



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDERS AND REASONS

Expiry Review No. RR-2014-006

Refined Sugar

*Orders issued
Friday, October 30, 2015*

*Reasons issued
Friday, November 13, 2015*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the orders made by the Canadian International Trade Tribunal on November 1, 2010, in Expiry Review No. RR-2009-003, as amended by its order made on September 28, 2012, in Expiry Review No. RR-2009-003R, concerning:

**THE DUMPING OF REFINED SUGAR 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 ORIGINATING IN
OR EXPORTED FROM THE EUROPEAN UNION**

ORDERS

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its orders made on November 1, 2010, in Expiry Review No. RR-2009-003, as amended by its order made on September 28, 2012, in Expiry Review No. RR-2009-003R, continuing its orders made on November 2, 2005, in Expiry Review No. RR-2004-007, continuing, with amendment, its orders made on November 3, 2000, in Review No. RR-99-006, continuing, with amendment, its findings made 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 the aforementioned goods originating in or exported from the European Union.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its order in respect of the dumping of the aforementioned goods originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom, and the subsidizing of the aforementioned goods originating in or exported from the European Union.

Pursuant to subsection 76.04(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal also hereby continues its order in respect of the dumping of the aforementioned goods originating in or exported from the United States of America.

The Canadian International Trade Tribunal excludes from its orders specialty-coloured decorative sugar crystals in granulated form combined with carnauba wax and food colouring matter, imported in small retail-ready containers not exceeding 16 oz. for use exclusively as a superficial decoration in baked goods (such as pies, cakes, pastries, muffins, cookies, etc.) and other prepared foods.

Jason W. Downey

Jason W. Downey
Presiding Member

Stephen A. Leach

Stephen A. Leach
Member

Rose Ritcey

Rose Ritcey
Member

The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	September 8 to 10, 2015
Tribunal Members:	Jason W. Downey, Presiding Member Stephen A. Leach, Member Rose Ritcey, Member
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STATEMENT OF REASONS

INTRODUCTION

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ of the orders made by the Canadian International Trade Tribunal (the Tribunal) on November 1, 2010, in Expiry Review No. RR-2009-003, as amended by its orders made on September 28, 2012, in Expiry Review No. RR-2009-003R, continuing its orders made on November 2, 2005, in Expiry Review No. RR-2004-007, continuing, with amendment, its orders made on November 3, 2000, in Review No. RR-99-006, continuing, with amendment, its findings made 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 (the subject goods), originating in or exported from the United States of America, Denmark, the Federal Republic of Germany (Germany), the Netherlands and the United Kingdom and the subsidizing of the subject goods originating in or exported from the European Union.

PROCEDURAL BACKGROUND

2. The Tribunal initiated the expiry review on February 18, 2015.

3. On June 18, 2015, the Canada Border Services Agency (CBSA) determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the orders was likely to result in a continuation or resumption of the dumping and subsidizing of the subject goods.

4. On June 19, 2015, following the CBSA's determinations, the Tribunal began its expiry review to determine whether, pursuant to subsection 76.03(10) of *SIMA*, the expiry of the orders was likely to result in injury to the domestic industry. The Tribunal's period of review (POR) is from January 1, 2012, to March 31, 2015.

5. As part of these proceedings, the Tribunal sent questionnaires to known domestic producers, importers, foreign producers and exporters of refined sugar. The responses to these questionnaires were used to prepare public and protected investigation reports.²

6. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, from September 8 to 10, 2015.

7. The Canadian Sugar Institute (CSI), an organization comprised of the two domestic producers, Redpath Sugar Ltd. (Redpath) and Lantic Inc. (Lantic), filed written submissions, witness statements and

1. R.S.C., 1985, c. S-15 [*SIMA*].

2. The record of these proceedings consists of all relevant documents filed or accepted for filing by the Tribunal, including the following: the CBSA's protected expiry review report, public statement of reasons, index of background information and related documents; written Tribunal communications; the Tribunal's notice of expiry review; the protected and public replies to the expiry review questionnaires; the public and protected investigation reports for this expiry review, as well as the revisions and supplements thereto; requests for product exclusions and replies thereto; witness statements and other exhibits; and the exhibit list and the Tribunal's findings and orders, and statements of reasons from Inquiry No. NQ-95-002, Review No. RR-99-006, Expiry Review Nos. RR-2004-007, RR-2009-003 and RR-2009-003R, and public and protected pre-hearing staff reports prepared for Expiry Review No. RR-2009-003. All public exhibits were made available to interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of the protection of confidential information.

made arguments in support of a continuation of the orders. The CSI called the following witnesses who testified at the hearing: Ms. Sandra L. Marsden, President of the CSI; Mr. John Holliday, President and CEO of Lantic; Mr. Edward Makin, retired President and CEO of Lantic; Mr. Michael Walton, Vice-President, Sales and Marketing, and General Manager, Lantic Blending, of Lantic; Mr. Daniel Lafrance, Director and former Senior Vice-President of Finance & Procurement, Chief Financial Officer and Secretary of Lantic; Ms. Manon Lacroix, Vice-President of Finance and Secretary of Lantic; Mr. Jonathan Bamberger, President of Redpath; Mr. Terry Brooks, Industrial Sales Manager, Redpath; and Ms. Elena Laktionova, Director of Finance, Redpath.

8. The Delegation of the European Union to Canada (EU Delegation) also filed written submissions and made a closing statement at the hearing.

9. The Tribunal received two requests for product exclusions, which were filed by Golda's Kitchen Inc. (Golda's Kitchen) and Kellogg Canada Inc. (Kellogg Canada).

PRELIMINARY MATTERS

10. On August 26, 2015, the Tribunal received a letter from the CSI stating that the volume of imports of refined sugar from non-subject countries, as presented in the investigation report, was potentially incorrect as it appeared significantly lower than the data that the CSI had obtained from Statistics Canada.

11. On September 1, 2015, the staff of the Administrative Tribunals Support Service of Canada (staff) held a teleconference with the CSI to discuss the issue.³ Mr. Greg Gallo, the director responsible for the preparation of the investigation report, testified at the hearing regarding the methodology used by staff to estimate the volume of imports of refined sugar from non-subject countries.⁴

12. The Tribunal recognizes that the CSI and staff identified different volumes of imports of refined sugar from non-subject countries.⁵ The Tribunal finds that these differences are immaterial to the Tribunal's overall analysis of whether injury is likely to result from the expiry of the orders.

13. The Tribunal had arranged for two witnesses to give factual testimony in respect of the refined sugar markets and programs in the United States and the European Union respectively. Due to their travel schedules, these witnesses were unable to attend the hearing and technical difficulties prevented them from testifying by videoconference.

PRODUCT

Product Definition

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

15. 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. Specialty sugars may be in granulated, liquid or powdered form.

3. *Transcript of Pre-hearing Teleconference*, 1 September 2015.

4. *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 20-26.

5. *Ibid.* at 7-11.

16. Refined sugar is sold to customers in a broad range of shipping and packaging configurations. These include 2-, 4-, 10-, 20- and 40-kg bags, and in bulk by railcar, truckload or one-metric-tonne intermediate bulk containers (tote bags). Liquid sugar is sold by railcar, truckload, drum or pail. Additionally, at the hearing, the Tribunal heard testimony describing bulk in, bagged out (BIBO) ships.⁶ There are two of these ships in the world, owned by ED & F Man, which are used to transport bulk sugar, loaded directly from silos in various ports in Europe and shipped to their destinations and discharged. Sugar can be discharged from these BIBO ships in bagged form or tote bags or directly into bulk containers, silos or trucks.⁷

17. In the original inquiry and subsequent reviews, the Tribunal excluded from the findings and orders a number of specialty and generic sugar products. The previously excluded products are listed in Appendix B to these reasons.

LEGAL FRAMEWORK

18. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the orders in respect of the subject goods is likely to result in injury or retardation.⁸

19. The Tribunal is also required, pursuant to subsection 76.03(12) of *SIMA*, to make orders either rescinding the orders in Expiry Review No. RR-2009-003, as amended by Expiry Review No. RR-2009-003R, if it determines that the expiry is unlikely to result in injury, or continuing the orders, with or without amendment, if it determines that the expiry of the orders is likely to result in injury.

20. Given that the likelihood of injury to a domestic industry must be assessed in relation to domestic producers of like goods in relation to the subject goods, the Tribunal must first determine what constitutes “like goods”. Once that determination has been made, the Tribunal must determine which domestic producers of the like goods constitute the “domestic industry”.

21. The Tribunal must also determine whether it is appropriate to assess the likely effect of the resumed or continued dumping and subsidizing of the subject goods from all subject countries cumulatively (i.e. whether it will conduct a single analysis of the likely effect or a separate analysis for each subject country).

22. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will “cross-cumulate”). Specifics on this matter are discussed in greater detail below.

LIKE GOODS AND CLASSES OF GOODS

23. Subsection 2(1) of *SIMA* defines “like goods” in relation to any other goods as follows: “... (a) goods that are identical in all respects to the other goods, or (b) in the absence of any [such] goods, ... goods the uses and other characteristics of which closely resemble those of the other goods”.

6. *Transcript of Public Hearing*, Vol. 2, 9 September 2015, at 169-71.

7. *Ibid.*

8. Subsection 2(1) of *SIMA* defines “injury” as “... material injury to a domestic industry” and “retardation” as “... material retardation of the *establishment* of a domestic industry” [emphasis added]. Given that there is currently an established domestic industry in this case, the issue of whether the expiry of the orders is likely to result in retardation does not arise in this expiry review.

24. In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the domestic goods fulfill the same customer needs as the subject goods.

25. In its statement of reasons in the original inquiry, the Tribunal stated the following:

Counsel and parties to the inquiry were unanimous in asserting that refined sugar from the subject countries, whether in granulated, liquid or powdered form, is fungible with domestically produced sugar. As such, refined sugar produced by the domestic industry and the subject goods have the same end uses and compete with and, in many applications, can be substituted for one another. Therefore, the Tribunal is of the view that domestically produced refined sugar is like the subject goods.⁹

[Footnote omitted]

26. The Tribunal notes that these conclusions were maintained in Review No. RR-99-006 and Expiry Review Nos. RR-2004-007 and RR-2009-003, as amended in Expiry Review No. RR-2009-003R, and that, in the current expiry review, it heard no evidence or argument that warrants departing from those conclusions. Accordingly, the Tribunal is of the view that the refined sugar produced by the domestic producers constitutes like goods in relation to the subject goods.

DOMESTIC INDUSTRY

27. Subsection 2(1) of *SIMA* defines “domestic industry” as follows: “. . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods . . .”

28. Redpath and Lantic together account for almost all known domestic production of like goods¹⁰ and, therefore, constitute the domestic industry for the purposes of this expiry review.

CUMULATION

29. The CBSA determined that the expiry of the orders is likely to result in the continuation or resumption of dumping of refined sugar from the United States, Denmark, Germany, the Netherlands and the United Kingdom and the continuation or resumption of subsidizing of refined sugar from the European Union.

30. Subsection 76.03(11) of *SIMA* provides that the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods “. . . that are imported into Canada from more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition . . .” between the goods imported into Canada from any of the countries and the goods from any other of those countries or between those goods and the like goods.

31. In this case, the Tribunal must decide whether to make an assessment of the cumulative effect of the dumping of refined sugar from five countries: the United States, Denmark, Germany, the Netherlands, and the United Kingdom.

9. *Refined Sugar* (6 November 1995), NQ-95-002 (CITT) at 13.

10. Exhibit RR-2014-006-06 (protected), Table 6, Vol. 2.1.

32. In considering the conditions of competition between goods, the Tribunal typically takes into account the following factors, as applicable: the degree to which the goods from each subject country are interchangeable with the subject goods from the other subject countries or with the like goods; the presence or absence of sales of imports from different subject countries and of the like goods into the same geographical markets; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, and of the availability of like goods supplied by the domestic industry.

33. In the context of expiry reviews, the Tribunal has stated in the past that the effect of continued or resumed dumping or subsidizing and the assessment of conditions of competition must be looked at prospectively.¹¹ Accordingly, when the Tribunal makes a prospective assessment of the conditions of competition in expiry reviews, its examination presupposes that competition will actually exist, i.e. if a finding or an order expires, goods from each subject country will likely be present in the Canadian market at the same time.

34. The CSI argued that the Tribunal must consider the cumulative effect of dumped imports of refined sugar from the United States, Denmark, Germany, the Netherlands and the United Kingdom, given the commodity nature of the subject goods and because price is a key driving factor in capturing sales, regardless of the source of the product.

35. The EU Delegation made no submissions on cumulation.

36. In its statement of reasons in Expiry Review No. RR-2004-007, the Tribunal concluded the following:

56. The evidence indicates that refined sugar is a commodity and that price is a key driving factor in capturing sales, regardless of the source of the product. Refined sugar of any given quality imported from each subject country is interchangeable, and the evidence indicates that the quality of refined sugar from the various subject countries is similar. In addition, modes of transportation and channels of distribution are similar. . . .

37. There is no evidence on the record of this expiry review that would warrant a departure from this conclusion. Refined sugar from all sources remains highly substitutable and price remains the key factor influencing purchase decisions. Further, as explained later in these reasons, the Tribunal is of the view that, if the orders are rescinded, refined sugar from these five countries will likely be present in the Canadian market.

38. Accordingly, the Tribunal considers it appropriate to make a cumulative assessment of the effect of the dumping of refined sugar from the United States, Denmark, Germany, the Netherlands and the United Kingdom.

CROSS-CUMULATION

39. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping of refined sugar from the United States, Denmark, Germany, the Netherlands and the United Kingdom and the subsidizing of refined sugar from the European Union.

11. *Hot-rolled Carbon Steel Plate* (9 January 2008), RR-2007-001 (CITT) at para. 48; *Carbon Steel Welded Pipe* (24 July 2001), RR-2000-002 (CITT) at 6-7.

40. The CSI submitted that, although *SIMA* does not expressly address the practice of cross-cumulation, subsection 76.03(11) could be interpreted to permit cross-cumulation if the Tribunal is satisfied that such an assessment is appropriate in the particular circumstances of the case. Moreover, the CSI submitted that there is no evidence on the record that permits differentiating between the effects caused by the dumping of the subject goods with those caused by the subsidizing.

41. According to the CSI, if the orders were rescinded, both dumped and subsidized refined sugar would enter Canada at residual prices, would compete openly with refined sugar in the Canadian market and would independently and cumulatively drive down Canadian refiners' net margins to unsustainable levels.

