exporters/Others)

Witnesses:

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Canadian Sugar Institute

Gregory J. Hoskins
President and Chief Executive Officer
Lantic Sugar Limited and
Rogers Sugar Ltd.

Dennis N. Hurl
Senior Vice-President
Sales, Marketing & Logistics
Lantic Sugar Limited and
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Jim Blair
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APPENDIX

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

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

Ottawa, Friday, November 3, 2000

Review No.: RR-99-006

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on November 6, 1995, in Inquiry No. NQ-95-002, concerning:

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

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
PATRICIA M. CLOSE, Member
JAMES A. OGILVY, Member

STATEMENT OF REASONS

BACKGROUND

This is a review, under subsection 76(2) of the *Special Import Measures Act*,[1] of the findings made by the Canadian International Trade Tribunal (the Tribunal) on November 6, 1995, in Inquiry No. NQ-95-002, concerning the dumping of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the United States of America, Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom, and the subsidizing of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the European Union.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the findings and issued a notice of review on March 9, 2000.[2] The notice was forwarded to all known interested parties. As part of this review, the Tribunal sent questionnaires to Canadian producers, importers and purchasers of refined sugar.

The record of this review consists of all relevant documents, including the findings, the notice of review and public and confidential replies to the questionnaires. All public exhibits were made available to interested parties, while protected exhibits were provided only to independent counsel who had filed a declaration and undertaking with the Tribunal in respect of the use, disclosure, reproduction, protection and

1. R.S.C. 1985, c. S-15 [hereinafter SIMA].
2. C. Gaz. 2000.I.795.

storage of confidential information on the record of the proceedings, as well as the disposal of such confidential information at the end of the proceedings or in the event of a change of counsel.

Public and in camera hearings were held in Ottawa, Ontario, from September 11 to 15, 2000.

The Canadian Sugar Institute (CSI) and the Canadian Sugar Beet Producers' Association Inc. (CSBPA) presented evidence and made arguments in support of a continuation of the findings. They were represented by counsel.

The Canadian Sugar Users Coalition (CSUC),[3] Effem, Inc. (Effem), an industrial user, Refined Sugars, Inc. (RSI), a U.S. producer, and the Competition Bureau, Department of Industry, presented evidence and made arguments in support of a rescission of the findings. They were also represented by counsel. Richdale Sugar (2000) Ltd., an importer, presented evidence and made submissions in support of a rescission of the findings. Sonnen & Co., Inc. (Sonnen) presented evidence and made submissions in support of an exclusion for certain specialty sugar products. International Sugars Inc. (International Sugars), Total Foods Corporation (Total Foods) and CSP Foods also requested exclusions.

SUMMARY OF THE FINDINGS IN INQUIRY NO. NQ-95-002

Prior to the 1995 findings, the Anti-dumping Tribunal had inquired into the dumping of refined sugar from the United States. On July 23, 1984, it found that the dumping of refined sugar from the United States had not caused, was not causing and was not likely to cause injury to the production in Canada of like goods.[4]

On November 6, 1995, the Tribunal found that the dumping in Canada of refined sugar from the United States, Denmark, the Federal Republic of Germany, the Netherlands, the United Kingdom and the Republic of Korea, and the subsidizing of refined sugar from the European Union had not caused material injury or retardation to the domestic industry. The Tribunal found that the domestic refiners experienced reduced refining margins[5] during the inquiry period, particularly in late 1994 and early 1995. The Tribunal accepted that dumped and subsidized imports were not the only factors affecting refining margins, but it was not convinced that the other factors explained, to any significant degree, the refining margin reductions and the resulting reduced profitability experienced by the domestic industry. Consequently, the Tribunal was persuaded that there was a causal link between the dumping and subsidizing of the subject goods and the refining margin reductions suffered by the domestic industry. However, the magnitude of the margin reductions was not sufficient to support findings of material injury to the domestic industry.

Turning to the question of threat of injury, the Tribunal concluded that dumped imports of refined sugar from the United States, Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom, and subsidized imports of refined sugar from the European Union, threatened to cause material injury to the domestic industry. The Tribunal noted that the subsidy programs in the European Union, even with the reductions agreed to under the World Trade Organization (WTO) agreements, would continue to

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3. The CSUC includes Robin Hood Multifoods Inc., Cadbury Chocolate Canada Inc., Ganong Bros. Limited, Oetker Ltd., E.D. Smith & Sons, Limited, Tamming Foods Ltd., Associated Brands Inc., GKL Commodities Inc., Parmalat Canada Inc. and Dare Foods Limited.
4. *Refined Sugar*, *Finding* and *Statement of Reasons* (23 July 1984), ADT-8-84 (ADT).
5. The refining margin is the difference between the refiners' selling price for refined sugar to the customer and their cost of raw sugar.

confer substantial subsidies to the exporters of refined sugar. Further, the sugar programs of both the European Union and the United States provided incentives to produce and export refined sugar. The programs in both jurisdictions supported sugar prices at levels well above world levels, and producers needed only to export at slightly more than variable costs. With Canada being one of the few open markets for sugar, there would be continued interest by exporters of refined sugar in both jurisdictions to export to Canada.

The Tribunal concluded that, in the absence of anti-dumping and countervailing duties, price pressure from imports from the named sources would intensify, bringing refining margins down to at least the levels experienced in late 1994 and early 1995. In the Tribunal's view, the domestic refiners would quickly lose substantial sales to lower-priced dumped, or dumped and subsidized, imports. This would lead to reduced production and a smaller market share for domestic refiners, in addition to inadequate returns for them. At these reduced refining margins, the industry would not remain viable, and at least one cane sugar refinery, as well as the two sugar beet processing plants, would be in jeopardy.

The Tribunal found no reason to believe that the small volume of imports of refined sugar from the Republic of Korea, which was less than 3 percent of total sugar imports, was threatening to cause material injury to the domestic industry.

Public Interest Investigation No. PB-95-002

At the time of its threat of injury findings, the Tribunal invited submissions concerning the public interest. Seven parties made representations to the Tribunal that there was a public interest question worthy of further investigation. There were two representations from parties that were of the view that there was no public interest question worthy of further consideration.

On January 8, 1996, the Tribunal initiated a public interest investigation under section 45 of SIMA. The Tribunal held public and in camera hearings. Industrial users, the Consumers' Association of Canada, the Director of Investigation and Research of the Competition Bureau, the CSI and the CSBPA participated in the hearing.

The Tribunal was of the view that section 45 of SIMA required it to balance the various interests that would be affected by the imposition of the duties. In its consideration of the public interest, the Tribunal's objective was to weigh the benefits accruing to the domestic industry and to sugar beet growers against any burden that the duties created on industrial users, resellers and consumers of refined sugar.

The Tribunal came to the conclusion that there had not been a significant adverse effect flowing from the imposition of the anti-dumping and countervailing duties. Moreover, the Tribunal was of the view that domestic refining margins would not likely increase significantly into 1998 and, thus, would not likely have a significant adverse effect on industrial users, resellers and consumers over this period. The Tribunal stated that the imposition of anti-dumping and countervailing duties normally provides scope for the domestic industry to increase its prices or, in this particular case, increase its refining margins.

In weighing the benefits of the duties to the domestic industry and the sugar beet growers against the burden on the industrial users, resellers and consumers, the Tribunal reached the opinion that there was no public interest issue which warranted the reduction or elimination of the duties in this case.

PRODUCT

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

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

In Inquiry No. NQ-95-002, the Tribunal excluded from the findings a number of specialty sugar products specifically identified by brand name, producer or importer. In 1997, the Governor in Council, on the recommendation of the Minister of Finance, issued a remission order respecting the anti-dumping and countervailing duties on certain generic specialty sugar products of the same nature as the ones for which the Tribunal had granted exclusions.[6]

Production Process

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

The refining process involves the separation of pure sucrose from raw sugar by affination,[7] clarification and filtration, crystallization and drying. The end product of this process is white granulated sugar. The non-sucrose components of raw sugar are purified through similar processes and become the basis for the colour and flavour of soft sugars and syrups. In the initial refining stages, some of the colour- and flavour-producing substances are separated from raw sugar to make specialty soft sugars, such as brown, yellow and demerara sugars.

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

For some applications, white granulated sugar from cane sugar refineries and sugar beet processing plants is further processed to produce liquid sugar, sugar cubes and icing sugar. Liquid sugars include liquid sucrose and liquid invert sugar. Liquid sucrose is refined granulated sugar dissolved in water with a 66 to 68 percent concentration of solids. Liquid invert sugar contains a combination of sucrose, fructose and glucose and can be made at concentrations of 77 percent solids. Sugar cubes are produced by remoistening

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6. *Order Respecting the Remission of Anti-dumping and Countervailing Duties on Certain Specialty Sugar Products*, S.O.R./97-479, Tribunal Exhibit RR-99-006-30, Administrative Record, Vol. 1B at 18 [hereinafter Remission Order].
7. Affination is the process of removing the molasses film from the raw sugar crystals by mixing the crystals with a sugar syrup, then separating the molasses and sugar crystals using centrifugal machines.

granulated sugar which is moulded into cubes, dried with hot air and packed into boxes. Icing sugar is made by pulverizing granulated sugar and adding up to 3 percent starch to prevent caking.

