



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Safeguards

DECISION ON COMMENCEMENT OF INQUIRY AND REASONS

Safeguard Inquiry
No. GS-2005-001

Unmanufactured Bright Virginia
Flue-cured Tobacco

*Decision and reasons issued
Thursday, December 29, 2005*

Canada

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IN THE MATTER OF a global safeguard inquiry, under subsection 26(1) of the *Canadian International Trade Tribunal Act*, respecting:

UNMANUFACTURED BRIGHT VIRGINIA FLUE-CURED TOBACCO

DECISION TO COMMENCE A GLOBAL SAFEGUARD INQUIRY

On October 17, 2005, pursuant to subsection 23(1) of the *Canadian International Trade Tribunal Act*, the Ontario Flue-Cured Tobacco Growers Marketing Board submitted a complaint requesting that the Canadian International Trade Tribunal initiate a global safeguard inquiry into the importation of unmanufactured bright Virginia flue-cured tobacco, whether stemmed or stripped, or partly or wholly stemmed/stripped, for use in the manufacture of cigarettes, tobacco sticks and other tobacco products.

On November 29, 2005, the Canadian International Trade Tribunal determined, pursuant to subsection 25(1) of the *Canadian International Trade Tribunal Act*, that the complaint was properly documented.

The Canadian International Trade Tribunal is satisfied that the relevant conditions listed in subsection 26(1) of the *Canadian International Trade Tribunal Act* have been met. Therefore, the Canadian International Trade Tribunal hereby commences an inquiry into the complaint.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Ellen Fry
Ellen Fry
Member

Elaine Feldman
Elaine Feldman
Member

Hélène Nadeau
Hélène Nadeau
Secretary

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|--------------------------------|--|
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STATEMENT OF REASONS

BACKGROUND

1. On October 17, 2005, pursuant to subsection 23(1) of the *Canadian International Trade Tribunal Act*¹, the Ontario Flue-Cured Tobacco Growers Marketing Board (the Board) submitted a complaint to the Canadian International Trade Tribunal (the Tribunal) requesting that the Tribunal initiate a global safeguard inquiry into the importation of unmanufactured bright Virginia flue-cured tobacco, whether stemmed or stripped, or partly or wholly stemmed/stripped, for use in the manufacture of cigarettes, tobacco sticks and other tobacco products.

2. As part of its examination of the complaint to determine whether it was properly documented, the Tribunal requested, on November 7, 2005, pursuant to subsection 24(1) of the *CITT Act*, that the Board provide additional information. On November 8, 2005, the Board provided further information in response to the Tribunal's request.

3. Based on its examination of the complaint and the additional information provided by the Board, the Tribunal determined, pursuant to subsection 25(1) of the *CITT Act*, that the complaint was properly documented. A notice of receipt of a properly documented global safeguard complaint was issued on November 29, 2005, and was published in the December 10, 2005, edition of the *Canada Gazette*, Part I.

4. Pursuant to subsection 26(1) of the *CITT Act*, the Tribunal has decided to commence an inquiry into the complaint to determine whether the goods subject to the inquiry are being imported into Canada from all sources in such increased quantities and under such conditions as to be a principal cause of serious injury, or threat thereof, to domestic producers of like or directly competitive goods. Pursuant to subsection 26(2), the Tribunal will notify the Board and other interested parties of its decision to commence this inquiry. In addition, the Tribunal will send a copy of this decision and a copy of the public complaint and other relevant public information examined by the Tribunal to the Minister of Finance.

PRODUCT

Product Definition and Description

5. The product that is the subject of the complaint is unmanufactured bright Virginia flue-cured tobacco, whether stemmed or stripped, or partly or wholly stemmed/stripped, for use in the manufacture of cigarettes, tobacco sticks and other tobacco products (flue-cured tobacco).

Classification of Imports and Tariff Treatment

6. The subject imports are classified under classification Nos. 2401.10.99.10 and 2401.20.90.91 of the schedule to the *Customs Tariff*.²

DOMESTIC INDUSTRY

7. According to the complaint, the Canadian growers of flue-cured tobacco are the 638 members of the Board and one known grower located in Prince Edward Island. Quebec had 56 growers represented by the Office des producteurs de tabac jaune du Québec; however, the association has wrapped up operations,

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].