42. The EU Delegation made no submissions on cross-cumulation.

43. The language of subsection 76.03(11) of *SIMA* is silent in regard to cross-cumulation, but this provision has been interpreted by the Tribunal as allowing an assessment of the cross-cumulative effects of dumping and subsidizing if the Tribunal is satisfied that such an assessment is appropriate under the particular circumstances of a case. The Tribunal has expressed the view that there could be a situation where goods that are only subsidized would have a different effect from goods that are only dumped and that, in such circumstances, it would not be appropriate to cross-cumulate their effects.¹²

44. In related past proceedings, the Tribunal has determined that it was appropriate to conduct a cumulative assessment of the dumping and subsidizing of refined sugar.¹³ The Tribunal concluded the following in Expiry Review No. RR-2004-007:

58. The conditions of competition discussed earlier are the same for the dumped and subsidized goods. The goods from the named European countries would be both dumped and subsidized. Since the combined effects of dumping and subsidizing are difficult or impossible to distinguish when present together, the Tribunal is satisfied that it would be appropriate to make an assessment of the cumulative effect of the dumping and subsidizing of all the subject goods.

12. *Stainless Steel Wire* (29 July 2009), RR-2008-004 (CITT) at 9.

13. *Refined Sugar* (6 November 1995), NQ-95-002 (CITT) at 19-21, (3 November 2000), RR-99-006 (CITT), (2 November 2005), RR-2004-007 (CITT) at paras. 53-58, (28 September 2012), RR-2009-003R (CITT) at paras. 54-56. In Expiry Review No. RR-2009-003, the Tribunal found that refined sugar from the European Union was not likely to be present in the Canadian market in more than negligible quantities; accordingly, it did not conduct a cumulative assessment of refined sugar from the European Union and refined sugar from the United States. However, in its separate consideration of refined sugar from the European Union, the Tribunal continued to cumulatively assess the effects of the dumping of refined sugar from Denmark, Germany, the Netherlands and the United Kingdom with the subsidizing of refined sugar from the European Union. On remand from the Federal Court of Appeal, the Tribunal came to a different conclusion on expected volumes from the European Union and, consequently, a different decision on cross-cumulation. Ultimately, the Tribunal considered the combined impact of the dumped goods from the United States and the subsidized goods from the European Union (some of which were also dumped).

45. In *United States - Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products From India*,¹⁴ the World Trade Organization (WTO) Appellate Body found that cross-cumulating imports that were subject to an anti-dumping duty investigation with those that were subject only to a countervailing duty investigation constituted a violation of the *SCM Agreement*.¹⁵

46. This finding is consistent with the Tribunal's view that whether it is appropriate to cross-cumulate must be determined on a case-by-case basis.

47. As such, the Tribunal collected data that allowed it to analyze the effects both cumulatively and separately and sought other evidence and argument on whether it would be appropriate to cross-cumulate in this case.

48. In this case, the Tribunal finds that there is no evidence that would lead it to arrive at a different conclusion than in past cases. Refined sugar that is either dumped or subsidized remains highly substitutable and perfectly fungible. As explained later in these reasons, the Tribunal tested the effects of dumped and subsidized refined sugar separately and found that it made no substantive difference to the outcome of its analysis: if *either* anti-dumping duties or countervailing duties are no longer imposed, then dumped or subsidized sugar would likely be present in the Canadian market in volumes and prices that would likely injure domestic producers.

BACKGROUND

49. Before assessing the likelihood of injury, the Tribunal will describe certain important facets of the sugar refining industry.

Fundamentals of Sugar Refining

Refining Process

50. Refined sugar can be produced either from sugar cane or from sugar beets. Refined sugar, regardless of how it is produced, is chemically and physically identical. However, the manufacturing process to convert raw cane sugar to refined sugar differs significantly from that which is required to convert sugar beets to refined sugar. A brief description of these production processes is presented below.

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14. (8 December 2014), WTO Doc. WT/DS436/AB/R, Report of the Appellate Body [*Indian Flat Products*]. In this dispute, India challenged countervailing duties implemented by the United States on imports of certain steel products from India, arguing that the U.S. International Trade Commission had acted inconsistently with Article 15.3 of the *Agreement on Subsidies and Countervailing Measures*, https://www.wto.org/english/docs_e/legal_e/24-scm.pdf (*SCM Agreement*) by cumulating the effects of subsidized imports from India with those of imports from 10 other countries. Imports from 5 countries, including India, were subject to both anti-dumping and countervailing duty investigations. Imports from the remaining 6 countries were subject to anti-dumping investigations only. India did not take issue with the former category but argued that, for the purposes of the countervailing investigation, its goods should not have been cumulated with the latter category, i.e. with goods that were subject to anti-dumping duty investigations only.
15. The WTO Appellate Body agreed with the WTO Panel that Article 15.3 of the *SCM Agreement* "... refers to imports 'simultaneously subject to countervailing duty investigations'," such that the authorization to cumulatively assess the effects of "such imports" requires that the imports be "subject to countervailing duty investigations". Conversely, "... the effects of imports other than such subsidized imports must not be incorporated in a cumulative assessment pursuant to Article 15.3". In essence, the decision stands for the proposition that "... being subject to simultaneous countervailing duty investigations 'is a necessary pre-condition for a cumulative assessment to be undertaken consistently with Article 15.3'."

51. The production of refined cane sugar typically involves two steps: producing raw sugar to an established colour standard with less than 99.5 percent pure sucrose, and then refining it to the required level of purity.

52. The manufacture of refined sugar from sugar cane involves the separation of pure sucrose from raw sugar by affination, clarification and filtration, decolourization, evaporation/boiling, centrifugation/drying and conditioning. The end product of this process is white granulated sugar. In the initial refining stages, some of the colour- and flavour-producing substances are separated from the raw sugar to make specialty soft sugars such as brown, yellow and demerara style sugars.

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

54. Cane refining and beet sugar processing are both capital-intensive processes, in an industry that is characterized by high fixed costs.¹⁶ Accordingly, the goal is to maximize throughput and maintain high capacity utilization. Further, it is important to sell refined sugar as soon as possible because it is expensive to store surplus stocks.¹⁷

Net Refining Margin

55. The Tribunal heard extensive testimony and received voluminous written submissions from the CSI that the key measure of profitability in the sugar industry is the net refining margin.¹⁸ Mr. Martin Todd’s testimony supported these submissions when he stated that “[r]efiners care only about the refining margin, and that’s because they buy raw sugar and they sell white [refined] sugar, so they are concerned ultimately with the cost of the raw sugar delivered to their facility and contrasting that with the price they are able to sell the white [refined] sugar that they produce from that raw sugar.”¹⁹

56. The CSI submitted that refined sugar is priced differently from other commodity products. Unlike other commodities, there is a direct link between the selling price of a specific volume of refined sugar and the purchase cost of the raw cane sugar. Accordingly, purchasers can set the raw sugar component of the pricing independently and negotiate separately the refiners’ net margins. The refiners’ net margins will not change as a result of fluctuations in the raw cane sugar price.²⁰ As such, the CSI submitted that the way Canadian market participants assess competing quotes is by comparing the refiners’ net margins.²¹

16. Exhibit RR-2014-006-A-12 at para. 29, Vol. 11B; Exhibit RR-2014-006-A-03 at para. 16, Vol. 11.

17. It is less expensive to store raw sugar. Exhibit RR-2014-006-A-06 at para. 23, Vol. 11A.

18. Exhibit RR-2014-006-A-27 at paras. 5-8, Vol. 11D; Exhibit RR-2014-006-A-10 at paras. 49-54, Vol. 11A; *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 14-15.

19. *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 66.

20. Exhibit RR-2014-006-A-27 at para. 7, Vol. 11D; Exhibit RR-2014-006-A-19 at para. 60, Vol. 11B.

21. *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 126-27.

ANALYSIS IN AN EXPIRY REVIEW

Overview

57. An expiry review is forward-looking.²² It follows that evidence from the period of review during which an order was being enforced is relevant insofar as it bears upon the prospective analysis of whether the rescission of the order is likely to result in injury.²³

58. There is no presumption of injury in an expiry review; the Tribunal's findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the *SCM Agreement* and the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*.²⁴ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.²⁵

Time Period

59. In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on the circumstances that can reasonably be expected to exist in the near to medium term, which is generally considered to be 18 to 24 months from the expiry of an order.

60. The CSI argued that, in this expiry review, the Tribunal should consider extending this period beyond 24 months by three weeks to allow for a consideration of the effects of the reforms to the EU's sugar program that will occur *after* October 17, 2017.²⁶

61. The Tribunal has considered extending the 18-24 month period in the past, but has been hesitant to do so where certain events beyond that time frame were not clearly foreseen and imminent.²⁷ In this case, while the event and the time frame of the legislative reforms are known, the Tribunal finds that the full effects of the EU reforms are unlikely to be realized until months or years after they come into force. It would be speculation to consider how the market might react at that time. Accordingly, the Tribunal will not extend its assessment of the likelihood of injury beyond the usual period of 24 months.²⁸

62. However, the Tribunal will consider the effects of changes that are likely to occur in the EU sugar market over the next 24 months, leading up to these reforms. For example, the Tribunal heard testimony

22. *Certain Fasteners* (5 January 2015), RR-2014-001 (CITT) [*Certain Fasteners*] at para. 76; *Certain Dishwashers and Dryers*, procedural order (25 April 2005), RR-2004-005 (CITT) at para. 16.

23. *Certain Fasteners* at para. 76; *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions*] at para. 21.

24. 15 April 1994, 1868 U.N.T.S. 201 (entered into force 1 January 1995), available at <http://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm>. *Certain Fasteners* at para. 77; *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

25. *Certain Fasteners* at para. 77.

26. On October 1, 2017, the European Union will introduce its second set of reforms to its domestic sugar program by removing all beet sugar production limits. The European Union takes the position that the WTO limitation on its exports will end on that date as well. However, the European Union will continue to maintain strict import limits.

27. *Whole Potatoes* (10 September 2010), RR-2009-002 (CITT) at para. 211.

28. There are mechanisms within *SIMA* to enable importers, exporters and governments to seek changes to the application of anti-dumping and countervailing duties when circumstances change.

that, because of the prospect of new opportunities after the removal of restrictions on beet production, some EU producers are increasing production and establishing or purchasing international trading arms.²⁹

LIKELIHOOD OF INJURY

63. Subsection 37.2(2) of the *Special Import Measures Regulations*³⁰ lists the factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that the expiry of the order or finding is likely to result in a continuation or resumption of dumping or subsidizing. These factors include the following: changes in international and domestic market conditions; the likely volumes of dumped or subsidized goods; the likely prices of dumped or subsidized goods; the likely impact of the dumped or subsidized goods on the domestic industry; the likely performance of the domestic industry, taking into account that industry's recent performance (including trends in production, capacity utilization, employment, exports, etc.); and the diversion of dumped or subsidized goods caused by anti-dumping or countervailing measures taken by the authorities in other countries. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

64. As stated earlier in these reasons, the Tribunal interprets *Indian Flat Products* to mean that the Tribunal must not resort to cross-cumulation by default and, instead, should consider whether, in a particular case, it is appropriate to cross-cumulate the effects of dumping and subsidizing.

65. Accordingly, the Tribunal will analyze the effects of dumping and subsidizing both cumulatively and separately.

66. However, the Tribunal will first consider whether there have been any changes in international and domestic market conditions, as this assessment applies equally to its cumulative and separate analyses of the effects of dumping and subsidizing.

International Market Conditions

Record World Surplus

67. One of the key developments in the world sugar market since 2010 has been the significant accumulation of excess stocks, or surplus refined sugar. According to the report of LMC International (LMC report), a major contributing factor to the surplus has been the ability of Asian producers to maintain stable production in the face of declining prices as a result of governments in many Asian countries intervening to support the price that farmers receive for sugar cane.³¹

68. The LMC report indicates that there has been significant investment in refining capacity around the world with some new refineries operating at and nearing full capacity, and others still under construction. According to this report, the new refineries and those currently under construction will add 5 million to 6 million metric tonnes refined value³² in the global market by the end of 2017.³³

29. *Transcript of Public Hearing*, Vol. 3, 10 September 2015, at 211-12.

30. S.O.R./84-927 [*Regulations*].

31. Exhibit RR-2014-006-A-18 at 3-4, Vol. 11B.

32. Units of measure varied across submissions, with some references to amounts in short ton raw value (STRV) and others to metric tonne raw value (MTRV). The Tribunal has decided to use metric tonne (MT or tonne) refined value in these reasons. It converted other units of measures using the factors submitted by the CSI in Exhibit LE-2014-005-02.01, Vol. 1 at 2. Further conversion from MTRV to refined value is confirmed by CSI's submission in Exhibit RR-2014-006-A-03, Appendix 9, Vol. 11, where the raw value multiplied by 0.92 equals the refined value.

33. Exhibit RR-2014-006-A-18 at 30, Vol. 11B.

69. Global production of refined sugar is estimated to hit a record 169.56 million MTs in 2014-2015, an increase of 1.01 million MTs, or a 0.1 percent increase since 2012-2013.³⁴ As of 2014-2015, the largest producers of refined sugar are Brazil at over 20 percent of global production, followed by India at 17 percent and the European Union at 10 percent.³⁵ The United States and Canada produce 4 percent and less than 1 percent, respectively, of global refined sugar.³⁶

70. Global sugar consumption increased during the POR.³⁷ According to the Organisation for Economic Co-operation and Development, this trend is expected to continue at a rate of 1.9 percent per year for the foreseeable future.³⁸ This increase in demand is being driven by developing countries, as per capita sugar consumption in urban African and Asian regions is low and growth prospects are high compared to other regions.³⁹

71. During the POR, global exports of refined sugar decreased by 4 percent, declining from 21.9 million MTs in 2012-2013 to 21.1 million MTs in 2013-2014.⁴⁰ Exports of refined sugar are concentrated in a few countries. In 2013-2014, Brazil was the leading exporter of refined sugar, representing approximately 21 percent of total exports, followed by Thailand with 13 percent and the United Arab Emirates with 8 percent.⁴¹

72. The LMC report states that global sugar production exceeded consumption in each of the five years preceding this expiry review.⁴² From 2010-2011 to 2014-2015, stocks of global sugar increased by 21.44 million MTs and, during this period, the stocks-to-use ratio climbed from 34.5 percent to 44.4 percent.⁴³ As of September 30, 2015, the total stock of global refined sugar is estimated at 72.96 million MTs.⁴⁴

73. The LMC report indicates that, even though global consumption is expected to exceed global production in 2015-2016, the estimated deficit of 3.4 million MTs, is small relative to the global oversupply of refined sugar amassed over the previous five-year period.⁴⁵

Declining World White Premium

74. Another key development in the world sugar market since 2010 has been a significant decline in prices and a significant decline in the world white premium.