DOMESTIC PRODUCERS

In 1995, the domestic industry was comprised of Rogers Sugar Ltd. (Rogers), with a cane sugar refinery in Vancouver, British Columbia, and sugar beet processing plants in Taber, Alberta, and Winnipeg, Manitoba; Lantic Sugar Limited (Lantic), with cane sugar refineries in Montréal, Quebec, and Saint John, New Brunswick; and Redpath Sugars (Redpath), with a cane sugar refinery in Toronto, Ontario. Rogers and Lantic were both owned by B.C. Sugar Refinery, Limited, but operated as independent businesses.

Since 1995, there has been considerable change in the ownership of the Canadian sugar refiners: B.C. Sugar Refinery, Limited was sold to BCS Acquisition Inc. Rogers was subsequently sold to the public under an income trust structure, and Lantic was made a subsidiary of Onex Corporation, a major shareholder in BCS Acquisition Inc. Lantic is the administrator of the Rogers Sugar Income Fund and provides Rogers with selling, general and administrative services and strategic management services under contract.

The refineries have made major changes to their production facilities: Lantic expanded its Montréal refinery and closed its Saint John refinery, Redpath expanded its Toronto refinery, and Rogers expanded its plant in Taber and closed its Winnipeg plant.

ENFORCEMENT

With respect to the European Union, the Canada Customs and Revenue Agency (CCRA) has, since the findings, monitored the major countervailable subsidy program, the export refunds program.[8] The CCRA reported that the program continues to provide benefits in the same range as it did prior to the injury findings. Since the findings, none of the exporters in the European Union have expressed any interest in obtaining normal values. Import volumes to Canada from the European Union have been low since 1995, and SIMA duties have been collected.

With respect to the United States, normal values were determined, at the time of the final determination, for four U.S. exporters: Domino Sugar Corporation (Domino), United Sugars Corporation, Savannah Foods & Industries, Inc. and RSI. These normal values have not been updated.[9] Since the findings, four other exporters in the United States have been issued normal values for specialty products subject to the findings. The firms are Sugar Stix Inc., Florida Crystals Corporation (Florida Crystals), Fountain Industries and Specialty Commodities Inc. In the years since the findings, there have been imports of the subject goods from the United States and anti-dumping duties have been collected.

8. Tribunal Exhibit RR-99-006-3, Administrative Record, Vol. 1 at 183.
9. The CCRA received no requests from Domino, United Sugars Corporation and RSI to update their normal values. Savannah Foods & Industries, Inc. submitted a formal proposal to the CCRA in July 1997 to establish normal values for future shipments to Canada. The proposal did not lead to a change in normal values.

POSITION OF PARTIES

CSI

The CSI submitted that the dumping from the United States and the subject European countries and the subsidizing by the European Union would likely resume if the findings were rescinded. The CSI further submitted that, in the event that the findings were rescinded, the domestic industry would likely suffer material injury.

With respect to the likelihood of resumed dumping from the United States, the domestic refiners pointed to the expected cumulated surplus in the 2000 and 2001 crop years, 800,000 to 1 million tons in excess of the U.S. Department of Agriculture's (USDA) target stocks-to-use ratio. Alternative outlets for this surplus (ethanol production and the replacement of sugar lost to drought) were discounted as unrealistic, and the CSI submitted that attempts at surplus reduction, through the USDA Payment-In-Kind (PIK) Program, actually result in net increases of sugar available on the market. Current depressed sugar prices indicated to the CSI that a deficit in the sugar market is not foreseen. The CSI contended that, notwithstanding the depressed prices, U.S. beet sugar would still have to be dumped to be sold in the Canadian market.

The CSI submitted that Canada is an accessible developed market with important industrial users, which are often integrated with U.S. parent companies, and a concentrated retail sector that would provide both a short-term solution to the surplus overhang and longer-term marketing opportunities. The CSI suggested that, because of the high level of the U.S. domestic support price, beet sugar producers are able to recover all of their overhead costs through domestic sales and, thus, that export sales need only recover variable costs.

The CSI argued that, by eliminating surplus sugar through dumping, U.S. sugar beet refiners would quell political pressures that risk jeopardizing the renewal of the U.S. sugar program and its attendant benefits. Exporting the surplus would allow U.S. domestic prices to recover. Forfeiture, on the other hand, carries a penalty and requires Commercial Credit Corporation (CCC) stocks to be returned to the domestic marketplace.

Moreover, should the findings be rescinded, the CSI submitted that U.S. cane sugar refiners would seize the prospect of an open Canadian market to maximize throughput by using the U.S. Refined Sugar Re-export Program to the greatest extent possible. With export prices based on world-priced sugar, and costs based on the commingling of world- and U.S.- priced sugar, dumping by the U.S. refiners is a certainty.

The CSI indicated that the E.U. refined sugar exports are still subsidized and that, even with the reductions under the WTO agreements, the total level of subsidized exports will reach approximately 2.7 million tonnes this year. As regards the likelihood of resumed dumping from the subject European countries, the CSI submitted that "C" sugar must be exported at prices that inevitably result in dumping. The CSI submitted that refined sugar from the European Union would inevitably be exported to Canada because of constricting market opportunities elsewhere, spare packaging capacity in Europe and Canada's attractive refining margins.

With respect to the question of likelihood of material injury, the CSI argued that a move by Canadian users to purchase even a small portion of dumped or subsidized sugar would begin a process of margin

erosion that would be difficult to stop. Sugar, because it is a fungible product, competes on price, and import penetration would occur by pricing below Canadian refiners. The evidence from the sugar users was that they wanted import competition to leverage prices down. Once prices start to go down, the domestic producers will have to match them because of the imperative to produce imposed by a capital-intensive production process. The consolidation of the grocery and industrial sectors would also facilitate the transmission of downward pricing. According to the CSI, any barriers to import penetration alleged in this proceeding, such as quality certification and timely delivery, can be overcome, as they were prior to 1995.

CSBPA

The CSBPA argued that, if the findings were rescinded, dumping by the U.S. producers would resume in order to relieve the sugar surplus and to improve domestic price levels. Rising U.S. sugar beet production, forfeiture coverage of no more than 20 percent of the U.S. sugar production and an expected increased Mexican access to the U.S. market are all indicative of the likelihood of resumed dumping in Canada, should the findings be rescinded.

The CSBPA submitted that the resumption of dumping would cause material injury. Indeed, the erosion of the refiners' prices and consequent reduction in the price to the growers would threaten to reduce acreage sown to beets to levels where the Rogers plant in Taber could not count on a viable source of sugar beets. In this respect, the decisions by sugar beet growers in the past year not to plant because of low prices were, in the CSBPA's opinion, indicative of the trend that would escalate in the wake of resumed dumping.

CSUC

The CSUC submitted that the CSI has not met the burden of proving the elements necessary for the Tribunal to continue the findings. Notably, the CSI has failed to refute the CSUC's proposition that, given the current price levels in Canada and the United States, U.S. beet sugar would not have to be dumped to be sold in the Canadian market.

Moreover, the CSUC questioned whether there was, in fact, a surplus of sugar in the United States that could be exported to Canada. The demand from the ethanol industry, possible crop failures due to bad weather, the expected low level of market access for Mexican sugar, the PIK Program and blocked stocks should solve the U.S. surplus situation without recourse to exporting. Moreover, the CSUC contended that the CCC is precluded from dumping its sugar stocks in Canada.

The CSUC argued that, because of existing long-term contracts, quality certification requirements and on-time delivery demands, the Canadian market is protected from immediate import penetration. Indeed, price is not the sole concern of Canadian industrial users. The performance of non-subject imports over the past three years is testimony to this reality.

The CSUC also pointed out that the historical penetration of imports did not exceed 15 percent of total market demand. The evidence was that the Canadian industrial users want access to U.S. suppliers, but do not contemplate shifting a large volume of their purchases to them. Rationalization, plant closures and labour problems were affecting the U.S refiners. Moreover, it made no sense for the U.S. plant of Tate & Lyle Industries Limited (Tate & Lyle), Domino, to dump against its Canadian plant, Redpath. The CSUC further submitted that nothing on the record indicates poised competition of U.S. beet sugar, should the findings be rescinded.

The CSUC indicated that its members want the possibility of sourcing a portion of their sugar from U.S. suppliers, with the expectation of greater price competition with the domestic producers. The CSUC argued that the domestic industry has benefited from the SIMA duties. Its sales, market share and capacity utilization have improved. Its return on investment is satisfactory, and its ability to raise capital has been enhanced. The finding in respect of the dumping of U.S. sugar should be rescinded because the industry is now in a position to compete with imports from the United States.

EFFEM

Effem submitted that the temporary nature of anti-dumping duties should be respected, absent a clear indication of a resumption of dumping and of material injury in the event that the findings are rescinded.