2. S.C. 1997, c. 36.

and most Quebec growers have applied for transitional payments from the federal and Quebec governments to exit tobacco growing.

Position of the Board

8. This section outlines a number of key submissions made by the Board. It is not intended to be exhaustive.

9. The Board submitted that current members had accounted for the majority of the volume and value of domestic production of flue-cured tobacco every year since 1999 and that they produce goods that are like or directly competitive with the subject goods.

10. The Board alleged that the subject goods are being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive goods. It alleged that the increase has been rapid and recent.

11. The Board alleged that the high degree of substitutability between domestic and imported products, and the fact that import pricing has declined dramatically at the same time as Canadian export pricing has increased, supports its view that pricing levels are driving the rapid growth of imports in the Canadian market and the declining volume of sales from domestic production.

12. It is the Board's contention that the domestic industry is being seriously injured and faces further threat of serious injury through a decline in the number of growers and in the acreage planted, loss of market share, loss of sales volume, declining revenues, price suppression, price erosion, and a foreseeable and imminent threat of further reductions in production volumes, market share, gross margins and profitability.

13. In the alternative, the Board contended that one Canadian cigarette manufacturer's plans to increase its use of imported products pose a threat of serious injury.

ANALYSIS

14. Pursuant to subsection 26(1) of the *CITT Act*, the Tribunal is required to commence an inquiry into the complaint if it is satisfied that the following conditions are met:

(a) that the information provided by the complainant and any other information examined by the Tribunal disclose a reasonable indication that

(i) in the case of a complaint filed under subsection 23(1), the goods that are the subject of the complaint are being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive goods, . . .

(b) that the complaint is made by or on behalf of domestic producers who produce a major proportion of domestic production of the like or directly competitive goods; and . . .

(c) where an inquiry, except an inquiry under sections 30.21 to 30.25, in relation to like or directly competitive goods has been completed or terminated by the Tribunal under this Act during the twenty-four month period preceding the date of receipt of the complaint, that the circumstances are sufficiently different to warrant a new inquiry.

Like or Directly Competitive Goods

15. The Tribunal's jurisdiction under subsection 26(1) of the *CITT Act* is to inquire into complaints concerning injury or threat of injury by imported goods to "domestic producers of like or directly competitive goods".

16. The Board submitted that flue-cured tobacco produced in Canada and the imported goods are identical, as the imported goods fall under tariff classifications that describe exactly the flue-cured tobacco grown in Canada, and are used for identical purposes.

17. The Board also submitted that while, due to its arrangements in Ontario, the methods used to market unmanufactured tobacco differ slightly from those used in other countries, all such products are marketed essentially through the same channels of distribution and have the same end uses.

18. In the alternative, the Board submitted that domestically grown flue-cured tobacco is directly competitive with the subject goods. It argued that both are purchased by Canadian manufacturers, are used exclusively for the production of cigarettes and, therefore, have similar characteristics.

19. Based on the foregoing submissions, the Tribunal finds that the goods of the domestic growers are like or directly competitive goods in relation to the subject imports.

Reasonable Indication of Increased Imports

20. Data obtained by the Tribunal from Statistics Canada, and aggregated on a fiscal year from June 1 to May 31 in order to coincide with the fiscal period of domestic growers, show that the subject imports increased from approximately 10.7 million green weight pounds for the fiscal year ending in 2001 to over 22.0 million green weight pounds for the fiscal year ending in 2005. Based on Statistics Canada data, the value of the subject imports increased from \$14.7 million for the fiscal year ending in 2001 to \$28.6 million for the fiscal year ending in 2005.

21. A significant increase in the subject imports was apparent for the fiscal year ending in 2005. In particular, the imports went from 14.3 million green weight pounds for the fiscal year ending in 2004 to 22.0 million green weight pounds for the fiscal year ending in 2005. This represents a 54 percent increase in the volume of subject imports for the fiscal year ending in 2005 over 2004.

22. In the Tribunal's view, the increase in imports was recent, sudden, sharp and significant and also appears to be ongoing.

Reasonable Indication of Serious Injury or Threat of Serious Injury

23. The Tribunal reviewed data contained in the complaint concerning domestic production of like or directly competitive goods, including declines in the number of growers and in the acreage planted, loss of market share, loss of sales volume, declining revenues, price suppression and price erosion.