75. There are two international benchmark prices for raw and refined sugar that are traded in the world market: (i) raw sugar is represented by the No. 11 futures contract, which is quoted at ICE Futures U.S., in New York, and (ii) refined sugar is represented by the No. 5 futures contract, which is quoted at ICE Futures

34. Exhibit RR-2014-006-A-03, tab 9, Vol. 11. The Tribunal converted this number to metric tonnes for consistency throughout the draft.

35. Exhibit RR-2014-006-05, Table 57, Vol. 1.1.

36. *Ibid.*; Exhibit RR-2014-006-A-03 at para. 15, Vol. 11.

37. Exhibit RR-2014-006-A-03, Appendix 11 at 394, Vol. 11.

38. *Ibid.*, Appendix 12 at 123.

39. *Ibid.*

40. Exhibit RR-2014-006-25.03, Table 8, Vol. 7.1A at 165.

41. *Ibid.*

42. Exhibit RR-2014-006-A-18 at 1, Vol. 11B.

43. Exhibit RR-2014-006-A-03 at para. 57, Vol. 11.

44. *Ibid.* The Tribunal converted this number to metric tonnes for consistency throughout the draft.

45. Exhibit RR-2014-006-A-03 at para. 64, Vol. 11.

Europe, in London. In both cases, prices are quoted on an FOB basis, i.e. sugar that is delivered onto an ocean-going vessel in a port.

76. As cane sugar refiners, U.S. producers are primarily concerned with the No. 11 price (the world raw sugar price) and, as sugar beet refiners, EU producers are primarily concerned with the No. 5 price (the world refined white sugar price).

77. Prices in Canada are indirectly tied to the No. 5 world futures contract for refined sugar because non-subject imports have open access to Canadian markets at No. 5 prices, which limits the costing “spread” or price difference that can exist in the Canadian market between the No. 11 and No. 5 prices.

78. The “spread” between these two futures prices is referred to as the “world white premium” and is the benchmark measure of conditions in the global and Canadian sugar markets.⁴⁶ A high premium signals that supplies in the white (refined) sugar market are tight and/or that costs of refining raw sugar are high, for example, because energy prices are high.⁴⁷ A low premium reflects large supplies available of white (refined) sugar and/or low refining costs.⁴⁸

79. The No. 11 futures price decreased by 19 percent during the POR, from 22.92 Canadian cents per pound in 2012 to 18.54 Canadian cents per pound in 2014.⁴⁹ The No. 11 futures price decreased by 3 percent between the first quarter of 2014 (18.13 Canadian cents per pound) and the first quarter of 2015 (17.54 Canadian cents per pound).⁵⁰

80. During the same period, the No. 5 futures price decreased by 16 percent from 26.49 Canadian cents per pound in 2012 to 22.16 Canadian cents per pound in 2014.⁵¹ Between the first quarter of 2014 and the first quarter of 2015, the No. 5 futures price decreased by 4 percent, from 22.36 Canadian cents per pound to 21.47 Canadian cents per pound.⁵²

81. Accordingly, the white premium narrowed during the POR, having traded in a range of US\$50-US\$100/tonne (2.65-5.30 Canadian cents per pound) for much of the period since 2014.⁵³ This compares to a range of US\$100-US\$150/tonne (4.75-7.13 Canadian cents per pound) for most of the period between 2009 and 2011.⁵⁴

82. The LMC report stated that a major reason for the squeeze on the white premium has been large-scale investments in refining capacity around the world, most of which have been in destination refineries that import raw sugar and process it into refined sugar.⁵⁵

83. Mr. Todd also testified that the sustained oversupply of sugar in the world market is and will continue to weigh heavily on world sugar prices.⁵⁶ The LMC report forecasted the continued decline of the

46. Exhibit RR-2014-006-A-18 at 9, Vol. 11B.

47. *Ibid.*

48. *Ibid.*

49. Exhibit RR-2014-006-05, Table 38, Vol. 1.1.

50. *Ibid.*

51. *Ibid.*, Table 39.

52. *Ibid.*

53. Exhibit RR-2014-006-A-18 at 9, Vol. 11B.

54. *Ibid.*

55. *Ibid.* at 10.

56. *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 68.

white premium into 2017 as a result of the growing surplus in global refining capacity.⁵⁷ The Tribunal finds this projection reasonable.

84. On the basis of the documentary evidence on record, and the uncontroverted testimony of Mr. Todd, the Tribunal finds that the global production of refined sugar exceeded global consumption over the last five years, resulting in global oversupply and depressed world sugar prices. Moreover, the Tribunal finds that the key indicator for the domestic industry's prospects, the world white premium, is likely to weaken over the next two years due to this excess global refining capacity.⁵⁸

Brazil

85. Brazil is the largest producer and exporter of sugar in the world and, as such, the price of its exports plays a key role in determining the world price of raw sugar.⁵⁹ Due to the weakening of Brazil's currency, the price of its raw sugar exports has been decreasing since 2011-2012 and had a deflationary impact on the world price of raw sugar.⁶⁰ The Tribunal finds that this trend will likely continue over the next 24 months and will contribute to the further narrowing of the world white premium.

The United States

– Sugar Program

86. Since the last expiry review, the sugar program provisions of the 2008 U.S. Farm Bill were continued in the 2014 U.S. Farm bill. The U.S. sugar program is comprised of domestic supply constraints, price supports and limits on duty-free imports from countries outside North America.⁶¹ The program subjects imports of raw cane sugar into the United States to tariff-rate quota restrictions and sets marketing allotments, which require that a high percentage of U.S. demand for sugar be allocated to U.S. sugar refiners and limits the amount of sugar that each refiner can sell in the U.S. market.⁶²

87. The Refined Sugar Re-Export Program (RSRP) is an important component of the U.S. sugar program. This program enables U.S. cane sugar refiners the opportunity to import world-priced raw cane sugar outside the tariff rate quota system, provided an equivalent volume of refined sugar is exported.⁶³ The RSRP is designed to enable U.S. refiners to increase the capacity utilization rate of their plants, without increasing the supply of refined sugar in the U.S. market, which would destabilize the sugar price support program.⁶⁴

88. Since 2005, sugar produced in excess of a beet sugar producer's market allotment, or "blocked stocks", cannot be used for credit under the RSRP. However, beet sugar producers can create a credit by exporting allotment sugar and subsequently selling the credit to a refiner (a swap), allowing the refiner to import world-priced raw cane sugar for refining and then sell the refined sugar in the U.S. market at a supported price. The combination of the selling price of the refined sugar in the world market and the

57. Exhibit RR-2014-006-A-18 at 11, Vol. 11B.

58. *Transcript of Public Hearing* Vol. 1, 8 September 2015, at 86.

59. Exhibit RR-2014-006-A-18 at 4, Vol. 11B.

60. *Ibid.* at 6.

61. *Ibid.* at 43.

62. Exhibit RR-2014-006-03A, Vol. 1A at 110.

63. Exhibit RR-2014-006-A-03 at para. 74, Vol. 11.

64. *Ibid.* at para. 79.

revenue from the sale of the credit make the exportation profitable.⁶⁵ During the *in camera* hearing, the Tribunal heard testimony that swaps were commonplace in the U.S. sugar market.⁶⁶

89. As noted above, the goal of sugar refineries is to maximize throughput. By doing so, refiners are able to recoup their investments and maintain profitability. In order for U.S. refiners to maximize their throughput, they must import raw sugar from the world market, refine it and export as much refined sugar as possible.

90. In his testimony, Mr. Todd explained that the RSRP facilitates the swap of such credits between refiners and beet producers to take place with only the trading of commercial paper, thereby reducing the potential landed cost of U.S. sugar in Canada.⁶⁷ Mr. Todd explained that U.S. refiners can import raw sugar and export refined sugar to Canada at substantially lower freight costs by swapping the export entitlement with a beet sugar producer in the northern United States (e.g. Michigan).⁶⁸

91. The Tribunal finds that the RSRP provides a material economic incentive for U.S. sugar producers to export sugar to Canada.

– U.S. Refining Capacity

92. Sugar refining capacity in the United States has increased since the last expiry review.⁶⁹ Mr. Todd testified that the United States currently has a surplus refining capacity of 1.1 million MTs,⁷⁰ in part because of a new cane sugar refinery opened by the Louisiana Sugar Refining Company and the rebuilding of an Imperial refinery in Georgia, which was damaged in 2008.⁷¹ The CSI submitted that another factor contributing to this unutilized refinery capacity is the lack of export markets for U.S. sugar under the RSRP because of changes to Mexico's IMMEX program, as discussed in further detail below.⁷²

– Mexico's IMMEX Program

93. Mexico is the biggest market for U.S. sugar exported under the RSRP because of Mexico's IMMEX program.⁷³ IMMEX is a program established by the Mexican government under the maquiladora program to stimulate employment.⁷⁴ With regard to sugar, the program grants food manufacturers in Mexico access to world-priced sugar, as long as it is used in products that are subsequently exported (within 6 months).

94. Mexican authorities appear to have taken steps to prevent imports of U.S. sugar from benefitting from duty-free importation for processing in Mexico (under the IMMEX program), if those imports from

65. Exhibit RR-2014-006-03A, Vol. 1A at 110.

66. *Transcript of In Camera Hearing*, Vol. 1, 9 September 2015, at 80.

67. *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 71-72.

68. *Ibid.* at 72.

69. Exhibit RR-2014-006-A-18 at 50, Vol. 11B.

70. Mr. Todd's testimony referenced 1.2 million short tons which have been converted to 1.1 MT (refined value) by converting short tons to metric tonnes (multiplying by 0.9072) and then dividing by 1.0695 to arrive at the refined value.

71. Exhibit RR-2014-006-A-03 at para. 95, Vol. 11.

72. Exhibit RR-2014-006-A-01 at para. 63, Vol. 11.

73. It is estimated that, currently, 70 to 80 percent of U.S. exports under the RSRP are to Mexico, where that sugar is used in Mexico's IMMEX program. Exhibit RR-2014-006-A-18 at 53, Vol. 11B.

74. *Refined Sugar* (1 November 2010), RR-2009-003 (CITT) at footnote 62.

the United States are of non-originating sugars (i.e. those that benefit from the RSRP and were produced from imported raw sugar). This proposed change was first published on February 12, 2015.⁷⁵ The Tribunal received conflicting testimony as to when the proposal was thought to become law. Although the witnesses were unsure in their testimony regarding the exact timing of these changes taking effect, they were all of the view that the changes had indeed taken effect at the time of the hearing.⁷⁶

95. The LMC report indicates that this will increase the U.S. refiners' excess refining capacity to 1.3 million to 1.4 million STRV (1.1 million to 1.2 million MTs).⁷⁷ Mr. Todd also testified that this change to the IMMEX program will result in the United States losing the ability to export 280,000 STRV (237,496 MTs) of refined sugar.⁷⁸ In her witness statement, Ms. Marsden relied on figures provided by the U.S. Sweetener Users Association to estimate that this change will drop the capacity utilization rate of non-integrated refiners to between 56 percent and 61 percent.⁷⁹

– Suspension Agreements with Mexico

96. In April 2014, the United States launched anti-dumping and countervailing investigations against Mexico in respect of imports of raw sugar into the United States.⁸⁰ In May 2014, the United States International Trade Commission (USITC) made a preliminary determination of injury⁸¹ and, in November 2014, issued a preliminary ruling finding that Mexican sugar was being dumped into the United States and that it was also unfairly subsidized and imposed duties as a result.⁸²

97. However, in December 2014, the United States announced that it had reached agreements with Mexico to suspend the anti-dumping and countervailing duties for five years.⁸³ These suspension agreements limit the amount of refined sugar that can be imported from Mexico to "U.S. needs"⁸⁴ and set minimum price levels for Mexican sugar for at least five years.⁸⁵ Notwithstanding the suspension agreements, at the request of two U.S. producers, the United States Department of Commerce has continued the anti-dumping and countervailing investigations and was scheduled to decide whether to continue the suspension agreements on November 2, 2015.⁸⁶

98. The CSI submitted that the prevailing view is that these suspension agreements will be continued.⁸⁷ In her witness statement, Ms. Marsden submitted that the suspension agreements have exacerbated the problems facing non-integrated U.S. refiners, which do not have access to domestically produced cane sugar and, therefore, are "starved" of raw sugar for their refineries.⁸⁸

75. Exhibit RR-2014-006-A-03, Appendix 22, Vol. 11.

76. *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 147, 151-52.

77. Exhibit RR-2014-A-18 at 53, Vol. 11B.

78. *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 147.

79. Exhibit RR-2014-006-A-03 at para. 92, tab 1, Vol. 11.

80. *Ibid.* at para. 76.

81. *Ibid.*, tab 17 at 2.

82. *Ibid.*

83. *Ibid.* at para. 77.

84. Exhibit RR-2014-006-15.03, Vol. 3B at 100.

85. Exhibit RR-2014-006-32.03, Vol. 1A at 212.

86. Exhibit RR-2014-006-A-03, tab 17 at 3-4, Vol. 11.

87. *Ibid.* at para. 78.

88. *Ibid.* at para. 79.

99. Mr. Todd testified that the excess refining capacity in the United States is largely attributable to the suspension agreements, which has worsened the inability of U.S. refiners to gain access to raw sugar from sources other than Mexico. Mr. Todd testified that, as a result, the capacity utilization of non-integrated refiners will drop to 75 percent.⁸⁹

100. The CSI argued that the suspension agreements provide U.S. beet sugar producers with a strong economic incentive to increase their production to ensure that they fill their marketing allotments under the RSRP because this is their only option to increase capacity utilization.⁹⁰ The CSI further argued that this will result in increased exports to Canada from U.S. beet sugar refiners, particularly in the northern states (e.g. Michigan Sugar).

European Union

101. The European Union is the world's third largest sugar producer⁹¹ and largest exporter of high-quality refined white sugar.⁹² It is the world's only major exporter of beet sugar.⁹³

– European Union's Sugar Program

102. The European Union has an extensive sugar program, which includes price supports, import controls and quotas. Because the WTO has limited the ability of the European Union to export in excess of 1.37 million MTs per year, any surplus sugar must be stored or carried forward to the next year.⁹⁴ Despite these restrictions, the LMC report indicated that the European Union exceeded those limits in 2009-2010 and 2011-2012.⁹⁵ The European Union acknowledged that it exceeded the limits in 2010-2011,⁹⁶ but claims that it was permitted to do so because exports under the European Union's Inward Processing Relief (IPR) program do not count under the WTO export limit.⁹⁷

103. The IPR program is similar to the RSRP, in that it is a duty-exemption program that allows an EU sugar processor to import raw sugar, provided an equivalent amount of refined sugar is exported within a specified period of time.⁹⁸ Like the RSRP, the IPR program is flexible and allows the import and the export of sugar to occur at different locations and at different times.⁹⁹

104. Since 2006, the European Union's sugar program has been undergoing reforms to accommodate greater imports and to respond to a WTO ruling that limited EU refined sugar exports.¹⁰⁰ Through these reforms, the reference price or threshold for refined white sugar has been cut from €632/tonne to

89. *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 70.