In Effem's submission, (1) the ability to forfeit U.S. sugar to the CCC, (2) loan default prices which are higher than Canadian prices, (3) the removal of the U.S. marketing allotments, (4) the sugar purchase by the CCC and (5) the PIK Program lead to the conclusion that it is not likely that there will be a resumption of dumping of U.S.-origin sugar. Effem argued that the CCC will not engage in dumping because of U.S. international trade obligations. Rather, CCC surplus sugar may be diverted to food aid or used in the production of alternative fuels. If "19 cent" beet sugar were nevertheless exported to Canada, it could be sold in certain Canadian markets without being dumped.

Effem pointed to the very slow rate of market penetration of non-subject imports, as well as to quality, service, delivery and storage concerns expressed by Canadian industrial users, as evidence that non-price considerations protect the Canadian refiners. Finally, Effem submitted that the Canadian producers have restructured and are in a position to compete with imports, as Canadian refining margins can be reduced and made more competitive without material injury occurring.

COMPETITION BUREAU

The Competition Bureau submitted that, if the findings were rescinded, dumping would resume, but, in respect of the United States, only from the Refined Sugar Re-export Program. There was, however, in the view of the Competition Bureau, no evidence that Canada would be flooded with imports from the United States. Import penetration would be limited by the barriers to entry in the Canadian market, including the need for appropriate infrastructure to meet just-in-time delivery requirements, the difficulty of ensuring security of supply from outside Canada and the existence of long-term supply agreements.

According to the Competition Bureau, the fundamental question to be assessed by the Tribunal in determining the likelihood of material injury was the rate of import penetration in the absence of the duties. The evidence of the Competition Bureau was that the growth of imports would be slow because of the barriers to entry. That penetration would be about 5 to 6 percent in the first year and total no more than 10 percent in three to five years. The Competition Bureau submitted that these estimates are well below the conditions that existed at the time of the Tribunal's determination of threat of injury. Moreover, the 1995 findings have allowed the domestic producers to become more competitive. They are well positioned to meet the competition, should the findings be rescinded.

RSI

RSI submitted that the Tribunal must examine the issues of likelihood of resumed dumping and of material injury within a time frame of two years. RSI submitted that, for the Tribunal to continue its findings, it must accept the occurrence of three events that have not been proven: first, that there exist substantial volumes of sugar poised to enter the Canadian market; second, that such sugar could indeed find a buyer in Canada; and, finally, that, even if these last two events were to occur, the Canadian industry would be materially injured.

RSI submitted that no exportable surplus of U.S.-origin sugar exists and that, even if there were an exportable surplus, it would not make economic sense to export it to Canada. While certain export opportunities are opened through the U.S. Refined Sugar Re-export Program, they are limited by freight costs, the capacity utilization rates of certain refineries closest to Canada and the corporate relationship between Domino, Redpath and Tate & Lyle.

Assuming an exportable surplus did exist, RSI argued that the integration of the most important importer of sugar prior to the 1995 findings, into Redpath, the existence of long-term contracts, the strength of the U.S. dollar, the need to establish shipping lines and the customer approval process are factors that all dictate limited market penetration capability over the two-year time frame that the Tribunal is to consider.

RSI submitted that, should market penetration occur, however, material injury would not ensue, given the current capacity utilization and profitability of the domestic producers. In that connection, RSI contended that, once an industry has recovered its health, the dumping protection should be removed.

ANALYSIS

While SIMA does not prescribe the questions to be decided in determining whether to continue a finding or order under section 76, it has been a long-standing Tribunal practice to consider two questions. First, it must determine whether, if a finding or order is rescinded, there is a likelihood of a continuation or resumption of dumping or subsidizing of imports from the named countries.[10] Second, the Tribunal must assess whether, if there is such a continuation or resumption of dumping or subsidizing, it is likely to cause material injury to the domestic industry.

On September 1, 2000, the Tribunal sent a letter to counsel, reminding them that, in conducting a review, the Tribunal considers the above-mentioned questions and directing that, at the hearing, issues relating to competition in the Canadian market be addressed only in relation to these two questions. The Tribunal indicated that it could not and would not consider the matter of competition as it affects the broader public interest. Following receipt of that letter, parties filed written submissions with the Tribunal, opposing or supporting this directive. Further, the CSUC requested permission to make oral submissions in this respect at the beginning of the hearing. The Tribunal agreed to the request.

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10. On April 15, 2000, certain amendments to SIMA came into effect that, *inter alia*, give the CCRA the jurisdiction to determine whether there is a likelihood of continued or resumed dumping or subsidizing. The new provisions apply to reviews commenced after April 15, 2000. They are, therefore, not applicable in this review, which commenced on March 9, 2000.

The CSUC submitted that the Tribunal was at liberty to consider the issue of competition outside the context of the above-mentioned questions and, especially, in the context of the broader public interest. Effem submitted that the Tribunal must look at what has happened since the findings. It suggested that, under subsection 76(2) of SIMA, Parliament gave broad jurisdiction to the Tribunal to "re-hear any matter", including the effect of the anti-dumping duty on Canadian consumers and industrial users and on prices in Canada. According to Effem, subsection 76(2) permits the Tribunal to re-hear matters that were heard in the course of the initial public interest investigation conducted under section 45. The Competition Bureau concurred with that position.

The CSI submitted that review proceedings under subsection 76(2) of SIMA relate to "injury" orders and findings only, the objective of which is the protection of the domestic industry from unfairly traded imports. These proceedings, in the CSI's view, do not relate to public interest issues. Such issues are addressed exclusively in investigations under section 45 and concern the effect of SIMA duties on interested parties. According to the CSI, the Tribunal's power to "re-hear any matter" is limited to matters relevant to the likelihood of continued or resumed dumping or subsidizing and the likelihood of injury. The CSI submitted that to change the nature and focus of this review six months after it commenced, and to inquire into matters which are governed by another section of SIMA, would constitute a breach of the rules of natural justice that govern the proceedings. The CSBPA made submissions to the same effect.

An inquiry under section 42 of SIMA requires the Tribunal to examine the question of injury to the domestic industry caused by dumping or subsidizing. It may result in an injury or threat of injury finding described in section 3 and issued pursuant to section 43.

On the other hand, a public interest investigation conducted under section 45 of SIMA sets out to examine and balance the interests of both the domestic industry in seeking protection against injurious dumping or subsidizing and the wider "public interest", which may include, among other things, the interests of Canadian users and consumers. The Tribunal notes that a public interest investigation does not result in an "order" or "finding". When the Tribunal is of the opinion that the imposition of an anti-dumping or countervailing duty in the full amount would not or might not be in the public interest, it must so report to the Minister of Finance.

The Tribunal conducted this review pursuant to subsection 76(2) of SIMA. That subsection provides, in part, that, at any time after the making of an order or finding described in any of sections 3 to 6, the Tribunal may review the order or finding and, in making such a review, may re-hear any matter before deciding it. Sections 3 to 6 relate to, notably, Tribunal orders or findings that the dumping or subsidizing of goods has caused injury or is threatening to cause injury to a domestic industry. The fact that these orders or findings concern injury or threat of injury findings made under section 43 is confirmed by the definition of "order or finding" found in section 2. It is, therefore, clear that the review contemplated by subsection 76(2) is a review of the findings made pursuant to section 43. In the present case, the findings are those made in Inquiry No. NQ-95-002. In the Tribunal's opinion, it is within these limitations that its power to "re-hear any matter" must be assessed.

In the Tribunal's view, the objective of a review of injury findings under subsection 76(2) of SIMA must, by implication and in the absence of contrary indication, be of the same nature as that of the initial inquiry which resulted in the findings, namely, to inquire into whether the domestic industry is likely to be injured by dumping or subsidizing, should the findings be rescinded. That is why, at the beginning of the hearing and after having carefully considered the written and oral submissions made by the parties, the

Tribunal ruled that, in conducting this review, factors that may also be considered in a public interest investigation, such as competition, would only be considered by the Tribunal to the extent that they are relevant to the issues of likelihood of continued or resumed dumping or subsidizing and likelihood of injury. Accordingly, it is the Tribunal's opinion that SIMA does not provide for a public interest investigation in a review under section 76.