24. Between 2001 and 2005, while the subject imports increased, domestic production declined from 112.8 million green weight pounds for the fiscal year ending in 2001 to 90.4 million green weight pounds for the fiscal year ending in 2005. In addition, the acreage planted declined from 52,050 acres for the fiscal year ending in 2001 to 36,603 acres for the fiscal year ending in 2005.

25. Data submitted with the complaint demonstrate that the number of domestic growers declined from 999 for the fiscal year ending in 2001 to 752 for the fiscal year ending in 2005.

26. Data in the complaint and those obtained by the Tribunal from Statistics Canada (compiled on a fiscal year basis) indicate that the domestic growers' market share declined from 87 percent for the fiscal year ending in 2001 to 70 percent for the fiscal year ending in 2005. From fiscal year 2004 to fiscal year 2005 alone, there was a significant decrease in the domestic growers' market share, from 80 percent to 70 percent.

27. The average unit price of the subject imports was \$1.38 per green weight pound for the fiscal year ending in 2001, rising in the fiscal year ending in 2002 to \$1.78 per green weight pound, before ending at \$1.30 per green weight pound for the fiscal year ending in 2005. The complaint alleges that the consistently low unit price of the subject imports has prevented domestic growers from implementing significant price increases in order to offset their increasing costs of production. The Tribunal accepts, at face value, the Board's allegation that there were increases in the Board member growers' cost of production. Further evidence in the complaint shows that the net domestic guaranteed unit price per green weight pound for domestic sales increased slightly from \$2.69 for the fiscal year ending in 2001 to \$2.82 for the fiscal year ending in 2004. Since 2004, the unit price has been steadily declining. The net domestic guaranteed unit price for the fiscal year ending in 2005 was \$2.75 and has now been reduced to \$2.74 for the fiscal year ending in 2006. As such, the evidence shows that domestic prices were suppressed from 2001 to 2005.

28. The evidence in the complaint also shows that the domestic industry has suffered reduced gross revenues. Between 2001 and 2005, Board member growers experienced declines in revenues from \$237 million for the fiscal year ending in 2001 to \$187 million for the fiscal year ending in 2005.

29. As indicated above, the information available to the Tribunal demonstrates that there was a significant increase in the subject imports from 2001 to 2005. The evidence also shows decreased domestic production and market share, reduced revenues, and price suppression during the same period.

30. The evidence indicates that the increase in imports from the fiscal year ending in 2001 to the fiscal year ending in 2005 had an adverse impact on domestic production during the same period. Given that the subject imports increased more sharply in the first nine calendar months of 2005 in comparison with the same period in 2004, and given that domestic production for domestic sales is expected to remain constant for the current crop year, it is reasonable to conclude that this recent increase has an impact on domestic production no less adverse than the increase from the fiscal year ending in 2001 to the fiscal year ending in 2005.

31. Accordingly, the Tribunal is satisfied that there is a reasonable indication that the subject goods are being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive goods.

Standing

32. Pursuant to paragraph 26(1)(b) of the *CITT Act*, the Tribunal must be satisfied that the growers represented by the Board account for a major proportion of domestic production of the like or directly competitive goods. Information in the complaint indicates that the volume of flue-cured tobacco production accounted for by the Board member growers that supported the complaint is well over 50 percent.

33. On the basis of this information, the Tribunal is satisfied that the complaint is made by or on behalf of growers that account for a major proportion of domestic production of the like or directly competitive goods.

No Recent Similar Cases

34. Finally, according to paragraph 26(1)(c) of the *CITT Act*, if the Tribunal has completed or terminated an inquiry in relation to the like or directly competitive goods during the 24-month period preceding the date of receipt of the complaint, it has to be satisfied that the circumstances are sufficiently different to warrant a new inquiry. The Tribunal has never conducted a global safeguard inquiry relating to flue-cured tobacco.

CONCLUSION

35. Based on the foregoing, pursuant to subsection 26(1) of the *CITT Act*, the Tribunal has decided to commence a global safeguard inquiry into the complaint on flue-cured tobacco.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Ellen Fry
Ellen Fry
Member

Elaine Feldman
Elaine Feldman
Member