90. Exhibit RR-2014-006-A-03 at paras. 83, 89, Vol. 11.

91. Brazil and Thailand export more white sugar than the European Union, but the majority of their exports are of lower quality than EU sugar. Exhibit RR-2014-006-06 (protected), table 57, Vol. 2.1.

92. Exhibit RR-2014-006-A-18 at 13, Vol. 11B.

93. *Ibid.*

94. *Ibid.*

95. *Ibid.* at 22.

96. There appears to be a discrepancy in the submissions of the parties in respect of the year(s) in which the European Union is alleged to have exceeded its export limits. The CSI's expert report suggests that this was the case in 2009-2010 and 2011-2012, but the European Union claims that this occurred only in 2010-2011.

97. Exhibit RR-2014-006-B-01 at para. 13, Vol. 13.

98. Exhibit RR-2014-006-A-18 at 18, Vol. 11B.

99. Exhibit RR-2014-006-A-12 at para. 90, Vol. 11B.

100. Exhibit RR-2014-006-B-01 at para. 2, Vol. 13; Exhibit RR-2014-006-A-18 at 31, Vol. 11B.

€404/tonne,¹⁰¹ and the minimum price for beets produced under the quota was reduced from €32.86/tonne to €26.29/tonne.¹⁰² Although these reforms have resulted in EU refined sugar prices declining in 2013-2014 and 2014-2015 and converging towards the world price, prices have now started to increase.¹⁰³ The EU refined sugar prices remain higher than the world and Canadian prices for sugar.¹⁰⁴

105. The European Union submitted that the 2006 reforms resulted in a decrease in beet plantings and corresponding decrease in sugar production of 5 million MTs.¹⁰⁵

106. However, the evidence indicates that out-of-quota sugar (surplus sugar) has increased substantially in Denmark, Germany, the Netherlands and the United Kingdom from 1.1 million MTs in 2013-2014 to 2.7 million MTs in 2014-2015.¹⁰⁶ During the POR, the total production of EU surplus sugar increased from 4.2 million MTs in 2012-2013 to 6.4 million MTs in 2014-2015 and, despite the decline in EU market prices, production in 2015-2016 is forecast at 5.2 million MTs.¹⁰⁷

107. The CSI estimated that, in 2014-2015, the EU surplus sugar will be 3 million MTs, or almost 2.5 times the size of the Canadian market.¹⁰⁸ The LMC report estimated the carry-over stocks to be around 1.7 million MTs in 2016-2017.¹⁰⁹

108. On the basis of the foregoing evidence, the Tribunal finds that, despite the aims of the 2006 EU reforms, beet sugar production during the POR increased and that, relative to the size of the Canadian market, there is significant excess sugar that is likely to be exported in the next 24 months.

– New Payment Scheme by 10 EU Member States

109. In its case brief, the EU Delegation submitted that 10 EU states now pay farmers on the basis of the number of hectares planted as opposed to a yield in relation to a specific crop and argued that this payment scheme, which took effect in 2008,¹¹⁰ is consistent with WTO commitments and is not trade distortive.¹¹¹ The payments will run from 2015 to 2020 and have an annual value of €175 million to €180 million.¹¹² In argument, the EU Delegation stated that this payment system is designed to encourage farmers to choose the most profitable crop, which may not always be sugar beets.¹¹³

110. The Tribunal is not persuaded that the new payment system by some EU member states is likely to reduce the significant excess sugar that is likely to be exported in the next 24 months. Indeed, it is not yet known if this new scheme will have any effect at all.

101. Exhibit RR-2014-006-B-02, public annex 1 for white reference sugar price, Vol. 13.

102. Exhibit RR-2014-006-A-03, tab 23 at 6, Vol. 11.

103. Exhibit RR-2014-006-A-18 at 36-38, Vol. 11B.

104. *Ibid.*

105. Exhibit RR-2014-006-B-01 at para.3, Vol. 13.

106. Exhibit RR-2014-006-A-03 at para.106, Vol. 11.

107. *Ibid.* at para. 105.

108. *Ibid.* at para. 108.

109. *Ibid.*

110. *Transcript of Public Hearing*, Vol. 3, 10 September 2015, 230-31.

111. Exhibit RR-2014-006-B-01 at para. 2, Vol. 13.

112. Exhibit RR-2014-006-A-18 at 19, Vol. 11B.

113. *Transcript of Public Hearing*, Vol. 3, 10 September 2015, at 235.

– October 1, 2017, EU Reforms

111. On October 1, 2017, the European Union will introduce a second set of reforms¹¹⁴ to its domestic sugar program by removing all beet sugar production limits.¹¹⁵ The European Union takes the position that the WTO limitation on its exports will end on that date as well. The European Union, however, will continue to maintain strict import limits.¹¹⁶

112. In response to the coming reforms, major EU processors have signalled an intention to expand production going forward despite current market factors.¹¹⁷ As well, there is evidence of that some EU suppliers are already establishing distribution networks in anticipation of the reforms.¹¹⁸

113. The CSI argued that there are few opportunities in the world market for the European Union to export its refined sugar and that the situation will only become more desperate after the October 2017 reforms. For its part, the European Union argued that, because of transportation costs, North Africa or the Middle East will be the preferred export destinations.

114. The European Union currently exports sugar to 140 countries, but close to half of those exports are destined to just five countries (Israel, Algeria, Norway, Switzerland and Syria).¹¹⁹ The CSI argued that exports to these destinations are declining due to an increase in refining capacity in Israel, Algeria and Syria, as well as market disruptions in Syria.¹²⁰ As such, Norway and Switzerland are now the only two “captive” markets for EU sugar.¹²¹

115. The European Union exports about 200,000 tonnes a year to other stable markets and exports to other “opportunistic”¹²² markets averaged around 600,000 tonnes during the POR and exceeded 1 million tonnes in the years in which the European Union went above its WTO limit.¹²³ Volumes are highly variable year-to-year depending on swings in local production, and high-quality EU refined sugar can often be displaced by lower-quality white sugar in countries where industrial users or consumers do not demand high-quality refined sugar.¹²⁴

116. The European Union also argued that export is not the only option when it comes to surplus sugar, in that producers have the option to either store the sugar or have it processed into ethanol.¹²⁵ In response, the CSI submitted that storage is expensive and pointed out that quota sugar, which could be sold in the EU market, is exported because of high storage costs.¹²⁶ Further, in regard to the option of using sugar for

114. Recall that the European Union’s first set of reforms was in 2006.

115. Exhibit RR-2014-006-A-01 at para. 77, Vol. 11.

116. *Ibid.*

117. Exhibit RR-2014-006-A-12 at para. 84, Vol. 11B. The CSI claimed that the European Union may ship as much as 2.5 million MT in the first year after the reforms take effect. As noted above, the Tribunal will not speculate as to what exactly will happen in the EU sugar market following the October 2017 reforms.

118. *Transcript of Public Hearing*, Vol. 3, 10 September 2015, at 211.

119. Exhibit RR-2014-006-A-03 at para. 114, Vol. 11.

120. *Ibid.*

121. *Ibid.*

122. Opportunistic markets refer to markets that accept lower quality sugar; therefore, the high-quality EU refined sugar must compete with this lower quality sugar. Exhibit RR-2014-006-A-01 at para. 92, Vol. 11.

123. Exhibit RR-2014-006-A-18 at 42, Vol. 11B.

124. Exhibit RR-2014-006-A-03 at para. 114, Vol. 11.

125. Exhibit RR-2014-006-B-01 at para. 16, Vol. 13.

126. Exhibit RR-2014-006-A-19 at para. 37, Vol. 11B.

producing ethanol, the CSI cited the same 2014 EU report that the European Union used in support of its submission which stated that “[t]he importance of ethanol as an outlet for sugar beet increased considerably following the 2006 reform, but is likely to decline with the disappearance of the sugar quota in 2017.”¹²⁷

117. The Tribunal finds that the lack of traditional export market opportunities for the European Union, due in large part to the increased refining capacity of those markets, provides an incentive for EU producers to seek out new markets, such as Canada, to which it can export its surplus sugar. Further, the Tribunal accepts the evidence that some EU producers have already begun preparations to export more sugar on the effective date of the 2017 reforms.

Domestic Market Conditions

118. There were few changes in domestic market conditions during the POR, although the size of the market declined marginally.¹²⁸ The CSI argued that this was attributable, in part, to changes in population, changes in the Canadian manufacture of sugar-containing products (SCPs), exports of SCPs, substitution of high fructose corn syrup for liquid sugar (particularly by bottlers), and competition with imports of sugar and SCPs.¹²⁹ Mr. Holliday pointed to several additional circumstances existing in the domestic market that impact the volumes of like goods that the domestic industry is able to sell, including a trend in Canada towards reduced sugar consumption and the closure of value-added food manufacturing or SCP-producing facilities.¹³⁰

CROSS-CUMULATED ANALYSIS OF LIKELIHOOD OF INJURY

119. As indicated above, the Tribunal will first assess the effects of dumping and subsidizing cumulatively.

Likely Performance of the Domestic Industry (if the Orders are Continued)

120. Paragraph 37.2(2)(c) of the *Regulations* directs the Tribunal to examine the likely performance of the domestic industry, taking into account the industry’s recent performance, including trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits. For the purposes of this analysis, the Tribunal will first consider the domestic industry’s recent performance and then assess the likely performance of the domestic industry if both orders were continued. In both cases, the Tribunal will look at whether there are any relevant factors other than the dumping and subsidizing of the subject goods affecting or likely to affect the domestic industry’s performance in the near to medium term.

Production, Sales and Exports

121. According to the CSI, Canadian sugar production has stagnated. This is due, in part, to the closure of large food processing plants which utilize significant quantities of sugar on a daily basis. Consequently, the performance of domestic producers has been, and will continue to be, limited by existing market conditions and restrictions on their ability to export.

127. *Ibid.* at para. 38.

128. Exhibit RR-2014-006-06 (protected), Table 21, Vol. 2.1.

129. Exhibit RR-2014-006-A-03 at paras. 19, 44, Vol. 11.

130. Exhibit RR-2014-006-A-05 (protected) at para. 17, Vol. 12.

122. According to data presented in the investigation report, domestic production decreased from 2012 to 2014 and also in the first quarter of 2014 compared to the first quarter of 2015.¹³¹ Export sales also decreased between 2012 and 2014, notwithstanding a slight increase in the first quarter of 2015 over the first quarter of 2014.¹³² Domestic sales increased from 2012 to 2014, but decreased in the first quarter of 2015 compared to the first quarter of 2014.¹³³

123. According to the CSI, Canadian exports are constrained by import barriers put in place by the United States, the European Union and other countries. New opportunities for Canadian producers are minimal and are usually unpredictable occurrences of opportunistic sales to export markets.¹³⁴ As well, export sales were limited because of the low world white premium.¹³⁵

124. The CSI argued that, with a flat consumer market since 2010, the Canadian industry remains highly dependent on bulk sales to manufacturers of SCPs to improve domestic sales and capacity utilization. However, the closure of major manufacturers of SCPs is estimated to significantly reduce the annual volume of sugar demand.¹³⁶ The domestic producers' forecasts for 2015 show marginally lower production and sales.¹³⁷

125. The Tribunal finds that, with the orders in place, the domestic industry will experience, at best, stable production, sales and exports, and may face minor declines because of the decreasing domestic market.

Market Share

126. During the POR, domestic producers held a significant share of the market. Imports, whether of the subject goods or refined sugar from non-subject countries, represented a small portion of the Canadian market.¹³⁸

127. The Tribunal does not expect that imports from either the subject countries or non-subject countries will increase significantly in the near to medium term or that the market share of the domestic industry will change significantly, if the orders remain in place.

Profitability

128. As noted previously, the key metric for the domestic industry's financial performance is the net refining margin. The evidence on the record indicates that, despite a steady decline in per unit direct material costs, and steady labour costs, the domestic industry's net refining margin decreased over the POR.¹³⁹

131. Exhibit RR-2014-006-06 (protected), Tables 4, 34, Vol. 2.1.

132. *Ibid.*

133. *Ibid.*, Table 7.

134. Exhibit RR-2014-006-A-08 at paras. 28-29, Vol. 11.

135. Exhibit RR-2014-006-A-10 at para. 22, Vol. 11A.

136. Exhibit RR-2014-006-A-03 at para. 41, Vol. 11; Exhibit RR-2014-006-A-13 (protected) at para. 33, Vol. 12A.

137. Exhibit RR-2014-006-A-13 (protected) at para. 33, Vol. 12 A; Exhibit RR-2014-006-A-09 (protected) at paras. 28-29, Vol. 12.

138. Exhibit RR-2014-006-06 (protected), Table 22, Vol. 2.1.

139. Exhibit RR-2014-006-16.01 (protected), Vol. 4 at 43; Exhibit RR-2014-006-16.02A (protected), Vol. 4B at 209; Exhibit RR-2014-006-16.04 (protected), Vol. 4C at 52; Exhibit RR-2014-006-06 (protected), Table 37, Vol. 2.1.

129. Looking to the future, as noted above, the world white premium, and by extension, the price of refined sugar are expected to decline to some extent over the next 24 months due to the continued global oversupply of sugar.¹⁴⁰

130. Accordingly, even with the orders in place, the Tribunal finds that it is unlikely that domestic producers will be able to improve their financial returns in the next 18 to 24 months.

Capacity Utilization

131. The capacity utilization rate of the domestic industry as a whole declined during the POR.¹⁴¹ While Redpath had a healthy capacity utilization rate,¹⁴² in his witness statement, Mr. Holliday indicated that Lantic has a relatively low one.¹⁴³

132. Since 2010, Redpath has made significant investments in capital projects, thus ensuring that its facilities are highly productive and cost competitive.¹⁴⁴ For its part, Lantic submitted that it has tried to run its plants at higher capacity utilization rates whenever sales (e.g. export) opportunities were possible¹⁴⁵ and has made investments in more efficient equipment.¹⁴⁶

133. The Tribunal finds that, if the orders are continued, the domestic industry's capacity utilization rate will likely remain at current levels, or decline slightly, due to prevailing production trends and limited access to export markets.

Employment

134. Employment and wages fluctuated during the POR, increasing steadily to a peak in 2013 but then declining in 2014.¹⁴⁷ The Tribunal finds it unlikely that there will be any significant change in the domestic industry's employment levels in the near future, if the orders are continued.