Likelihood of a Resumption of Dumping or Subsidizing

European Union

Under the European Union's Common Agricultural Policy, the sugar program supports sugar beet production and processing into refined sugar through a system of price supports, production quotas, preferential import quotas and export "restitution" payments or refunds for surplus production. The current sugar program was adopted in 1995 and expires on June 30, 2001.[11]

An internal E.U. minimum price for refined sugar, called the intervention price, is maintained at levels that are well above world prices.[12] For example, the intervention price over the 1999-2000 marketing year, which has been fixed since 1994-95,[13] was 631.90 euros per tonne, or approximately US$0.29 per pound.[14] The world price for refined sugar ranged between US$0.08 and US$0.14 per pound over the period of review.[15] The volume of E.U. beet sugar production that is eligible for intervention pricing is limited to production under "A" and "B" quotas. The "A" quota is intended to cover E.U. consumption requirements.[16] The "B" quota provides a safety margin to accommodate unanticipated changes in supply and demand.[17] Since unused quotas can result in a reduced quota allocation for the next year, producers have an incentive to overproduce.[18] This overproduction, referred to as "C" sugar, is not eligible for intervention pricing and is generally exported at world market prices.[19] Exports of "C" sugar benefit indirectly from high intervention prices for "A" and "B" quota sugar.[20]

Although the European Union produces a surplus of sugar relative to its domestic requirements, it is also a major importer of sugar.[21] The European Union maintains minimum sugar import commitments, primarily with the former colonies in Africa, the Caribbean and the Pacific (ACP countries) and India. These preferential imports enter duty free, and suppliers receive the European Union's guaranteed ACP price,

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11. Manufacturer's Exhibit A-2, Appendix 10, chapter 19 at 1, Administrative Record, Vol. 11.
12. The F.O.B. Europe spot price, as established by the London International Financial Futures Exchange (LIFFE), Contract No. 5, London daily price, for refined sugar is considered by most industry observers as a proxy for the world price.
13. Tribunal Exhibit RR-99-006-37, Administrative Record, Vol. 1B at 102.
14. Converted at an average exchange rate of 1.025 US$/euro. Manufacturer's Exhibit A-2, Appendix 10, chapter 19 at 27, Administrative Record, Vol. 11.
15. Tribunal Exhibit RR-99-006-5, Administrative Record, Vol. 1A at 97.
16. Tribunal Exhibit RR-99-006-5, Administrative Record, Vol. 1A at 19.
17. Tribunal Exhibit RR-99-006-5, Administrative Record, Vol. 1A at 19-20.
18. Tribunal Exhibit RR-99-006-50, Administrative Record, Vol. 1C at 204.
19. If not exported, "C" sugar is stored and counts against the next year's "A" and "B" quotas. See Tribunal Exhibit-RR-99-006-5, Administrative Record, Vol. 1A at 20.
20. Tribunal Exhibit RR-99-006-50, Administrative Record, Vol. 1C at 205.
21. Tribunal Exhibit RR-99-006-5, Administrative Record, Vol. 1A at 88.

which is also significantly above world market prices.[22] As "A" and "B" quota sugar is more than sufficient to meet E.U. requirements,[23] preferential imports contribute to the European Union's exportable refined sugar surplus.

In order to avoid the need for E.U. authorities to purchase refined sugar at intervention prices, the surplus is exported. Since the Tribunal's findings, total E.U. exports, including "C" sugar, have increased from 4.6 million tonnes raw value in 1995-96 to 6.6 million tonnes raw value in 1999-2000, an increase of approximately 43 percent.[24] For the 2000-2001 marketing year, exports are expected to decline to 5.2 million tonnes raw value.[25]

To ensure that producers receive the intervention price when quota sugar is exported, a restitution payment, or export refund, is paid which makes up the approximate difference between the intervention price and the world price. Export restitution payments are also made on preferential import sugar, or displaced quota sugar, that is subsequently exported. The value of these export refunds increased from approximately 448 euros per tonne in 1995-96 to 521 euros per tonne in 1999-2000,[26] largely as a result of declining world prices.

In addition to export refunds, the E.U. sugar program includes payments that compensate refiners for their storage costs in order to ensure a regular flow of sugar to the market.[27] These payments relate to the cost of storage and inventory financing. As well, U.K. cane sugar refiners receive an adjustment aid to compensate for reduced margins earned on the processing of preferential raw sugar imports.[28] While these payments are small relative to the export refund, all three programs were found by the Department of National Revenue (now the CCRA) to be countervailable subsidies pursuant to SIMA.[29]

Pursuant to its WTO obligations, the European Union has undertaken to reduce the volume and value of subsidized refined sugar exports by 21 percent and 36 percent respectively. In terms of volume, the reduction in subsidized refined sugar exports is from a base level of 1.612 million tonnes to 1.274 million tonnes, to be implemented in 2000-2001.[30] In terms of value, the reduction is from recent levels of approximately 800 million euros to 499.1 million euros.[31] However, the reductions are limited to "A" and "B" quota sugar and do not impact subsidized exports of refined sugar processed from preferential imports

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22. For the 1999-2000 marketing year, the guaranteed price for raw sugar was 523.70 euros per tonne, or approximately US$0.24 per pound. The guaranteed ACP price for refined sugar was 646.50 euros per tonne, or approximately US$0.30 per pound. Converted at an average exchange rate of 1.025 US$/euro. See Manufacturer's Exhibit A-2, Appendix 10, chapter 19 at 27, Administrative Record, Vol. 11.
23. E.U. production quotas total 14.6 million tonnes, white sugar equivalent (Manufacturer's Exhibit A-2, Appendix 10, chapter 19 at 28, Administrative Record, Vol. 11), and consumption is approximately 13.4 million tonnes, white sugar equivalent (Tribunal Exhibit RR-99-006-5, Administrative Record, Vol. 1A at 94).
24. Tribunal Exhibit RR-99-006-5, Administrative Record, Vol. 1A at 94.
25. Tribunal Exhibit RR-99-006-5, Administrative Record, Vol. 1A at 94.
26. Tribunal Exhibit RR-99-006-5, Administrative Record, Vol. 1A at 22.
27. Tribunal Exhibit RR-99-006-48, Administrative Record, Vol. 1C at 127.
28. Tribunal Exhibit RR-99-006-48, Administrative Record, Vol. 1C at 128.
29. Tribunal Exhibit RR-99-006-48, Administrative Record, Vol. 1C at 116.
30. Tribunal Exhibit RR-99-006-11.4, Appendix 1, Administrative Record, Vol. 3D at 101.
31. Tribunal Exhibit RR-99-006-65, Administrative Record, Vol. 1B at 299.

originating in the ACP countries or India. These exports are equivalent to approximately 1.3 million tonnes of refined sugar.[32]

While the next E.U. review of the sugar program is scheduled for June 2001, the Tribunal has no reason to believe that it will be modified in any significant way at that time. The sugar program has been virtually unchanged since its establishment in 1968, despite having been reviewed every five years. Intervention prices in the European Union are expected to remain well above world prices, thus requiring significant export subsidies in order to dispose of surplus production. With respect to dumping, the Tribunal is convinced that exports from the subject European countries after a rescission of the findings would have to be made at dumped prices, given the difference between internal market prices in these countries and Canadian market prices with which these exports must compete.

The Tribunal was provided with evidence that E.U. sugar exporters have lost considerable market share in a number of African countries over the past several years, while other traditional markets, particularly in the Middle East, have turned to local refining.[33] Given the pressure to export created by the large surpluses of refined sugar in the European Union, the relatively high refining margins and sophisticated Canadian market, a rescission of the findings would present European exporters with an attractive market opportunity. Therefore, the Tribunal concludes that there is a likelihood of resumed subsidizing of exports from the European Union to Canada, if the findings are rescinded. The Tribunal also finds a likelihood of resumed dumping from Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom.

United States

Under section 156 of the *Federal Agricultural Improvement and Reform Act* of 1996 (the U.S. FAIR Act), funded through fiscal 2002,[34] the U.S. sugar program grants loans to domestic processors of sugar cane and sugar beets. Sugar loans can be either "non-recourse" or "recourse".

When the tariff rate quota (TRQ) for U.S. sugar imports is set above 1.5 million tons raw value, the CCC grants non-recourse loans. Sugar pledged as collateral for the loan is valued at US$0.18 per pound for raw cane sugar and US$0.229 per pound for refined beet sugar.[35] Non-recourse loans also require processors to make minimum payments for sugar cane or sugar beets delivered to the processor. These loans provide processors with the option of forfeiting pledged sugar rather than repaying the loan. On forfeiture, the processor pays a penalty of US$0.01 and US$0.0107 per pound for raw cane sugar and refined beet sugar respectively. Loan rates are intended to set a minimum price for sugar in the U.S. market.[36]

When the TRQ for U.S. sugar imports is set below 1.5 million tons raw value, the CCC grants recourse loans. This type of loan, introduced in the U.S. FAIR Act, does not require minimum payments to growers, but enables the CCC to demand full repayment in cash of the loan, including interest, regardless of

32. Tribunal Exhibit RR-99-006-11.4, Appendix 1, Administrative Record, Vol. 3D at 101.
33. Tribunal Exhibit RR-99-006-37, Administrative Record, Vol. 1B at 98.
34. The fiscal year runs from October 1 to September 30.
35. Tribunal Exhibit RR-99-006-11.4, Appendix 14, Administrative Record, Vol. 3D.1 at 61.
36. Tribunal Exhibit RR-99-006-11.4, Appendix 14, Administrative Record, Vol. 3D.1 at 60.

the price for refined sugar.[37] Given U.S. import commitments under the WTO agreements and the *North American Free Trade Agreement*,[38] it is unlikely that this option will be exercised.[39]

The U.S. sugar program has avoided costs to the U.S. taxpayer by maintaining prices above the loan rates, primarily by restricting imports, and thereby avoiding forfeitures. These non-forfeiture prices must compensate refiners for the additional costs associated with marketing and transportation, as well as interest costs owing on any CCC loans when refined sugar is not forfeited. These prices, which generally ranged between US$0.26 and US$0.29 per pound over the period of review,[40] are significantly above world prices and prices in the Canadian market.

The Tribunal heard evidence from Canadian industrial users of refined sugar that overproduction in the United States and constraints on further limiting imports have recently led to bulk refined sugar prices below the loan rate.[41] A witness for the CSUC submitted that, at these lower prices of approximately US$0.19 per pound for refined beet sugar, U.S. exports could compete in the Canadian market without dumping.[42]

Pricing information filed by the domestic industry indicated that Canadian prices for bulk granulated sugar were lower than U.S. prices, once transportation costs and exchange rates were taken into account.[43] Therefore, in order to compete, U.S. refiners would have to export at prices that are lower than the current U.S. bulk sugar price. Moreover, even if U.S. prices declined to a level such that they could match current Canadian refined sugar prices, this would not be sufficient to capture sales. Evidence submitted by industrial users showed that imports from the United States would require a minimum 5 to 10 percent discount relative to domestic prices in order to compensate for the risks associated with switching from a proven domestic refiner to a new foreign source of supply.[44]

The Tribunal is of the opinion that, given the manipulation of the U.S. domestic market by the levers of the sugar program, U.S. domestic prices will not dip to levels that allow sales into Canada at undumped prices. The combination of CCC purchases, the PIK Program and forfeitures has removed or will remove sufficient amounts of the surplus to arrest or reverse the fall in prices.[45] Moreover, the Tribunal does not

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37. Manufacturer's Exhibit A-2, Appendix 10, Chapter 20 at 7, Administrative Record, Vol. 11.
38. 32 I.L.M. 289 (entered into force 1 January 1994).
39. Tribunal Exhibit RR-99-006-54, Administrative Record, Vol. 1B at 209.
40. Tribunal Exhibit RR-99-006-11.4, Appendix 5, Administrative Record, Vol. 3D.1 at 197.
41. *Transcript of Public Hearing*, Vol. 4, 14 September 2000, at 783.
42. *Ibid.*
43. Manufacturer's Exhibit A-23 at 1-2, Administrative Record, Vol. 11. The Tribunal examined domestic pricing for bulk granulated sugar based on the Gross Refined Price Formula contained in the CSI's protected aid to argument using a raw sugar price of US$0.105 per pound. Bulk granulated and average industrial refining margins were from Tribunal Exhibit RR-99-006-4 (protected), Administrative Record, Vol. 2 at 82; transportation costs for U.S. bulk granulated refined sugar to Canadian purchasers were from information contained in Manufacturer's Exhibit A-18 (protected), Appendix 2, Administrative Record, Vol. 12.
44. Tribunal Exhibit RR-99-006-5, Administrative Record, Vol. 1A at 79; and *Transcript of Public Hearing*, Vol. 3, 13 September 2000, at 605-606, and Vol. 4, 14 September 2000, at 662-64 and 687-88.
45. In order to help stabilize low sugar prices, the CCC purchased, between May 26 and June 6, 2000, 132,000 tons of refined sugar. On August 1, 2000, 42,000 tons of refined sugar was forfeited to the CCC. On August 23, 2000, the USDA announced a PIK Program, expected to remove approximately 350,000 tons of refined sugar from the supply for 2000-2001. The USDA also expected additional forfeitures of between 500,000 and 550,000 tons of refined sugar in 1999-2000. See Manufacturer's Exhibit A-23, Appendix 1 at 51281-82, Administrative Record, Vol. 11.

foresee, given market pressures from high-fructose corn syrup, imports from non-subject countries and the need to keep industrial users cost competitive, that Canadian prices will rise to U.S. levels and, in that manner, provide for imports from the United States at undumped prices.

The Tribunal also heard extensive evidence about the possible disposition of surplus U.S. stocks. The CSUC and Effem submitted that there was no limit on the amount of refined sugar that could be forfeited because of the elimination of marketing allotments in the U.S. FAIR Act.[46] Any surplus sugar in the U.S. market would be forfeited to the CCC and not dumped in Canada, since the loan rates are above Canadian prices.[47] Therefore, in their view, there is no logical reason or incentive for U.S. refiners to dump sugar in the Canadian market. Moreover, the CCC, as a government agency, would respect U.S. commitments under the WTO agreements and not dump in Canada.[48]

The domestic industry rejected the proposition that the elimination of the marketing allotments would make resumed dumping unlikely. It submitted that, at the time of the original inquiry, testimony of U.S. refiners before the Tribunal indicated that their decision to enter the Canadian market was not influenced by the marketing allotments. In its findings of 1995, the Tribunal concluded that the elimination of marketing allotments was unlikely to affect the interest that U.S. sugar producers had in the Canadian market.[49]

The Tribunal acknowledges the U.S. efforts this year, through the CCC's purchase of refined sugar, loan forfeitures and the PIK Program, to remove surplus refined sugar from the U.S. market and return the stocks-to-use ratio back to more normal levels. However, the Tribunal also observes that a one-time removal of the surplus is not sufficient to rebalance the U.S. market. In the Tribunal's opinion, the U.S. market for refined sugar will remain in a surplus position for the foreseeable future. CCC sugar purchases and forfeitures do not get rid of the problem, they only delay it, as plantings are unlikely to decline. A market equilibrium can only be re-established if the CCC stocks are dealt with at some point.

Should the findings be rescinded, there is little doubt, in the Tribunal's mind, that the Canadian market would act as a safety valve in order to return the U.S. market to an equilibrium and help maintain the integrity of the sugar program. Witnesses for the domestic industry testified that refiners in the United States would be reluctant to forfeit sugar guaranteeing CCC loans due to the consequent political risk to the sugar program associated with incurring taxpayer expenditures.[50] Furthermore, if the refiners were able to permanently remove the current surpluses from the U.S. market through dumped exports, any reduced revenue from export sales would be more than compensated for by the resulting price increases applicable to the very much larger volume of domestic sales.[51] Canada represents an attractive outlet to dispose of surplus

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46. Purchaser's Exhibit F-1 at 7, Administrative Record, Vol. 13; and Purchaser's Exhibit G-1 at 8, Administrative Record, Vol. 13.
47. Purchaser's Exhibit G-1 at 7-8, Administrative Record, Vol. 13; and Purchaser's Exhibit F-1 at 7, Administrative Record, Vol. 13.
48. *Transcript of Public Argument*, 15 September 2000, at 126; *Transcript of Public Hearing*, Vol. 1, 11 September 2000, at 76 and 223-24; and Purchaser's Exhibit G-1 at 8, Administrative Record, Vol. 13.
49. Tribunal Exhibit RR-99-006-1, Administrative Record, Vol. 1 at 49.
50. *Transcript of In Camera Hearing*, Vol. 2, 13 September 2000, at 143; and *Transcript of Public Hearing*, Vol. 1, 11 September 2000, at 111, and Vol. 3, 13 September 2000, at 551 and 552.
51. *Transcript of In Camera Hearing*, Vol. 2, 13 September 2000, at 166; and *Transcript of Public Hearing*, Vol. 3, 13 September 2000, at 428-30 and 529-34, and Vol. 1, 11 September 2000, at 139.

stocks, due to its close proximity, refining margins that are higher than world prices have to offer and the familiarity that U.S. refiners have with Canadian sugar consumers.

In considering the likelihood of resumed dumping from the United States, the Tribunal also considered the U.S. Refined Sugar Re-export Program. This program allows licensed cane sugar refiners to remain competitive in export markets by allowing imports of raw sugar at world prices. Production cannot be sold in the United States except under the substitution provisions of the U.S. Refined Sugar Re-export Program, which require that an equivalent volume of domestically produced cane sugar or beet sugar be exported.[52] These provisions also allow imported raw sugar to be refined in one plant and an equivalent amount of domestically produced cane sugar or beet sugar to be exported from another plant, thus reducing transportation costs.

Faced with intense competition from increased beet sugar production in the United States, cane sugar refiners must seek export opportunities to sustain production levels.[53] In this regard, the Tribunal heard evidence that the sugar refining business is very capital-intensive, with high fixed costs.[54] This creates an imperative to maximize throughput in order to allocate these fixed costs over the greatest possible volume.

Evidence before the Tribunal indicates that cane sugar refiners are, on average, operating at capacity utilization rates that are well below the industry average.[55] Use of the U.S. Sugar Re-export Program enables licensed cane sugar refiners to increase their throughput and reduce their unit costs in order to remain competitive. The domestic industry submitted that U.S. refiners would sell re-export sugar to Canada at prices that were based upon refining margins only slightly above variable costs of processing as a means of achieving the required capacity utilization.[56] The Tribunal notes that, with export prices based on world-priced sugar and U.S. refining costs based upon a commingling of world- and U.S.-priced raw cane sugar, dumping by the U.S. refiners is a certainty.[57]

For all the above reasons, the Tribunal finds that, if the finding with respect to the United States were rescinded, there would be a resumption of dumping of refined sugar from the United States.

Likelihood of Material Injury

Having found that dumped and subsidized imports from the subject countries are likely to resume if the findings are rescinded, the Tribunal must now address the second question of whether such resumption is likely to cause material injury to the domestic industry. In assessing this question, the Tribunal first considered the likely volumes of dumped and subsidized imports and then considered the likely prices at which the imports would enter or be offered for sale in the Canadian market.