Conclusion

135. During the POR, the domestic industry maintained production and increased its already substantial share of the market, and its financial performance was stable. The Tribunal is of the view that, if the orders are continued, the domestic industry's overall performance will remain substantially the same as during the POR, notwithstanding the potential for some slight decreases in production and profitability due to existing market conditions.

Likely Import Volume of Dumped and Subsidized Goods (if the Orders are Rescinded)

136. Paragraph 37.2(2)(a) of the *Regulations* directs the Tribunal to consider the likely volume of the dumped goods if the order is rescinded and, in particular, whether there is likely to be a significant increase

140. Exhibit RR-2014-006-A-18 at 22-23, Vol. 11B.

141. Exhibit RR-2014-006-06 (protected), Table 50, Vol. 2.1.

142. *Ibid.*

143. Exhibit RR-2014-006-A-04 at para. 17, Vol. 11A; Exhibit RR-2014-006-06 (protected), Table 50, Vol. 2.1.

144. Exhibit RR-2014-006-A-12 at para. 20, Vol. 11B.

145. Exhibit RR-2014-006-A-06 at para. 20, Vol. 11A.

146. Exhibit RR-2014-006-A-04 at para. 17, Vol. 11A.

147. Exhibit RR-2014-006-06 (protected), Table 46, Vol. 2.1.

in the volume of imports of the subject goods, either in absolute terms or relative to the production or consumption of like goods.

137. The Tribunal's assessment of the likely volumes of dumped imports generally encompasses the likely performance of the foreign industry, evidence of the imposition of anti-dumping measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.¹⁴⁸

138. The CSI argued that, if the orders are rescinded, there will likely be a significant increase in the import volumes due to the substantial inventories of the subject goods, the significant unutilized capacity in both the U.S. and EU markets, and the attractiveness of the Canadian market. Whether analyzed together or separately, the CSI argued that the volume available from either source is material and exceeds volumes that were imported into Canada prior to the imposition of anti-dumping and countervailing duties.

139. According to the CSI, the Canadian market has become even more vulnerable to imports from the United States and the European Union, due in part to the fact that growth in the domestic market has stagnated, reflecting the closure of significant sugar-using food processing plants, the full impact of which has yet to be felt on domestic sales.¹⁴⁹

140. For its part, the European Union argued that EU export volumes to Canada have been limited to around 500 tonnes per year over the past five years and that it is unlikely that exports in significant quantities would resume if the orders were rescinded.¹⁵⁰

141. As discussed in further detail below, the Tribunal finds that there will likely be a significant increase in the volume of dumped and subsidized refined sugar from the subject countries if the orders are rescinded.

Import Volumes during the POR

142. The total volume of imports of the subject goods increased in 2013, before decreasing somewhat in 2014, albeit remaining at a higher level than 2012.¹⁵¹ However, the volume of imports of the subject goods was minimal throughout the POR.

143. The Tribunal finds that the volume of imports of the subject goods was low during the POR because of the imposition of anti-dumping and countervailing duties and that, therefore, the low volume is not a reliable predictor of the volumes of refined sugar that would be imported from the European Union and the United States if the orders were rescinded.

Excess Capacity and Surplus Sugar

144. There is ample evidence on the record to indicate that production of the subject goods in the United States and the European Union will continue at high levels and that producers in both regions will be highly motivated to pursue any new market opportunities that become available in order to absorb sugar surpluses.

148. Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

149. Exhibit RR-2014-006-A-03 at para. 44, Vol. 11.

150. Exhibit RR-2014-006-B-01 at para. 8, Vol. 13.

151. Exhibit RR-2014-006-06 (protected), Table 12, Vol. 2.1.

145. With respect to the European Union, the CSI submitted that the significant increase in production forecast for 2014-2015 will result in a surplus of 3.4 million MTs being carried forward into 2015-2016.¹⁵² Although the surplus is forecast to be lower at the end of 2015-2016 (2.4 million MTs), it will nonetheless be substantial compared to the levels seen in the previous expiry review (i.e. 150,000 tonnes in 2010-2011).¹⁵³

146. According to the CSI, these surpluses provide a strong incentive for the European Union to increase the volume of exports.¹⁵⁴ The CSI estimated that, until the 2017 reforms, the European Union will export at least 1.8 million MTs of sugar per year, comprised of quota exports of 125,000 MTs, the WTO maximum of 1.37 million MTs and another 300,000 MTs under the IPR program.¹⁵⁵ The CSI's estimate of total EU exports was supported by the LMC report and the testimony of Mr. Todd.¹⁵⁶

147. The CSI further argued that, if the orders were rescinded, at least 665,000 MTs of those exports, which are currently sold to "opportunistic" markets, would be a source of potential sales to Canada. However, to be conservative, the CSI estimated that only 176,000 MTs would be redirected to Canada in the absence of the orders.¹⁵⁷

148. Mr. Todd testified that EU producers are faced with a choice between incurring the significant costs of storage and exporting surplus sugar.¹⁵⁸ The evidence, however, suggests that EU producers will have some difficulty exporting surplus sugar. In particular, Mr. Todd testified that over half of EU exports were limited to five countries (Israel, Algeria, Norway, Switzerland and Syria) and opined that there will be fewer opportunities for EU producers to export to these countries because refineries have been constructed in many of these countries.¹⁵⁹

149. With respect to the United States, the CSI submitted that current market conditions, in particular, the price stabilizing effect of the suspension agreements, provide U.S. sugar beet producers with a strong incentive to increase beet production, which, if processed, will exacerbate surpluses of sugar.¹⁶⁰

150. Similarly, the evidence on the record indicates that U.S. non-integrated cane refiners have about 1 million MTs of excess refining capacity in 2015, which, if anything, is likely to increase in the next 24 months, as they seek to increase their capacity utilization rate in the face of additional pressure from the U.S. suspension agreements with Mexico and recent changes to the IMMEX program.¹⁶¹

152. Exhibit RR-2014-006-A-20, tab 37 at 20, Vol. 11B. This estimate is based on forecasts that indicate that total production for 2014-2015 will be 19.4 million MTs. It is assumed that EU producers, after supplying domestic quotas and industrial uses, will export 1.5 million MTs (including the WTO maximum of 1.37 million MTs for out-of-quota sugar). The remaining 3.4 million MTs would be surplus.

153. Exhibit RR-2014-006-A-01 at paras. 74-85. Vol. 11.

154. *Ibid.* at para. 75.

155. *Ibid.* at paras. 84-85.

156. Exhibit RR-2014-006-A-18 at 23-25, Diagram 2.4, Vol. 11B; *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 76.

157. Exhibit RR-2014-006-A-01 at paras. 91-94, Vol. 11.

158. *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 74.

159. Exhibit RR-2014-006-A-03 at para. 114, Vol. 11.

160. Exhibit RR-2014-006-A-01 at paras. 55-57, Vol. 11.

161. *Ibid.* at para. 5.

151. In sum, the evidence before the Tribunal demonstrates that there has been and will likely continue to be excess refining capacity and significant sugar surpluses in both the United States and the European Union.

Canada Would be the Likely Destination

152. As noted above, U.S. refiners have lost a significant avenue for export with the changes to the IMMEX program. This, coupled with the fact that the European Union has new competition in its traditional export markets as a result of increased refining capacity, means that surplus sugar from the United States and the European Union has fewer viable destinations than before.¹⁶²

153. Further, in response to the global surplus and falling sugar prices, a number of sugar-producing countries throughout the world have increased protectionist measures or introduced new ones.¹⁶³

154. In view of these developments, the Tribunal finds that, if anti-dumping and countervailing duties in Canada are no longer in place, Canada will quickly become a highly attractive market for EU and U.S. exports of refined sugar.

155. Even without these developments, the Tribunal finds that EU and U.S. producers would be attracted to the Canadian market because they would not have to compete with the low prices of “near white” sugar that some countries accept, given that Canadian customers insist on high-quality refined sugar produced to international standards.

156. Lastly, EU and U.S. producers are sophisticated exporters capable of supplying large volumes of high-quality refined sugar throughout the year through established freight routes.¹⁶⁴

Conclusion

157. On the basis of the foregoing,¹⁶⁵ the Tribunal finds that, if the orders are rescinded, there will likely be a significant increase in the absolute volume of imports of the subject goods over the next 18 to 24 months.

Likely Price Effects of Dumped and Subsidized Goods (if the Orders are Rescinded)

158. The CSI argued that, if the orders are rescinded, given the protected nature of the EU and U.S. markets, producers in those markets will continue to be able to make profits on their domestic sales while exporting at low prices that are sufficient only to make a contribution to producers’ fixed costs (“residual” prices).¹⁶⁶ The resulting influx of low-priced refined sugar into the Canadian market from the United States

162. Exhibit RR-2014-006-A-12 at para. 79, Vol. 11B.

163. Exhibit RR-2014-006-A-03 at para. 71, Vol. 11.

164. Exhibit RR-2014-006-A-06 at paras. 32-34, Vol. 11A; Exhibit RR-2014-006-A-19 at para. 58, Vol. 11.

165. The Tribunal also received extensive evidence from the CSI on the forecasted likely volumes of the subject goods that may come from the European Union *following* its October 2017 reforms, should the orders be rescinded. However, as stated earlier, the Tribunal will not speculate as to the likely volumes following the reforms, as to do so would be a purely hypothetical exercise.

166. Exhibit RR-2014-006-A-10 at para. 67, Vol. 11A. The CSI made no submissions regarding the price-suppressive effects of the subject goods.

and the European Union would significantly erode refining margins, placing considerable strain on domestic producers.¹⁶⁷

159. The European Union submitted that, if the orders are rescinded, there will continue to be a difference between the price of quota sugar and the price of out-of-quota sugar.¹⁶⁸ The European Union further submitted that, while Canada is a possible market, closer destinations are more likely to be targeted due to lower transportation costs. Finally, the European Union submitted that the minimum export price for EU sugar to Canada would be the out-of-quota price (which is currently close to the world market price of around €300/tonne) plus transportation costs of US\$50/tonne, plus the normal import tariff of US\$30/tonne.¹⁶⁹

160. The prices of the subject goods in the domestic market during the POR do not provide a good basis for estimating what prices will be in the absence of the orders because the nature of those imports is likely not representative of the type of products that would be shipped to Canada if the orders were rescinded. The fact that the subject goods imported during the POR were priced much higher than the like goods suggests that they were specialty sugar products.¹⁷⁰

161. Redpath¹⁷¹ and Lantic¹⁷² projected the prices at which the subject goods from the European Union and the United States would be sold in Canada if the orders were rescinded.¹⁷³ Although the details of their calculations were different, the Tribunal finds that the approaches used were reasonable, indeed conservative, and that ample evidence was submitted to support the assumptions used.

162. The projections by Redpath and Lantic demonstrated that, in most cases, in the absence of the orders, the prices of the subject goods from both the European Union and the United States will undercut the price of like goods.¹⁷⁴ The CSI submitted that prices at this level would be devastating for the domestic industry, as domestic producers would be forced to lower their prices and refining margins quickly to match the offers from the United States or the European Union and, in the process, would lose profit from every remaining sale of refined sugar.

167. Exhibit RR-2014-006-A-15 (protected) at para. 37, Vol. 12A.

168. Exhibit RR-2014-006-B-08 at 1, Vol. 13.

169. *Ibid.* at 1-2.

170. Exhibit RR-2014-006-06 (protected), Table 18, Vol. 2.1.

171. Exhibit RR-2014-006-A-11 (protected), Appendices 5, 8, Vol. 12; Exhibit RR-2014-006-A-17 (protected) at 14-23, Vol. 12A.

172. CSI's protected aid to argument, Vol. 18 at 8-11.

173. The CSI's submissions with respect to price initially revolved around anticipated differences in net refining margins between the like goods and the subject goods and the impact on the domestic industry's net margins. The Tribunal recognizes that this is how the sugar industry operates. However, *SIMA* directs the Tribunal to consider the likely *prices* of the subject goods and their effects on the prices of the like goods. Therefore, the Tribunal requested that the CSI also make submissions on the likely prices of the subject goods and their price effects. At the hearing, the CSI submitted that "absolute prices" could be estimated by adding the landed raw sugar cost in Canada (i.e. the No. 11 cost) to net refining margins. The CSI submitted that, similarly, all world white premium data on the record can be converted to absolute selling prices by adding in the cost of raw sugar. The CSI submitted a confidential aid to argument that estimated absolute prices using the same set of assumptions that had been used to estimate Lantic's net refining margins. Applying the same adjustment to Redpath's estimates of net refining margins would have also redefined differences in net refining margins as price undercutting. Therefore, the Tribunal will discuss price undercutting with regard to both Lantic and Redpath.

174. CSI's protected aid to argument, Vol. 18 at 8-11.

163. In the Tribunal's view, it is likely that the prices of the subject goods will actually be lower than the estimates by the domestic industry, as the domestic industry's estimates do not take into account the effects of the RSRP. Moreover, the domestic industry has demonstrated that the ability to swap beet sugar for refined cane sugar provides an additional economic advantage to U.S. producers, thus ensuring that the subject goods from the United States get to the Canadian market in the most cost-efficient way possible.¹⁷⁵

164. If the orders are rescinded, price pressures will be felt almost immediately by the domestic industry,¹⁷⁶ given that Canada is one of very few markets that would present new opportunities to EU and U.S. producers of refined sugar and that, for the various reasons discussed above, EU and U.S. producers would be highly motivated to take advantage of any opportunities in this market.

Conclusion

165. In view of the above, the Tribunal finds that the prices of the subject goods will significantly undercut and depress the prices of the like goods if the orders are rescinded.

Likely Impact of Dumped and Subsidized Goods on the Domestic Industry (if the Orders are Rescinded)

166. For the reasons discussed below, the Tribunal finds that, if the orders are rescinded, it is likely that imports of the subject goods will quickly gain market share in Canada, which would cause the domestic industry to lose sales and suffer from reduced throughput, which, in turn, would significantly impact the profitability of the domestic industry.

167. According to the CSI, although the domestic industry is currently stable, it nonetheless remains vulnerable and would therefore be highly susceptible to injury from the subject goods in the event that the orders were rescinded. Indeed, the CSI maintained that, if the orders are rescinded, the domestic producers' very survival is at risk. Mr. Bamberger stated that "... the protection provided by the duties is the single most important determinant as to whether or not Redpath survives as a separate entity."¹⁷⁷ Similarly, in respect of Lantic, Mr. Holliday stated that the rescission of the orders, individually or collectively, would result in the financial collapse of its business.¹⁷⁸

168. The European Union submitted that the Canadian industry is not suffering injury and that there is no likelihood of recurrence of injury if the orders are rescinded, as EU export volumes are restricted by the WTO limit and exports are preferably made to closer destinations.¹⁷⁹ By extension, the European Union appears to be arguing that the domestic industry will not be negatively impacted by the subject goods if the orders are rescinded.