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52. Tribunal Exhibit RR-99-006-48, Administrative Record, Vol. 1C at 106.
53. Manufacturer's Exhibit A-3 at 7, Administrative Record, Vol. 11A.
54. Manufacturer's Exhibit A-5 at 3, Administrative Record, Vol. 11A.
55. Manufacturer's Exhibit A-18 (protected) at 5, Administrative Record, Vol. 12; and Tribunal Exhibit RR-99-006-50, Administrative Record, Vol. 1C at 282.
56. Manufacturer's Exhibit A-17 at 5, Administrative Record, Vol. 11B.
57. As a result of the substitution provisions of the U.S. Refined Sugar Re-export Program, the Deputy Minister of National Revenue found that the weighted average cost of domestically produced and imported raw sugar was appropriate to use in determining the cost of refined sugar exported to Canada. See Tribunal Exhibit RR-99-006-48, Administrative Record, Vol. 1C at 106-107.

Likely Volumes of the Subject Imports

In assessing the likely volumes of the subject imports, the Tribunal considered the issue of barriers to entry into the domestic market. Industrial users of refined sugar noted a number of non-price factors that would limit their purchases of imported refined sugar. These included concerns relating to product quality, just-in-time delivery, security of supply and the existence of long-term supply contracts with domestic refiners. The expert witness for the Competition Bureau also opined that these barriers to entry would limit importers' access to the Canadian market to a maximum of 10 percent over 5 years.[58]

The Tribunal heard industrial users' concerns about potential quality differences and/or the reliability of quality of imported refined sugar. They noted that current quality assurance practices required strict prequalification certification by potential suppliers.[59] In certain cases, involving private label products, the marketers of these products often specified the quality requirements and sources of supply.[60] Industrial users of refined sugar were, therefore, constrained in their choice of suppliers.

Industrial users also noted their reliance on the domestic industry's service and support. The Tribunal heard testimony from several members of the CSUC of how cooperative domestic refiners had been in helping resolve production quality concerns, regardless of whether these originated with the refiner or the food processor.[61]

It was also submitted that the sugar-handling facilities of industrial users were designed for just-in-time delivery arrangements. In some cases, on-site storage capacity was limited to less than two days of production.[62] The potential for supply disruptions and the resultant costs associated with production stoppages far outweighed the potential cost savings that might be available from foreign sources of refined sugar.[63] Moreover, the risk of facing financial penalties (including potential loss of accounts) imposed by some of the larger retailers for failure to meet delivery schedules for sugar-containing products also made reliance on foreign sources of refined sugar unattractive to industrial users.[64]

The existence of long-term supply arrangements, which commit purchasers to specified volumes over a defined period of time, was also put forward by the CSUC and the Competition Bureau as another barrier to entry for imported refined sugar. In this regard, the Tribunal notes that supply contracts for industrial users normally differ from those for resellers of refined sugar.[65] Industrial user contracts, in addition to specifying the volume and time period, identify the pricing mechanism. Typically, pricing is based on either a specified refiner's margin or a discount from list price.[66] In contrast, reseller agreements are

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58. *Transcript of Public Hearing*, Vol. 4, 14 September 2000, at 802-803 and 807-808; and Competition Bureau's Exhibit J-3 at 10-11, Administrative Record, Vol. 13.1.
59. *Transcript of Public Hearing*, Vol. 3, 13 September 2000, at 580 and 585.
60. *Transcript of Public Hearing*, Vol. 3, 13 September 2000, at 580 and 584-88.
61. *Transcript of Public Hearing*, Vol. 3, 13 September 2000, at 576, and Vol. 4, 14 September 2000, at 667.
62. *Transcript of Public Hearing*, Vol. 3, 13 September 2000, at 580.
63. *Transcript of Public Hearing*, Vol. 3, 13 September 2000, at 577-78 and 585-86.
64. *Transcript of Public Hearing*, Vol. 3, 13 September 2000, at 586-87.
65. Tribunal Exhibit RR-99-006-1, Administrative Record, Vol. 1 at 39; and replies to Tribunal questionnaires, Tribunal Exhibits RR-99-006-15.1 (protected), -15.2 (protected) and -15.3 (protected), Administrative Record, Vol. 4.1 at 4-5, 49-50 and 83-84 respectively.
66. Manufacturer's Exhibit A-19 at 7, Administrative Record, Vol. 11B; and *Transcript of Public Hearing*, Vol. 1, 11 September 2000, at 123, Vol. 3, 13 September 2000, at 503, and Vol. 2, 12 September 2000, at 270.

agreements to supply. They do not specify the refiner's margin and, therefore, tend to reflect spot pricing.[67] Reseller agreements also provide resellers with the ability to entertain competitive offers, domestic refiners retaining the right of first refusal to meet the competitive offer.[68]

Due to all the above non-price considerations and attendant risks, industrial users of refined sugar submitted that they were unlikely to switch completely to the subject sources of supply and that domestic refiners would be able to maintain a price premium over imported sugar.

In the opinion of the expert witness for the Competition Bureau, there was no doubt that dumped and subsidized imports would reenter the domestic market, if the findings were rescinded. However, his view was that these barriers to entry would limit the penetration of these imports to 1 to 2 percentage points of growth per year. After 5 years, imports from all sources would reach a maximum of about 10 percent of the market share.[69]

The Tribunal was not persuaded by the industrial users' portrayal of non-price factors as a barrier to entry. The substitutability of refined sugar from the subject sources is evidenced by their penetration of the domestic market during the period covered by the original inquiry. At that time, the subject sources of refined sugar had captured approximately 15 percent of the domestic market.[70] The Tribunal also notes that, in the current review, a large majority of purchasers of refined sugar submitted that refined sugar from the subject sources was interchangeable with domestic sugar.[71] In terms of service, as a witness for the domestic industry put it, "You only need one reliable supplier to give you the service . . . you only need one local supplier and a small proportion of your business with them to guarantee the service".[72]

With respect to the issue of long-term contracts, the Tribunal notes that a significant portion of the domestic market is not covered by such contracts.[73] Furthermore, because the duration of these contracts varies, they come up for renewal on an ongoing basis. Evidence adduced at the hearing also indicates that purchasers have tended to shorten the length of contracts in anticipation of this review.[74] This, in the Tribunal's opinion, provides importers of the subject refined sugar with ample opportunity to bid on supply contracts. As noted above, in the more profitable reseller market, buyers are free to entertain competitive bids at any time. With the right of first refusal, domestic refiners will have to either meet these competitive offers or risk losing volume and the associated economies of scale that characterize sugar refining.

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67. *Transcript of Public Hearing*, Vol. 2, 12 September 2000, at 365.
68. *Transcript of Public Hearing*, Vol. 4, 14 September 2000, at 910.
69. Competition Bureau's Exhibit J-3 at 11, Administrative Record, Vol. 13.1.
70. Tribunal Exhibit RR-99-006-8, Administrative Record, Vol. 1.1 at 99; and Competition Bureau's Exhibit J-3 at 16, Administrative Record, Vol. 13.1.
71. Tribunal Exhibit RR-99-006-5, Administrative Record, Vol. 1A at 77 and 78.
72. *Transcript of In Camera Hearing*, Vol. 2, 13 September 2000, at 175-76.
73. Replies to Tribunal questionnaires, Tribunal Exhibits RR-99-006-15.1 (protected), -15.2 (protected) and -15.3 (protected), Administrative Record, Vol. 4.1 at 4-5, 49-50 and 83-84 respectively.
74. Replies to Tribunal questionnaires, Tribunal Exhibits RR-99-006-15.1 (protected) and -15.2 (protected), Administrative Record, Vol. 4.1 at 5 and 50 respectively; and *Transcript of Public Hearing*, Vol. 2, 12 September 2000, at 324.

Finally, the industrial users' own evidence indicates that less than a 10 percent price discount would be necessary to overcome these non-price factors and make imports an attractive alternative source of supply. Indeed, one of the CSUC's main objectives in having the findings rescinded is to benefit from alternative sources of supply with which to negotiate down domestic refining margins.[75]

The Tribunal was also not persuaded by the Competition Bureau's submission on the rate of increase and maximum level of import penetration. The Tribunal was not convinced that there is such a natural upper limit to import penetration, particularly in light of the fact that capturing only one or two large accounts would bring imports up to this level. The Tribunal also notes that, prior to the original findings, imports from the subject sources had surpassed the upper limit put forward by the Competition Bureau.[76] Given the extraordinary circumstances that the surplus has created in the United States, the Tribunal considers that U.S. sugar beet processors alone could quickly capture more than 10 percent of the Canadian market, if the findings were rescinded. Moreover, re-export sugar sales alone to Canada could easily attain a similar share of the domestic market, given the attractiveness of increasing capacity utilization rates.