169. Mr. Bamberger indicated, in his witness statement, that, in the event that subject goods re-enter the Canadian market, Redpath will have no way to respond other than with drastic measures.¹⁸⁰ Due to trade restrictions in the United States, the European Union and elsewhere in the world, the domestic industry appears to have very few other viable options in order to retain sales and profitability. In other words, the

175. *Transcript of Public Hearing*, Vol. 3, 10 September 2015, at 200.

176. *Transcript of In Camera Hearing*, Vol. 2, 9 September 2015, at 109-112.

177. Exhibit RR-2014-006-A-12 at para. 14, Vol. 11B.

178. Exhibit RR-2014-006-A-04 at para. 15, Vol. 11A.

179. Exhibit RR-2014-006-B-08 at 3, Vol. 13.

180. Exhibit RR-2014-006-A-13 (protected) at paras. 14, 31-34, Vol. 12A.

domestic sugar industry relies almost exclusively on the domestic market, and this is unlikely to change unless and until trade restrictions in foreign markets are lessened or removed.¹⁸¹

170. Lantic and Redpath pointed to two specific consequences of the rescission of the orders that would have a material impact on domestic producers: (1) volume losses and the corresponding effect on per tonne manufacturing costs; and (2) the erosion of margins. The Tribunal will discuss each of these, in turn, below.

Volume Losses and Impact on Costs

171. Sugar is a commodity product and sales are largely based on price. Therefore, the Tribunal expects that the impact of the rescission of the orders on the domestic industry will be swift. Buyers in the Canadian market, particularly those that are part of larger conglomerates with established networks in the United States and the European Union, would not hesitate to purchase sugar from these sources if anti-dumping and countervailing duties were lifted.

172. Redpath¹⁸² and Lantic¹⁸³ each provided estimates of the volumes of sales that they would lose to imports of the subject goods if the orders were rescinded. The Tribunal heard *in camera* testimony identifying the particular domestic industry customers that would most likely switch to imports of refined sugar from either the United States or the European Union in the event that duties were lifted.¹⁸⁴

173. As indicated by Mr. Holliday, if the expected volume of subject goods returns to Canada, domestic producers will be placed in a position in which they must reduce their margins in order to retain sales. He argued that this would put Lantic in a vicious circle of unsustainable increased costs and decreased margins.¹⁸⁵ Redpath submitted that losses in volume are likely to result in lower capacity utilization rates, significantly higher unit costs and corresponding reductions in profitability.¹⁸⁶

174. The Tribunal finds the estimates of lost sales provided by the two domestic producers credible and, more than likely, conservative.

175. Given the capital-intensive nature of the sugar industry, the Tribunal finds that losses in sales volumes of these magnitudes would have a significant negative impact on domestic producers' per tonne manufacturing costs and, hence, on their profitability.

Erosion of Net Margins

176. In addition to losing sales volumes, if the orders are rescinded, the domestic producers will be under immediate pressure from customers to reduce their margins to match those of the United States and the European Union. Indeed, witnesses for the domestic industry testified that they would have no option but to lower their margins to try to maintain sales and throughput.¹⁸⁷

177. The erosion of net margins was cited as being a critical implication of the rescission of the orders for Canadian producers. In his witness statement, Mr. Holliday stated that, before the duties were in place in

181. Exhibit RR-2014-006-A-03 at paras. 27-28, Vol. 11.

182. Exhibit RR-2014-006-A-16 Appendices 4, 5, Vol. 11B.

183. Exhibit RR-2014-006-A-10, Appendices 5, 8, Vol. 11A.

184. *Transcript of In Camera Hearing*, Vol. 1, 9 September 2015, at 109-112.

185. Exhibit RR-2014-006-A-04 at para. 18, Vol. 11A.

186. Exhibit RR-2014-006-A-13 at para. 32, Appendix 1, Vol. 11B; Exhibit RR-2014-006-A-04 at para. 18, Vol. 11A.

187. Exhibit RR-2014-006-A-04 at para. 18, Vol. 11A.

1994, 125,000 MTs of dumped and subsidized EU and U.S. sugar were imported into Canada.¹⁸⁸ Mr. Holliday suggested that, if these import levels were to return, it would cause a material injury to Lantic due to a substantial loss in the volume in sales, which would increase Lantic's per unit costs of production and lead to a severe reduction in net margin.¹⁸⁹ This evidence is consistent with Mr. Makin's witness statement which indicates that net margins would be driven below sustainable levels, similar to the situation that the domestic industry faced in 1995.¹⁹⁰

178. As discussed above, both Lantic and Redpath estimated the net margins that would likely result with the resumption of imports of the subject goods from either the United States or the European Union.

179. A large proportion of the domestic industry's sales volumes is linked to the industrial market. Sales in this segment are generally less profitable on a per metric tonne basis than those in the resale segment, but they are a critical source of volume and an important margin generator for the domestic industry. Industrial customers tend to be sophisticated and tend to be well informed of any discounts, including by importers, available in the market.¹⁹¹ It is foreseeable that, in the presence of the subject goods, the domestic industry will face pressure to reduce its margins in order to retain volumes in this segment of the market.

180. Sales of refined sugar to the resale segment of the market are generally more profitable on a net margin basis for the domestic industry.¹⁹² However, buyers from this market segment are most likely to be part of vertically integrated global supply chains and stand to benefit significantly from the rescission of the orders against the United States and the European Union. It has been suggested that these customers possess significant leverage and at least some of these customers would be willing to severely challenge or ignore contractual relationships and agreements currently in existence between themselves and the domestic industry in order to secure lower prices on refined sugar. The Tribunal is of the view that, even if contractual relationships with the domestic industry are preserved, it is quite likely that the domestic industry will face immediate demands for concessions, thereby reducing net margins.¹⁹³

181. On the basis of the analyses of the domestic producers, the Tribunal finds that, if the orders are rescinded, the domestic industry will need to compete with the subject goods from the European Union and the United States and that, in order to retain sales and market share, the domestic industry will be forced to reduce its refining margins. However, even if the domestic industry decreases its refining margins, there is a strong likelihood that the subject goods will still capture some volumes previously supplied by the domestic industry.

Impact on Financial Results

182. Redpath submitted an analysis of its 2014 financial results for domestically produced refined sugar if the anti-dumping and countervailing duties had not been in place.¹⁹⁴ The results showed that Redpath would have suffered significant reductions in its net income and would have faced a challenging situation with respect to cash flow.

188. *Ibid.* at para. 17.

189. Exhibit RR-2014-006-A-05 (protected) at para. 20, Vol. 12.

190. Exhibit RR-2014-006-A-06 at para. 35, Vol. 11A.

191. Exhibit RR-2014-006-A-08 at paras. 66-67, Vol. 11A; Exhibit RR-2014-006-A-15 (protected) at para. 11, Vol. 12A.

192. Exhibit RR-2014-006-A-08 at paras. 71-75, Vol. 11A.

193. *Ibid.* at para. 88.

194. Exhibit RR-2014-006-A-17 (protected) at para. 7, Vol. 12A.

183. It is notable that the price estimates for imports from the United States assumed the highest possible freight costs, with the goods being shipped from the southern states rather than from Michigan. If U.S. refined sugar were to be shipped from Michigan, which could reflect a swap between northern and southern refiners, it would be reasonable to expect prices to be significantly lower, having an even greater impact on domestic producers' net refining margins, volumes of sales and, ultimately, profitability.¹⁹⁵

184. It is the Tribunal's view that these calculations were reasonable, indeed conservative, and provided a reliable indication that Redpath would suffer significant financial losses, when faced with competition from the subject goods.¹⁹⁶

185. Similar calculations were performed for Lantic, and the results were comparable, in particular, the presence of the subject goods resulting in lower net refining margins, reduced volumes and substantial reductions in profitability.¹⁹⁷

186. Redpath also provided the Tribunal with percentages representing the company's actual return on investment for 2013-2014. It then calculated how its return on investment would change taking into account net profit reductions resulting from financial losses attributable to the subject goods, under a number of different scenarios.¹⁹⁸ All scenarios demonstrated a diminished return on investment and, in some cases, to such an extent that Redpath's parent company, ASR, might question whether it should continue investing in new capital projects.

187. Accordingly, the Tribunal finds that the domestic industry will encounter severe financial consequences arising from the significant volumes of sales that are likely to be lost to the dumped and subsidized goods and the price pressures that force domestic producers to reduce net margins, in the event that the orders are rescinded.

Analytical Framework for Assessing Cross-cumulated Effects

188. In accordance with the Tribunal's interpretation of *Indian Flat Products*, the Tribunal directed staff to develop an analytic framework to forecast the separate effects of the dumping and subsidizing in order for the Tribunal to determine if the cross-cumulation of the effects of dumping and subsidizing would be appropriate in this case.

189. In essence, staff began with the detailed information on projected lost volumes and lower refining margins submitted by Redpath and Lantic, if the orders were rescinded. After examining the record to assess the reasonableness of these projections, staff merged the information to arrive at forecasts of the net impact on the domestic industry's profitability as a whole. The details of the model and its assumptions are presented in Appendix A to these reasons. The Tribunal finds that the methodology and forecasts are reasonable.

195. *Ibid.*, Appendices 3, 4.

196. Exhibit RR-2014-006-A-17 (protected), Appendices 1-7, Vol. 12A.

197. Exhibit RR-2014-006-A-11 (protected) at paras. 65-95, Appendices 5-9, Vol. 12; Exhibit RR-2014-006-A-05 (protected) at paras. 34, 38, Vol. 12.

198. Exhibit RR-2014-006-A-17 (protected) at paras. 27-31, Appendix 8, Vol. 12A.

190. The analytical framework indicates that, if both orders were rescinded, the domestic industry would experience significant margin erosion and lost sales volumes.¹⁹⁹

Conclusion—Cross-Cumulated Likelihood of Injury Analysis

191. On the basis of the above analysis, the Tribunal is satisfied that, if both orders are rescinded, the subject goods will reappear in the Canadian market in significant volumes and at prices that will have a severe and immediate impact on the domestic industry in terms of lost sales volumes and reductions in refining margins, cash flow and profitability.

SEPARATE ANALYSES OF THE LIKELIHOOD OF INJURY FROM DUMPING AND SUBSIDIZING

192. The Tribunal will now assess separately the effects of the dumping and subsidizing.

Overview

193. In making these assessments, the Tribunal first had to decide how it would treat imports of the subject goods from the four EU countries that face both anti-dumping duties and countervailing duties (the EU-4).²⁰⁰ There is no issue with regard to imports of the subject goods from the United States which face only anti-dumping duties or imports of the subject goods from the 24 remaining EU countries which face only countervailing duties (the EU-24).

194. All imports of refined sugar from the European Union face anti-dumping duties of 180 percent and countervailing duties of approximately CAN\$336 per tonne.²⁰¹ Applying either of these duties to even the lowest forecast price for the subject goods from the European Union²⁰² would make it economically unfeasible to export the subject goods from the EU-4 to Canada. In other words, assuming either component of the EU order remains in place for the EU-4 (whether the anti-dumping duties or the countervailing duties) leads to a conclusion that no goods from the EU-4 will be imported into Canada because it would be cost-prohibitive to do so.

195. Accordingly, if the Tribunal were to assess the effects of removing the anti-dumping duties on the EU-4, while assuming the countervailing duties remain in place for the EU-4, it would in fact be analogous to assessing only the effects of imports of the subject goods from the United States.

196. Similarly, if the Tribunal were to assess the effects of removing the countervailing duties for the EU-4, while assuming the anti-dumping duties remain in place for the EU-4, this would be analogous to assessing the effects of imports of the subject goods from the EU-24 only.

199. The forecasts show that, if both orders were rescinded, imports from the United States, the four EU countries that face both anti-dumping and countervailing duties and the remaining 24 EU countries would account for 42 percent, 22 percent and 30 percent, respectively, of the value of the total decrease in the domestic industry's margins and profits.

200. To be clear, the United States has been found to be dumping only and the EU-24 have been found to be subsidizing only.

201. Exhibit RR-2014-006-03A, Vol. 1A at 91-92; Exhibit RR-2014-006-05, Table 71, Vol. 1.1.

202. Exhibit RR-2014-006-A-11 (protected), Appendix 8, Vol. 12; Exhibit RR-2014-006-A-17 (protected) at 19-23, Vol. 12A; CSI's protected aid to argument, Vol. 18 at 10-11; Exhibit RR-2014-006-B-08 at 1-2, Vol. 13.

197. Therefore, the Tribunal decided to conduct its separate analyses of the effects of the dumping and subsidizing under the assumption that neither anti-dumping duties nor countervailing duties apply to imports of the subject goods from the EU-4.

Effects of the Dumping

198. The Tribunal will first assess the cumulated effects of the dumping (from the United States and the EU-4) in the absence of anti-dumping duties.²⁰³

Likely Volumes of Dumped Goods

199. The Tribunal's above analysis²⁰⁴ of the conditions in the U.S. market and its conclusion that imports of the subject goods from the United States would increase significantly if the order against the United States were rescinded continues to apply in this scenario.²⁰⁵

200. The Tribunal also analyzed the conditions in the EU market, concluding that there was significant excess sugar that could be exported to Canada in the next 18 to 24 months.²⁰⁶ In 2014-2015, out-of-quota exports from the EU-4 accounted for 42 percent of all exports from the European Union.²⁰⁷ Furthermore, for the same time frame as quoted above, the EU-4 accounted for nearly the same proportion of total EU sugar production.²⁰⁸

201. Therefore, even if exports of the subject goods from the EU-4 only matched their historic share of out-of-quota exports and production, the Tribunal finds that volumes would still be substantial.

202. However, the Tribunal heard testimony that the European Union functions as a single trading block.²⁰⁹ There are many companies that have sugar-producing facilities in different countries within the European Union.²¹⁰ If exports of the subject goods to Canada from the EU-4 faced no duties, it is possible that production would be rationalized within the European Union to take advantage of that opportunity and, therefore, exports from the EU-4 could be greater than their historic share of out-of-quota exports or production.

203. In view of the above, the Tribunal concludes that there will be a significant increase in imports of the subject goods if the anti-dumping duties are no longer in place.

203. Countervailing duties are also assumed not to be imposed for imports of the subject goods from the EU-4. However, countervailing duties remain in place for imports of the subject goods from the EU-24.

204. See paragraphs 86-100, 142-44, 149-56 of these reasons.

205. The order against the United States covers only dumping. Therefore, the Tribunal's previous analysis, as it applies to the likely volumes if the U.S. *order* were rescinded, is identical to analyzing the likely volumes if no anti-dumping duties were imposed on the subject goods from the United States.

206. See paragraphs 101-17, 142-48, 151-56 of these reasons.

207. Exhibit RR-2014-006-A-01 at para. 74, Vol. 11; Exhibit RR-2014-006-A-03 at paras. 106-109, Vol. 11.

208. Exhibit RR-2014-006-05, Table 68, Vol. 1.1.

209. *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 104.

210. *Ibid.* at 140; Exhibit RR-2014-006-21.13, Vol. 5.1A at 39.

Likely Price Effects of Dumped Goods

204. The nature of the refined sugar market dictates that the lowest-priced product in the market sets the floor price for the market.²¹¹ The same outcome would apply to exports from the five dumping countries (EU-4 and the United States) if only the anti-dumping duties were removed.

205. In this regard, there is no evidence to indicate that imports from the EU-4 would be priced any differently from the forecasts for the European Union generally.²¹²

206. Therefore, the Tribunal finds that the prices of the dumped goods will significantly undercut and depress the prices of the like goods if the anti-dumping duties are no longer in place.

Likely Impact of Dumped Goods on the Domestic Industry)

207. The forecasts of the impact of the subject goods submitted by Lantic and Redpath for imports of the subject goods from the United States are the same as described above and analyzed by the Tribunal. With regard to the EU-4, the Tribunal finds that price effects and their resultant impact on profits will also remain the same. However, the volume of imports and, hence, the extent of lost sales might be less for the EU-4 than for the European Union as a whole.

208. Therefore, the Tribunal finds that, in the absence of the anti-dumping duties, there will be a severe and immediate impact on the domestic industry in terms of lost sales volumes and reductions in refining margins, cash flow and profitability.

Conclusion

209. Accordingly, the Tribunal finds that the resumption or continuation of the dumping, in and of itself, is likely to result in material injury to the domestic industry.

Analytical Framework for Assessing the Effects of Dumping

210. The analytical framework shows the identical impact on the domestic industry as in the cross-cumulated scenario. There was no change with regard to forecast pricing and volume of imports of the subject goods from the United States. As well, imports from the European Union were forecast at the same volumes and at the same prices as previously, except that the volumes were shown as coming entirely from the EU-4.

Effects of the Subsidizing

211. The Tribunal will next assess the effects of the subsidizing in the absence of the countervailing duties.²¹³

211. See paragraphs 34, 171 of these reasons.

212. *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 104.

213. Anti-dumping duties are also not imposed on imports of the subject goods from the EU-4. However, anti-dumping duties remain in place on imports of the subject goods from the United States.

Likely Volumes of Subsidized Goods

212. As discussed above, the Tribunal considered the conditions in the EU market, concluding that there was significant excess sugar that could be exported to Canada in the next 18 to 24 months.²¹⁴

213. Therefore, the Tribunal concludes that there will be a significant increase in imports of subsidized goods from the European Union if the countervailing duties are no longer in place.

Likely Price Effects of Subsidized Goods

214. The likely price effects of the subsidized goods from the European Union would be the same as those previously analyzed by the Tribunal in its assessment of the cross-cumulated effects of the dumping and subsidizing.²¹⁵

215. Therefore, the Tribunal finds that the prices of the subsidized goods will significantly undercut and depress the prices of the like goods if the countervailing duties are no longer in place.

Likely Impact of Subsidized Goods on the Domestic Industry

216. The forecasts of the impact of the subject goods submitted by Lantic and Redpath as they apply to imports of the subject goods from the European Union are the same as previously described and analyzed by the Tribunal.²¹⁶

Conclusion

217. Accordingly, the Tribunal finds that the resumption or continuation of the subsidizing, in and of itself, is likely to result in material injury to the domestic industry.

Analytical Framework for Assessing the Effects of Subsidizing

218. Although the value of the decrease is 15 percent less than in the scenario for the effects of dumping described above, the analytical framework indicated that the forecasted negative impact on the domestic industry's profitability is still substantial.

SEPARATE ANALYSES OF THE LIKELIHOOD OF INJURY BY SOURCE OF SUBJECT IMPORTS

219. The Tribunal finally analyzed separately the effects of imports of the subject goods in the following way:

- imports from the United States, assuming no anti-dumping duties are levied, but with all other duties in place;
- imports from the EU-4, assuming no anti-dumping duties nor countervailing duties on imports from the EU-4, but with all other duties in place; and
- imports from the EU-24, assuming no countervailing duties are levied, but with all other duties in place.

214. See paragraphs 145-48 of these reasons.

215. See paragraphs 158-62, 164-65 of these reasons.

216. See paragraphs 166-87 of these reasons.

220. With regard to the United States, the Tribunal reiterates its above analyses made in the context of assessing the effects of the dumping, i.e. there will be a significant increase in imports from the United States at prices that will undercut and depress the prices of the like goods and cause injury to the domestic industry. Therefore, the Tribunal concludes, that resumed imports of the subject goods from the United States would, in and of themselves, cause injury to the domestic industry.

221. As for the EU-4 and the EU-24, in terms of the likely volume of imports, the Tribunal has already concluded that there will be a significant increase in imports from the European Union as a whole. Even if these two groups of EU countries only matched their historic shares of out-of-quota exports, 42 percent and 58 percent, respectively, each group, on its own, would be the source of a significant increase in exports.

222. Since there is no evidence to indicate that the prices from either EU group would be different from prices for the European Union as a whole, the Tribunal reiterates its previous conclusion that prices will significantly undercut and depress the prices of the like goods. Accordingly, resumed imports of the subject goods from either the EU-4 or the EU-24 would cause injury to the domestic industry.

Conclusion

223. In view of the above, the Tribunal finds that resumed imports from either the EU-4 or the EU-24 would, in and of themselves, likely cause material injury to the domestic industry.

224. The analytical framework indicates that the negative impact on the domestic industry's profits was greatest for the EU-24, followed by the United States, with EU-4 generating the smallest impact. However, even this latter impact was substantial.

DETERMINATION

225. As stated earlier in these reasons, it is the Tribunal's view that the WTO Appellate Body's finding in *Indian Flat Products* means that the appropriateness of cross-cumulating must be determined on a case-by-case basis. The Tribunal collected evidence that allowed it to undertake both cumulative and separate assessments and sought evidence and argument on what would be appropriate in this case.

226. In this case, the Tribunal actually undertook the following six analyses:

- the cross-cumulated effects of the dumping and subsidizing;
- the cumulated effects of the dumping (United States and the EU-4);
- the effects of the subsidizing (European Union);
- the separate dumping effects of the subject goods from the United States;
- the dumping and subsidizing effects of the subject goods from the EU-4; and
- the separate subsidizing effects of the subject goods from the EU-24.

227. As noted above, the Tribunal arrived at the same conclusion in each individual analysis, namely, in the absence of duties, the negative impact on the domestic industry would be swift and severe. Accordingly, the Tribunal finds it appropriate in this case to cross-cumulate the effects of the dumping of refined sugar from the United States, Denmark, Germany, the Netherlands and the United Kingdom, with the effects of the subsidizing of refined sugar from the European Union.

228. On this basis, the Tribunal finds that, if the orders are rescinded, the continuation or resumption of the dumping and subsidizing of the subject goods is likely to cause material injury to the domestic industry.

EXCLUSIONS

229. The Tribunal received two requests to exclude products from the orders, each of which is discussed in turn below.

General Principles

230. While *SIMA* does not expressly authorize the Tribunal to grant exclusions from the scope of an order or finding, it has been recognized by the Federal Court of Canada and Binational Panels that this authority is implicit.²¹⁷ In the context of an expiry review, the rationale is that, despite the general conclusion that all goods covered by a finding or an order are likely to cause injury to the domestic industry, there may be case-specific evidence that imports of particular products captured by the definition of the goods are not likely to cause injury. Thus, the purpose of exclusions to an order continuing a previous order or finding is to confine the assessment of anti-dumping and countervailing duties to those goods that are likely to cause or threaten to cause material injury to the domestic industry.

231. As the Tribunal has repeatedly stated, exclusions are an extraordinary remedy that may be granted only when the Tribunal is of the view that such exclusions will not cause injury to the domestic industry. In the context of an expiry review, applying this principle entails determining whether imports of the specific goods for which exclusions are requested are not likely to cause injury to the domestic industry, despite the general conclusion that, should the order or finding under review be rescinded, the continued or resumed dumping and subsidizing of all goods covered by the order or finding are likely to result in injury to the domestic industry.

232. In *Aluminum Extrusions*, the Tribunal was clear that every party must submit its best evidence either in support of, or against, an exclusion request. In this way, the evidentiary burden is to be shared by all parties so that the Tribunal can determine whether it will exercise its discretion to grant product exclusions on the basis of its assessment of the totality of the evidence on the record.²¹⁸

233. As noted in Expiry Review No. RR-2009-001,²¹⁹ evidence about factors such as whether the domestic industry produces the products for which exclusions are requested, whether it produces substitutable or competing products, whether it is an “active supplier” of the products and whether it has the capability of producing the products should be submitted to enable the Tribunal to determine whether a product exclusion is likely to cause injury to the domestic industry.

234. Consistent with its usual practice, the Tribunal examined the evidence relating to these factors in order to dispose of the two requests for product exclusions that it received in this expiry review.

217. *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA); *Sacilor Aciéries v. Anti-dumping Tribunal* (1985) 9 C.E.R. 210 (CA); Binational Panel, *Induction Motors Originating From the United States of America (Injury)* (11 September 1991), CDA-90-1904-01; Binational Panel, *Certain Cold-Rolled Steel Products Originating or Exported From the United States of America (Injury)* (13 July 1994), CDA-93-1904-09.

218. *Aluminum Extrusions* at paras. 193-95.

219. *Certain Fasteners* (6 January 2010), (CITT) at para. 245.

Analysis of Specific Product Exclusion Requests

Golda's Kitchen

235. The Tribunal received a request from Golda's Kitchen to exclude "[s]pecialty coloured decorative sugar crystals in granulated form combined with carnauba wax and food colouring matter, imported in small retail-ready containers not exceeding 16 oz, for use exclusively as a superficial decoration in baked goods (such as pies, cakes, pastries, muffins, cookies, etc.) and other prepared foods."²²⁰

236. In its request, Golda's Kitchen provided information on the physical properties of the product for which it requests an exclusion. In particular, Golda's Kitchen described this product as sanding and coarse sugar used to decorate cookies or other baked goods. Golda's Kitchen indicated that these crystals may be "oven durable", meaning that they are resistant to high temperatures, without melting and, as such, retain their decorative properties in baked goods. Moreover, food-grade carnauba wax is added to provide a "glitter" or "shimmer" effect to the sugar crystals. Furthermore, Golda's Kitchen clarified that its request does not include products for use in mass production of processed foods by factories, mills or plants.

237. The CSI consented to this product exclusion request.²²¹ However, this consent is simply one factor that the Tribunal will consider in its analysis of whether the importation of such a product will cause injury to the domestic industry.

238. Golda's Kitchen submitted that this product is not produced in Canada. Furthermore, there is no evidence on the record that the domestic industry produces, actively supplies or is capable of producing like goods in relation to the subject goods for which this exclusion is requested. Accordingly, the Tribunal finds that imports of this product are unlikely to cause injury to the domestic industry.

239. Accordingly, the Tribunal excludes the following subject goods from its order: speciality-coloured decorative sugar crystals in granulated form combined with carnauba wax and food colouring matter, imported in small retail-ready containers not exceeding 16 oz. for use exclusively as a superficial decoration in baked goods (such as pies, cakes, pastries, muffins, cookies, etc.) and other prepared foods.

Kellogg Canada

240. The Tribunal received a request from Kellogg Canada to exclude "[e]vaporated cane syrup, Golden Granulated imported by Kellogg . . . for use as an ingredient in the production process."²²² In its reply submission, Kellogg Canada signalled that it would be willing to revise the language of its request by adding the modifier ". . . specific to the manufacturing of Kashi™ branded foods in Canada".²²³ In its reply, Kellogg Canada emphasized that no Canadian sugar supplier has been able to provide this ingredient that it has been importing since 2011. Kellogg Canada described evaporated cane juice as a more natural product than refined sugar, citing the fact that it has not been bleached or treated with chemicals.

241. The CSI objected to this request on the basis that its members do in fact produce a product that can be substituted for evaporated cane juice. In particular, Mr. Walton indicated that, based on the product specification, Kellogg Canada's product exclusion request is for an amber-coloured liquid sugar, which

220. Exhibit RR-2014-006-34.01A, Vol. 1.5 at 8.

221. Exhibit RR-2014-006-36.01, Vol. 1.5 at 27.

222. Exhibit RR-2014-006-34.02, Vol. 1.5 at 21.

223. Exhibit RR-2014-006-38.01, Vol. 1.5 at 45-46.

Lantic can produce and has produced in the past.²²⁴ Further, in his *in camera* testimony, Mr. Walton described the reasons for which Kellogg Canada has not accepted Lantic's substitute for evaporated cane juice.²²⁵

242. Moreover, Ms. Marsden testified that the domestic industry produces products that may be substitutable for evaporated cane juice, in particular, liquid sugar or melted turbinado or muscovado sugar, which are high-colour specialty sugar products, in liquid form. Ms. Marsden also testified that evaporated cane juice is "...really no different than a cane syrup that you can produce from the sugar refining process."²²⁶

243. Ms. Marsden also testified that the term "evaporated cane juice" is a misnomer. In particular, she indicated that evaporation is part of the refining process and that, in fact, refined sugar generally could be described as evaporated cane juice.²²⁷ She indicated that the product for which Kellogg Canada is requesting an exclusion originates from raw sugar, similar to Canadian refined sugar. In response to questions from the Tribunal, Ms. Marsden also clarified that evaporated cane juice is not actually a juice per se; rather, it is syrup produced by melting sugar.²²⁸

244. On the question of whether evaporated cane juice is a more natural product than substitutes produced by the domestic industry, Ms. Marsden testified that evaporated cane juice is no more natural than refined sugar. She further testified that, while certain refining aids are used in the domestic industry's production processes, no chemicals are used to produce refined sugar. Ms. Marsden explained that refining involves a purification process and that there are different degrees of purification depending on the product—some many have more molasses and colour, or different crystal sizes—however, all are substitutable for products produced by the domestic industry. Accordingly, the fact that evaporated cane juice has not undergone treatment or bleaching with chemicals does not differentiate it from the available substitutes produced by the domestic industry.²²⁹

245. Finally, the CSI submitted that the granting of this exclusion would pose a significant risk of circumvention because of its potentially wide scope. There is no industry standard or industry-wide accepted definition of evaporated cane juice, and the term itself does not describe a product with particular or unique characteristics. The CSI submitted that the product specifications would read exactly the same way for any refined sugar in liquid form. For this reason, the CSI expressed concern that the product for which Kellogg Canada requested an exclusion could potentially be shipped to Canada in liquid form and that, as long as it were described as evaporated cane juice, rather than refined liquid sugar, the Tribunal's orders could be circumvented.²³⁰

246. Kellogg Canada did not appear at the hearing nor did it bring forward any evidence in its written submissions contravening the assertions of the domestic industry.