In addition, the Tribunal heard evidence on a number of other factors that would facilitate the entry of the subject refined sugar. A significant degree of consolidation within the reseller market segment and centralization of purchasing decisions have taken place since the original inquiry.[77] In the Tribunal's opinion, the increased concentration of refined sugar buyers and the centralization of their decision making have shortened the time for importers to canvass the range of potential customers and have accentuated the impact of individual decisions to switch to imports.[78]

The Tribunal also heard evidence regarding a number of large industrial accounts that have plants on both sides of the Canada-United States border. In an increasing number of cases, purchasing decisions have been centralized at the head office in the United States. It was submitted that these arrangements would facilitate purchasing additional volumes from current U.S. suppliers, whose quality and service are known, to supply Canadian plants.[79]

In the Tribunal's opinion, the Canadian market is even more attractive today for E.U. and U.S. exporters of refined sugar than at the time of the original inquiry. Both subject sources now have larger exportable surpluses[80] and fewer alternative markets where these surpluses can be sold, and refining margins in Canada are better today than they were during the period covered by the original inquiry.[81]

For all the reasons stated above, the Tribunal is of the opinion that the barriers to entry would not be sufficient to limit the volume of dumped and subsidized imports entering the Canadian market to non-injurious levels, should the findings be rescinded.

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75. *Transcript of Public Hearing*, Vol. 3, 13 September 2000, at 584 and 602, and Vol. 4, 14 September 2000, at 638-40.
76. Competition Bureau's Exhibit J-3 at 16, Administrative Record, Vol. 13.1.
77. *Transcript of Public Hearing*, Vol. 1, 11 September 2000, at 233-34, and Vol. 2, 12 September 2000, at 329.
78. Tribunal Exhibits RR-99-006-15.1A (protected), -15.2A (protected) and 15.3A (protected), Administrative Record, Vol. 4.1 at 18-45, 55.1-80 and 97-157 respectively.
79. Manufacturer's Exhibit A-3 at 8, Administrative Record, Vol. 11A; Manufacturer's Exhibit A-7 at 8, Administrative Record, Vol. 11A; and Manufacturer's Exhibit A-19 at 14, Administrative Record, Vol. 11B.
80. Tribunal Exhibit RR-99-006-5, Administrative Record, Vol. 1A at 91 and 94.
81. Tribunal Exhibit RR-99-006-6 (protected), Administrative Record, Vol. 2 at 79.

Likely Prices of the Subject Goods

Evidence before the Tribunal indicates that world import demand is weakening due to the adoption of increasingly protectionist policies by importing countries,[82] combined with increasing refining capacity in traditional importer markets. The European Union, one of the world's largest exporters of refined sugar,[83] will find it increasingly difficult to find markets for its surplus production. Should the Tribunal rescind the findings against the European Union, Canada would be an attractive market for E.U. exports. With prices in Canada above world prices, E.U. exports could earn a higher margin in certain segments of the Canadian market than in other foreign markets that buy refined sugar based upon the London No. 5 contract price.[84] Accordingly, in these segments, E.U. exports would enter the Canadian market at prices that are much lower than Canadian prices.

As for U.S. surplus production, the development of a Canadian customer base provides U.S. refiners with attractive benefits. Should the finding be rescinded, exports to Canada would provide an easily accessible outlet for surplus production. The Canadian market is close to the United States, and it is sophisticated. Canadian prices, while lower than those in the U.S. market, are well above world prices. Refiners could, therefore, sell incremental quantities, covering their variable costs and making some contribution to their fixed costs. Removal of the surplus would also help restore U.S. prices to traditional non-forfeiture levels for the remaining U.S. domestic sales.[85] Moreover, selling into the Canadian market at dumped prices would not, as result of arbitrage, undermine home market prices, since access to the U.S. market is tightly controlled.

For many of the same reasons, sales of refined sugar to Canada through the U.S. Refined Sugar Re-export Program would also be attractive to U.S. cane sugar refiners. The Tribunal notes the production imperative created by the high fixed costs of sugar refining. The increase in beet sugar production in the United States has put pressure on cane sugar refiners, as they face increased competition in their domestic market and must seek export opportunities to sustain production levels. Evidence before the Tribunal indicates that some cane sugar refiners are operating at capacity utilization rates that are well below the industry average.[86] Thus, capacity is available to refine sugar under the U.S. Refined Sugar Re-export Program for the Canadian market. Therefore, in the Tribunal's view, U.S. cane sugar refiners will export to Canada at the price necessary to capture the business as long as variable costs are covered.

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82. Tribunal Exhibit RR-99-006-11.4, Appendix 7, Administrative Record, Vol. 3D at 304.
83. Tribunal Exhibit RR-99-006-11.4B, Administrative Record, Vol. 3D.3 at 33-49.
84. Estimates of the landed price of E.U. refined sugar were based on a constructed London No. 5 refined sugar price using US$0.105 per pound raw sugar costs and the average annual "white premium" during the period of inquiry in Inquiry No. NQ-95-002 (Tribunal Exhibit RR-99-006-8, Administrative Record, Vol. 1.1 at 120) and the average "white premium" during the period of review (Tribunal Exhibit RR-99-006-5, Administrative Record, Vol. 1A at 103). Transportation costs to Montréal, packaging costs for the retail segment and import duties were from Manufacturer's Exhibit A-4 (protected), Appendix 7, Administrative Record, Vol. 12. See note 43 for the method used to estimate domestic selling prices.
85. *Transcript of Public Hearing*, Vol. 1, 11 September 2000, at 111.
86. Manufacturer's Exhibit A-18 (protected) at 5, Administrative Record, Vol. 12; and Tribunal Exhibit RR-99-006-50, Administrative Record, Vol. 1C at 282 .

While there is no doubt that surplus sugar from the European Union and the United States is available for sale to Canada, evidence adduced at the hearing also indicates that there is excess packaging capacity[87] that would allow refiners to target the more profitable reseller segment of the domestic market.

In the industrial market segment, the Tribunal heard evidence of how, despite the use of long-term contracts, competitive pricing can quickly exert downward pricing pressure throughout the segment. Witnesses for the domestic industry explained that, when an industrial user's competitor sourced refined sugar at a lower cost, the industrial user's own sales of finished goods were threatened and, hence, its purchases of refined sugar. In order to maintain the competitiveness of the industrial user, renegotiating the terms of the contract became mutually beneficial. Consequently, lower pricing spread quickly across accounts.[88]

Evidence before the Tribunal also indicates that refined sugar purchasing has been centralized on one side of the border or the other.[89] In other cases, where purchasing on a plant-by-plant basis is still practised, the Tribunal has little doubt that pricing information is quickly transmitted throughout the company.

Due to the transparency of the retail market segment, where each retailer's products are clearly priced for consumers and competitors to see, incidents of low pricing and/or new sources of supply are highly visible.[90] Retailers monitor their competition. If one retailer is able to offer sugar at prices below those of other retailers, the latter will be quick to demand price concessions from their suppliers. Consequently, the impact of low-priced imports is quickly transmitted throughout the retail market segment, regardless of whether all customers have been approached by importers. The Tribunal also heard evidence that spot pricing in the retail market segment forced refiners to respond to competitive price offers on a regular basis.[91]

The Tribunal is, therefore, of the opinion that, if the findings were rescinded, significant volumes of dumped and subsidized imports would quickly penetrate the Canadian market, thereby substantially reducing domestic refiners' margins.

Injury to the Domestic Industry

In the Tribunal's opinion, if the findings are rescinded, it is likely that imports will quickly achieve a 10 percent market share and continue to grow beyond that. Given the significant volumes of surplus refined sugar available from both the European Union and the United States, and the declining number of alternative foreign market outlets, Canada will be viewed as an attractive destination for exports from these sources.

The Tribunal recognizes that, in order to reenter the Canadian market, particularly in competition with well-established domestic suppliers, foreign suppliers would need to offer prices and/or conditions that are more advantageous than those offered by domestic refiners. Evidence before the Tribunal indicates that, all other things being equal, buyers would begin switching sources of supply when prices were discounted by as little as 5 to 10 percent. Even at these prices, exporting to Canada would still yield a greater return than could otherwise be earned by exporting elsewhere at world prices. With the magnitude of surpluses in both

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87. *Transcript of Public Hearing*, Vol. 3, 13 September 2000, at 549 and 557.
88. *Transcript of Public Hearing*, Vol. 2, 12 September 2000, at 324-25.
89. Manufacturer's Exhibit A-7 at 8, Administrative Record, Vol. 11A.
90. Manufacturer's Exhibit A-7 at 6, Administrative Record, Vol. 11A.
91. *Transcript of In Camera Hearing*, Vol. 1, 12 September 2000, at 60-64.

the E.U. and U.S. markets, there would be no reason to stop at discounts of 5 to 10 percent in order to gain additional market share. Once prices begin declining, domestic refiners must compete because of their production throughput imperative.[92]

The CSI argued that, in the face of competition from dumped and subsidized imports, Canadian refiners would experience reductions in both their refining margins and their volumes of sales. It argued that, in the face of dumped and subsidized imports or simply the threat of such imports, through written or oral price offers, Canadian refiners would have to reduce margins on their sales of refined sugar to preserve volume. There would also be accounts where import competition would prevail and volume would be lost. Due to the significance of economies of scale in the production of refined sugar, losses in volume also have the consequent effect of increasing per-unit costs of production. Hence, domestic refining margins would be squeezed in terms of declining prices and increasing costs of production. The Tribunal accepts these arguments.