247. The fact that Kellogg Canada further limited its request to evaporated cane juice for use in KashiTM branded products is not sufficient to satisfy the Tribunal that injury is not likely to result from the exclusion of this product.

224. *Transcript of Public Hearing*, Vol. 2, 9 September 2015, at 175.

225. *Transcript of In Camera Hearing*, Vol. 1, 8 September 2015, at 50-51.

226. *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 47.

227. *Ibid.* at 44-45, 47.

228. *Ibid.* at 47-48.

229. *Ibid.* at 46.

230. *Transcript of Public Hearing*, Vol. 2, 9 September 2015, at 171-72.

248. On the basis of the foregoing, the Tribunal finds that substitutable products are manufactured domestically and that to grant this exclusion would be injurious to the domestic industry.

249. The request is therefore denied.

CONCLUSION

250. Pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal continues its order in respect of the dumping of the subject goods originating in or exported from Denmark, Germany, the Netherlands and the United Kingdom, and the subsidizing of the aforementioned goods originating in or exported from the European Union.

251. Pursuant to subsection 76.04(1) of *SIMA*, the Tribunal also continues its order in respect of the dumping of the subject goods originating in or exported from the United States.

252. The Tribunal excludes from its orders specialty-coloured decorative sugar crystals in granulated form combined with carnauba wax and food colouring matter, imported in small retail-ready containers not exceeding 16 oz. for use exclusively as a superficial decoration in baked goods (such as pies, cakes, pastries, muffins, cookies, etc.) and other prepared foods.

Jason W. Downey

Jason W. Downey
Presiding Member

Stephen A. Leach

Stephen A. Leach
Member

Rose Ritcey

Rose Ritcey
Member

APPENDIX A

OVERVIEW

1. As described in these reasons, Redpath¹ and Lantic² each submitted detailed information on net refining margins and sales volumes for different market segments in a base case scenario (orders continued) and future year scenarios (orders rescinded).
2. Staff used this information to develop a model to forecast the total impact on the domestic industry's financial results arising from both an erosion of margins (price effect) and losses in sales volume (volume effect) in various scenarios.
3. The key assumption underlying all scenarios is that, in the absence of anti-dumping and countervailing duties, domestic producers will be forced to lower their prices and, implicitly, their refining margins to match the lowest price in the market.³

CROSS-CUMULATED SCENARIO

4. Staff forecast the impact on the domestic industry if *both* orders were rescinded.

Price Effect

5. For each market segment identified by Redpath and Lantic, staff added the No 11 sugar price⁴ to net refining margins to calculate domestic, U.S. and EU⁵ absolute prices.⁶ Staff then determined the lowest

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1. Redpath provided two forecasts of net refining margins for the subject goods from the United States, on the basis of imports arriving from different facilities, Grammercy, Louisiana, and Michigan. Staff conservatively assumed that all imports of the subject goods from the United States would come from the more distant facility, which requires higher transportation costs. Redpath did not provide a forecast for 2016; therefore, staff assumed the forecast provided for 2015 would apply to 2016 as well. Exhibit RR-2014-006-A-17 (protected), Appendices 1-6, Vol. 12A.
 2. Lantic provided separate data for Eastern Canada and Western Canada; therefore, staff calculated a single weighted net refining margin for each market segment and summed the lost sales volumes. Exhibit RR-2014-006-A-11 (protected), Appendices 5, 8, Vol. 12; CSI's protected aid to argument, Vol. 18 at 8-11. A weighted average formula was used to combine both east and west facilities for Lantic.
 3. CSI's protected aid to argument, Vol. 18 at 1-2; *Transcript of In Camera Hearing*, Vol. 2, 9 September 2015, at 113-14; *Transcript of Public Hearing*, Vol. 3, 10 September 2015, at 199.
 4. The ICE Sugar No. 11 contract is the global price benchmark for raw sugar. Exhibit RR-2014-006-25.03, Vol. 7.1a at 205. Lantic and Redpath used different forecast prices for the No. 11 raw sugar contract. Lantic used a weighted average No. 11 price right across a 24-month forecast horizon, while Redpath took a March 2016 terminal month futures price and carried it across the whole forecast period. Staff used Lantic's price as being more representative. *Transcript of Public Hearing*, Vol. 3, 10 September 2015, at 205; CSI's protected aid to argument, Vol. 18 at 8-11; *Transcript of Public Hearing*, Vol. 3, 10 September 2015, at 202, 205.
 5. In a parallel analysis, staff replaced forecast EU prices from Lantic and Redpath with the price submitted by the European Commission. Exhibit RR-2014-006-B-08 at 1-2, Vol. 13. A landed Canadian price was constructed from the EU export price and information on shipping costs. As the European Commission only provided an export price for all sugar products, while Lantic and Redpath provided prices for a range of sugar products, staff needed to transform the EU price into a comparable range of product prices. To do this, staff created a weighted aggregate landed-in-Canada price of all sugar products for Lantic and Redpath, corresponding to the single price provided by the European Commission. The ratios of the EU price to these aggregate prices were then applied to the Lantic and Redpath prices for each of their sugar products, producing a corresponding EU range of sugar product prices. This price construction necessarily assumes that the domestic industry and the EU exporters charge the same discounts and premia for different products, e.g. the price premium for speciality sugar over industrial bulk sugar is identical in Canada and the European Union. As the European Commission export price was considerably lower than the prices provided by Lantic and Redpath, the injury to the domestic industry was even greater.
 6. Using net refining margins instead of absolute prices throughout the analysis yields the same results for the value for the price effect, as all prices are equal to the refining margin plus the No. 11 sugar contract.

price offer, which was subtracted from the domestic producer's price to calculate a price undercutting per tonne.⁷ The price undercutting per tonne was multiplied by the base case sales volume to arrive at the price effect, i.e. the reduction in profits due to a reduction in price.

Volume Effect

6. For each market segment identified by Lantic and Redpath, staff calculated the total forecast lost sales volumes associated with potential imports from the United States and the European Union. Taking the lowest absolute price, staff calculated the analogous net refining margin by subtracting the No. 11 sugar price from that price.⁸ This net refining margin was then multiplied by the total volume of lost sales to arrive at the volume effect, i.e. the additional reduction in profits due to a reduction in sales volume in the new lower-priced market. While Lantic and Redpath provided separate potential lost sales forecasts from both the United States and the European Union, staff assumed that all lost sales would be lost to whichever region had the lowest price, unless both the United States and the European Union had the same lowest price, in which case domestic sales would be lost in equal measure to imports from the United States and the European Union.

Total Effect

7. Finally, staff added the price effect and the volume effect to arrive at the total effect on the domestic industry.⁹ The total effect represents the forecast decrease in gross margin and net profits that the domestic industry would experience if both orders were rescinded. It should be noted that this is a very conservative analysis which assumes that average production costs do not rise as domestic sales volumes decrease. As noted in the body of the reasons, if production decreases, average production costs are likely to increase,¹⁰ further lowering profit margins and putting even more pressure on the domestic producers.

Attribution of Total Effect

8. Staff then used the model to attribute the total effect on the domestic industry's margin and profits to imports of the subject goods from different sources.

9. Staff attributed the total effect on margin and profits to imports of the subject goods from the United States, the EU-4 and the EU-24.¹¹ The assumption was made that, once the orders are rescinded, multinational buyers will adjust their behaviour to maximize profits by making *all* their purchases from the lowest-price source, whether the United States, the European Union or domestic producers.¹²

10. Staff then attributed the total effect on margin and profits between dumped imports (i.e. imports from the United States and the EU-4) and subsidized imports (i.e. imports from the European Union as a

7. If the domestic price was the lowest price, then the price effect was zero because there was no price undercutting.

8. Where the domestic price was the lowest, staff assumed that sugar buyers would have no incentive to import sugar; therefore, no sales would be lost to imports of the subject goods and the volume effect was therefore zero.

9. Staff calculated total effects for both 2015 and 2016.

10. *Transcript of In Camera Hearing*, Vol. 1, 8 September 2015, at 18; Exhibit RR-2014-006-A-10 at para. 56, Vol. 11A.

11. The sum of the effects allocated to the United States, the EU-4 and the EU-24 equal the total effect.

12. Where the United States and the European Union had the same lowest price, staff assumed that half of the imports would come from the United States and that half would come from the European Union. If the domestic price was the lowest price in the market, then there would be no price undercutting and no imports of the subject goods, i.e. no price or volume effect.

whole).¹³ For the attribution to dumping countries, staff further assumed that, when the European Union had the lowest price, 42 percent of EU exports would come from the EU-4 because these countries represent 42 percent of EU out-of-quota exports, and that 58 percent would come from the EU-24.¹⁴ Staff assumed that all imports from the United States contribute fully to the total effect on margins when the United States has the lowest price.

11. For the attribution to the subsidizing countries, staff modified its assumptions somewhat. Because the European Union functions as a single trading block,¹⁵ staff attributed 100 percent of the effects of imports of the subject goods to the European Union when the European Union had the lowest price.¹⁶ Since the subject goods from the United States are not subsidized, when the United States had the lowest price, staff attributed none of the total effect to those imports.

ADDITIONAL SCENARIOS

12. Staff forecast the impact on the domestic industry in the following five scenarios:

- Effects of dumping—no anti-dumping duties for the United States and the EU-4; no countervailing duties for the EU-4; countervailing duties for the EU-24;
- Effects of subsidizing—no countervailing duties for the EU-24 and the EU-4; no anti-dumping duties for the EU-4; anti-dumping duties for the United States;
- Effects of U.S. exports—no anti-dumping duties on U.S. exports, but all other duties in place.
- Effects of EU-4 exports—no anti-dumping duties and no countervailing duties on EU-4 exports, but all other duties in place.
- Effects of EU-24 exports—no countervailing duties on EU-24 exports, but all other duties in place.

13. To estimate the absolute prices of the subject goods from the European Union with the anti-dumping duties in place, staff multiplied the previous estimates of EU prices by 180 percent and added this amount to the original EU prices.¹⁷ To estimate the absolute prices of the subject goods with the countervailing duties in place, staff added CAN \$336 per tonne to the original estimates of EU prices.¹⁸

14. Otherwise, staff applied the same assumptions as above.

13. The sum of the effects allocated to dumping and subsidizing is greater than the total effect because the EU-4 are included in both amounts.

14. This assumption is also consistent with production data provided by the European Union, which show that roughly 40 percent of EU sugar production comes from the EU-4. Exhibit RR-2014-006-B-04 at 4-5, Vol. 13.

15. *Transcript of Public Hearing*, Vol. 1, 8 September 2015, at 104.

16. Where the United States and the European Union had the same lowest price, staff assumed that half of the total forecast lost sales volumes would enter the market from each region, but only the half from the European Union would be attributable to the effects from subsidizing countries. If the domestic price was the lowest price in the market, then there would be no price undercutting and no imports of the subject goods, i.e. no price or volume effect.

17. Exhibit RR-2014-006-03A, Vol. 1A at 91.

18. *Ibid.* at 92; Exhibit RR-2014-006-05, Table 71, Vol. 1.1

APPENDIX B**GOODS EXCLUDED FROM THE FINDINGS MADE BY THE TRIBUNAL IN
INQUIRY NO. NQ-95-002**

1. *Co-crystallized products* - For greater clarity, these products are comprised of sugar syrups or liquid sucrose blends and one or more non-sucrose ingredients combined through a co-crystallization process to form a dry solid structure in granulated or powder form.
2. *Pearl sugar* - For greater clarity, pearl sugar is hard granulated sugar, pellet-formed by subjecting sugar syrup to intense heat. The pellet, which is the size of a pea, is shaped like a football. It is coarser than coarse sugar, i.e. confectioners' sugar.
3. *Bottler's floc-free beet sugar* - Imported by McNeil Consumer Products Company for use in pharmaceutical preparations.
4. *Lyle's Golden Syrup* - Produced by Tate & Lyle PLC.
5. *Lyle's Pouring Syrup* - Produced by Tate & Lyle PLC.
6. *Daddy brand wrapped sugar dominoes in 1-kg boxes* - For greater clarity, these are sugar cubes which are wrapped in illustrated paper wrappings, each of which contains two sugar cubes.
7. *Daddy brand wrapped sugar cubes in 5-kg boxes containing 960 portion* - For greater clarity, each portion contains two sugar cubes which are wrapped in illustrated paper wrappings.
8. *Saint Louis brand pre-cut brown cane sugar lumps in 1-kg boxes* - For greater clarity, these are rough-shaped sugar lumps comprised of brown cane sugar.
9. *Daddy brand shaped white sugar pieces in 500-g boxes* - For greater clarity, these sugar pieces are pre-cut into diamond, heart, spade and club shapes.
10. *Daddy brand brown or blond "Vergeoise" sugar in 500-g cases.*
11. *Comptoir du Sud brand brown and white sugar pieces in 1-kg and 500-g boxes.*
12. *Daddy brand brown coffee sugar in 500-g box packets* - For greater clarity, this is a large granule brown sugar.
13. *Demerara sugar cubes* - Produced by Tate & Lyle PLC.
14. *Amber sugar crystals* - Produced by Tate & Lyle PLC. For greater clarity, these are large sugar crystals in varying shades of brown.
15. Low-colour liquid sucrose with a colour no higher than 10 maximum ICUMSA (International Commission for Uniform Methods of Sugar Analysis) colour units and distiller's grade liquid sucrose imported by Gilbey Canada Inc. for use as ingredients in its production process.

**GOODS EXCLUDED BY THE ORDERS MADE BY THE TRIBUNAL IN
REVIEW NO. RR-99-006 FROM THE FINDINGS MADE BY THE 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. rectangular) shaped sugar.
5. Rough-shaped lumps and pieces, in lumps or pieces weighing between 3 and 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.

**GOODS EXCLUDED BY THE ORDERS MADE BY THE TRIBUNAL IN
REVIEW NO. RR-2004-007 FROM THE FINDINGS MADE BY THE TRIBUNAL
IN INQUIRY NO. NQ-95-002**

1. Individually wrapped rectangular cane sugar tablets.