The domestic industry provided three possible scenarios to quantify the magnitude of injury that would result from a rescission of the findings. The three scenarios estimated the impact on earnings resulting from: (1) a return to margin levels realized in the first quarter of 1995; (2) margin levels that would result if U.S. exports of refined cane sugar were sold at prices that covered variable costs plus a contribution to fixed costs; and (3) prices of imports based on the London No. 5 contract price for refined sugar. The range in the cumulative loss in earnings for the domestic industry started at about $75 million.[93]

In this regard, it is interesting to note the submission by the Competition Bureau. Despite the very different approach to estimating lost volumes and reduced prices, should the findings be rescinded, the Competition Bureau's analysis suggests a range of loss in earnings that overlaps the range estimated by the domestic industry.

In reaching its decision, the Tribunal compared these estimates of the loss in earnings with the net earnings before interest and taxes reported by the domestic industry. In the Tribunal's opinion, a loss in earnings by the domestic sugar refining industry by even the smallest of the estimated losses constitutes material injury. Even if the assumptions of the above scenarios are not fully met, the Tribunal is of the view that the circumstances created by the E.U. surplus and the imbalance in the U.S. sugar program are likely, if the findings are rescinded, to lead to volumes and prices of imports from the subject countries that would cause injury of a similar magnitude. For these reasons, the Tribunal is convinced that the dumping from and subsidizing by the subject countries are likely to materially injure the domestic industry, if the findings are rescinded.

EXCLUSIONS

Requests for product exclusions were made by International Sugars and Florida Crystals jointly, by Sonnen and by Total Foods.

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92. *Transcript of Public Argument*, 15 September 2000, at 54.
93. Manufacturer's Exhibits A-4 (protected), Appendices 2, 3, 6, 7 and 8, A-12 (protected), Appendices 1-3, and A-22 (protected) at 3-4, Administrative Record, Vol. 12.

In considering product exclusions, it has been the Tribunal's practice, in injury inquiries and expiry reviews, to grant them only under exceptional circumstances.[94] The main criterion relied on by the Tribunal in determining whether to exclude a particular product has been whether the domestic industry produces the product.[95] The Tribunal has also considered such factors as whether there is any domestic production of substitutable or competing products[96] and whether the domestic industry is an "active supplier" of the product.[97]

International Sugars and Florida Crystals requested an exclusion for organic sugar imported into Canada. They submitted that organic sugar is not produced in Canada, that there are no substitutable products produced in Canada, that selling prices for organic sugar are higher than refined sugar prices in Canada and that the requested exclusion would benefit Canadian food processors of organic and natural foods.

The domestic producers, International Sugars and Florida Crystals agreed to the exclusion based on wording that would permit, in their view, and in the Tribunal's view, an effective application of the exclusion.

Given that organic sugar is not produced in Canada, that there are no substitutable products produced in Canada, that there is an agreement between International Sugars, Florida Crystals and the domestic producers, and given the terms of this agreement, the Tribunal grants the exclusion requested following the terms found in paragraph 9 of the Appendix to the orders.

Sonnen requested exclusions for elongated tubular-shaped packages containing sugar, called "Stick Packets", and for tetragonal-shaped packages containing sugar, called "Lucky Sugar". Both types are individual serving packets. Sonnen submitted that packaging distinguishes those products from the individual service envelopes (ISEs) sold by the domestic producers. Sonnen submitted that, while the products for which it requests an exclusion are substitutable to some degree for the ISEs, their price represents a significant barrier to switching from the ISEs to the "Stick Packets" or "Lucky Sugar".

The domestic producers objected to Sonnen's request for exclusions. They stated that their ISEs are substitutable for and compete directly with the Sonnen products for which exclusions are sought. They also stated that the price differential between the ISEs and Sonnen's products is not as great as alleged by Sonnen.

In the Tribunal's view, the "Stick Packets" and "Lucky Sugar" are directly substitutable for the ISEs made by the domestic industry. They all contain the same product, refined sugar. The distinction between them simply lies in packaging, flat rectangular envelopes versus tubular or tetragonal packages. Sonnen's products and the ISEs are aimed at the foodservice segment. Given that the "Stick Packets" and "Lucky

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94. *Certain Corrosion-resistant Steel Sheet Products*, *Finding* (29 July 1994), *Statement of Reasons* (15 August 1994), NQ-93-007 (CITT); and *Certain Oil and Gas Well Casing*, *Order* and *Statement of Reasons* (5 July 1996), RR-95-001 (CITT).
95. *Ibid*.
96. See, for example, *Machine Tufted Carpeting*, *Finding* (21 April 1992), *Statement of Reasons* (6 May 1992), NQ-91-006 (CITT).
97. See, for example, *Certain Hot-rolled Carbon Steel Plate*, *Findings* (6 May 1993), *Statement of Reasons* (21 May 1993), NQ-92-007 (CITT).

Sugar" compete with and are substitutable for the ISEs, the Tribunal denies the request for exclusions sought by Sonnen.

Total Foods requested an exclusion for icing sugar produced with wheat starch. It submitted that such sugar is not produced in Canada. Total Foods submitted that one of its customers, which exports to Europe, requested icing sugar produced with wheat starch rather than corn starch because of concerns in Europe that it may contain genetically modified organisms (GMOs).

The domestic producers objected to Total Foods' request for an exclusion. They submitted that icing sugar produced with wheat starch is substitutable for icing sugar produced by the domestic producers with corn starch and that to grant such an exclusion would give rise to considerable circumvention issues. They further submitted that it would be possible for Total Foods to satisfy its client's needs by using "pure" icing sugar (i.e. icing sugar containing no starch) or by using sugar produced with GMO-free corn starch. In addition, Lantic and Rogers offered to produce sugar with wheat starch to accommodate Total Foods.

In the Tribunal's view, given the substitutability of icing sugar produced with wheat starch for icing sugar produced with corn starch, the availability of GMO-free corn starch and the offer by Lantic and Rogers to produce icing sugar with wheat starch to accommodate Total Foods, the exclusion for icing sugar produced with wheat starch is not warranted.

CSP Foods requested an exclusion for sugar imported into Saskatchewan, and Ganong Bros. Limited (Ganong) requested an exclusion for sugar imported into the Atlantic provinces. In the Tribunal's view, there are no principled reasons in the present case that would allow for Saskatchewan and the Atlantic provinces to be differentiated from the rest of the country, given that the whole Canadian market for refined sugar is currently served by the domestic producers. The Tribunal also notes that it received no evidence indicating that there were significant supply problems facing Saskatchewan or the Atlantic provinces. On the contrary, the Tribunal heard evidence relating to steps taken by Lantic to help Ganong and others in the Atlantic provinces adjust to the shutdown of the Saint John refinery. Ganong acknowledged that the delivery of sugar from Montréal to its factory was quite acceptable. The Tribunal also notes that Lantic has established a distribution centre in Moncton, New Brunswick, to facilitate distribution of its products in the Atlantic provinces. Consequently, the Tribunal denies the requests for exclusions for refined sugar imported into Saskatchewan and the Atlantic provinces.

During the hearing, the Tribunal advised the parties that it was considering making generic certain brand-, producer- or importer-specific exclusions granted in the initial inquiry. The Tribunal indicated that the generic exclusion that it was contemplating would follow the wording of the Remission Order currently in place which uses generic descriptions.[98] The domestic industry agreed with such a generic exclusion. Given the existence of the Remission Order and for the purpose of simplifying customs administration, the Tribunal grants the exclusions found in paragraphs 1 to 8 of the Appendix to the orders.

CONCLUSION

For the foregoing reasons, the Tribunal hereby continues the findings in respect of the dumping of the subject goods originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom, and the subsidizing of the subject goods originating in or exported from the European Union, with an amendment to exclude the goods listed in the Appendix.

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98. *Supra* note 6.

The Tribunal also hereby continues the finding in respect of the dumping of the subject goods originating in or exported from the United States, with an amendment to exclude the goods listed in the Appendix.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Patricia M. Close
Patricia M. Close
Member

James A. Ogilvy
James A. Ogilvy
Member

Ottawa, Friday, November 10, 2000

Review No.: RR-99-006

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on November 6, 1995, in Inquiry No. NQ-95-002, concerning:

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

CORRIGENDUM

In the English version of the orders, the fourth paragraph of the Appendix should read: "Pre-cut specialty shaped sugar pieces, imported in retail-ready packaging, in packages not exceeding 1 kg in weight. For greater clarity, these include diamond-, heart-, spade- and club-shaped sugar but do not include cube- or domino- (i.e. rectangular) shaped sugar."

In the French version of the orders, the fourth paragraph of the Appendix should read: "Morceaux de sucre de spécialité précoupés, importés dans des emballages prêts à être vendus au détail d'au plus 1 kilogramme. Aux fins de précision, ces marchandises comprennent les morceaux de sucre en forme de carreaux, de cœurs, de piques et de trèfles, mais non les morceaux de sucre en cubes ou en dominos (c.-à-d. rectangulaires)."

By order of the Tribunal,

Michel P. Granger
Secretary