



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2005-001

Unprocessed Grain Corn

*Finding issued
Tuesday, April 18, 2006*

*Reasons issued
Wednesday, May 3, 2006*

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IN THE MATTER OF an inquiry, under section 42 of the *Special Import Measures Act*, respecting:

**THE DUMPING AND SUBSIDIZING OF UNPROCESSED GRAIN CORN
ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA**

FINDING

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping and subsidizing of unprocessed grain corn, excluding seed corn (for reproductive purposes), sweet corn and popping corn, originating in or exported from the United States of America have caused injury or retardation or are threatening to cause injury to the domestic industry.

This inquiry is pursuant to the issuance by the President of the Canada Border Services Agency of a preliminary determination dated December 15, 2005, and of a final determination dated March 15, 2006, that the aforementioned product originating in or exported from the United States of America has been dumped and subsidized.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping and subsidizing of the aforementioned product originating in or exported from the United States of America have not caused injury and are not threatening to cause injury to the domestic industry.

Pierre Gosselin
Pierre Gosselin
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Elaine Feldman
Elaine Feldman
Member

Hélène Nadeau
Hélène Nadeau
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: March 20 to 25, 2006

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STATEMENT OF REASONS

BACKGROUND

1. The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry to determine whether the dumping and subsidizing of unprocessed grain corn, excluding seed corn (for reproductive purposes), sweet corn, and popping corn, originating in or exported from the United States of America (the subject goods) have caused injury or retardation or are threatening to cause injury to the domestic industry.

2. On September 16, 2005, the President of the Canada Border Services Agency (CBSA), following a complaint filed by the Ontario Corn Producers' Association (OCPA), the Federation of Quebec Producers of Cash Crops (FQPCC) and the Manitoba Corn Growers Association, Inc. (MCGA), collectively the Canadian Corn Producers (CCP), initiated an investigation into whether the subject goods had been dumped or subsidized.

3. On September 19, 2005, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or retardation or were threatening to cause injury to the domestic industry. On November 15, 2005, it issued a preliminary determination of injury with respect to the dumping and subsidizing of the subject goods.

4. On December 15, 2005, the CBSA issued a preliminary determination of dumping and subsidizing with respect to the subject goods. It was satisfied, as a result of its preliminary investigation, that the subject goods had been dumped and subsidized, that the margins of dumping and amounts of subsidy were not insignificant and that the volumes of dumped and subsidized goods were not negligible.

5. On December 16, 2005, the Tribunal issued a notice of commencement of inquiry.² As part of the inquiry, it sent questionnaires to the OCPA, the FQPCC, the MCGA, the Department of Agriculture and Agri-Food and several importers. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared a public pre-hearing staff report.

6. On March 15, 2006, the CBSA issued a final determination of dumping and subsidizing with respect to the subject goods which confirmed that the margin of dumping and the amount of subsidy were not insignificant.

7. A hearing, with public and in camera testimony, was held in Ottawa, Ontario, from March 20 to 25, 2006. The CCP and its member associations filed submissions in support of a finding of injury and were present at the hearing.

8. Animal Industry Corn Users (a coalition of the Canadian Pork Council [CPC], the Animal Nutrition Association of Canada [ANAC] and the Canadian Cattlemen's Association [CCA]), Archer Daniels Midland Company (ADM)/ADM Agri-Industries, the Canadian Snack Food Association (CSFA), Casco Inc./Corn Products International, Inc. (Casco/CPI), Commercial Alcohols Inc., Diageo Canada Inc. (Diageo), Hytek Limited (Hytek), Maple Leaf Foods Inc. (Maple Leaf), The Pepsi Bottling Group,

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

2. C. Gaz. 2005.I.4323.

Schenley Distilleries Inc./Alberta Distillers Limited (Schenley/Alberta) and Weston Foods Inc. (Weston), filed submissions opposing a finding of injury and were present at the hearing. The Association of Canadian Distillers, the Brewers of Canada, the Food Processors of Canada and Pepsi-Cola Canada Ltd. also opposed a finding of injury. These parties did not file submissions, but were present at the hearing.

9. Submissions opposing a finding of injury were also received from the Animal Nutrition Association of Canada—Manitoba Division, the Office of the United States Trade Representative, the Township of Edwardsburgh/Cardinal, Ontario and the U.S. Corn Coalition. These parties were not present at the hearing.

10. Several parties opposed a finding of injury, but did not file submissions and were not present at the hearing. These parties are the Animal Nutrition Association of Canada—British Columbia Division (ANAC-BC), Brar Natural Flour Milling Incorporated (Brar), Bradner Farms, Brandy Farms Inc. and Cozy Prairie (Brandy Farms), Del Comal Foods Ltd., the Manitoba Pork Council, Newco Commodities Ltd., the Ontario Agri Business Association, Que Pasa Mexican Foods (Que Pasa) and Suncor Energy Products Inc.

11. Requests for product and regional exclusions were filed by ANAC, ANAC-BC, The Black Velvet Distilling Company, Bradner Farms, Brandy Farms, Brar, Casco/CPI, the CCA, the CPC, the CSFA, the Deaf Smith County Grain Processors, Del Comal Foods Ltd., Diageo, Hytek, Que Pasa, Schenley/Alberta, Sunny State Products, Inc. and Weston.

12. Prior to the hearing, parties were advised that the Tribunal would likely limit oral testimony to cross-examination on the witness statements and that, therefore, they should file comprehensive witness statements. After reviewing the extensive and complete witness statements filed by the parties, and in light of the nature of the evidence and matters at issue, the Tribunal decided to treat the written evidence of witnesses as evidence in chief and permit only cross-examination of witnesses at the hearing. The parties identified the witnesses to be cross-examined. The Tribunal then established a hearing schedule that imposed overall time limitations on the cross-examination phase of the hearing and allocated equal amounts of time to the domestic industry and the group of parties opposed to a finding of injury.

13. The record of this inquiry consists of all Tribunal exhibits, including the public and protected record of the preliminary injury inquiry on unprocessed grain corn (PI-2005-001), public and protected replies to questionnaires, requests for information and replies thereto, witness statements and all exhibits filed by the parties throughout the inquiry, as well as the transcript of the hearing. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

14. The Tribunal issued its finding on April 18, 2006.

RESULTS OF THE CBSA'S INVESTIGATION

15. The CBSA's investigation covered all the subject goods released into Canada during the period from September 1, 2003, to August 31, 2005.

16. The CBSA found that 99 percent of the volume of the subject goods that entered Canada were dumped, that the estimated margins of dumping ranged from 0.005 to 214 percent and that the weighted average margin of dumping, expressed as a percentage of the export price, was 26 percent. This is equal to a margin of dumping of US\$0.60 per bushel.

17. The CBSA also determined that the following programs and incentives offered by the U.S. Government provide actionable subsidies:

- Direct and Counter-cyclical Payment Program (formerly Marketing Loss Assistance Payments)
- Nonrecourse Marketing Assistance Loans and Loan Deficiency Payments
- Federal Crop Insurance Program

18. The CBSA estimated that the amount of subsidy for the CBSA's entire period of investigation was 18 percent of the export price of the subject goods shipped to Canada or US\$0.45 per bushel. The CBSA stated that the amount of subsidy after a finding of injury would be US\$0.87 per bushel.

19. In the absence of evidence to the contrary, the CBSA assumed that 100 percent of the subject goods imported into Canada have benefited from the actionable subsidies.

PRODUCT

Product Definition and Description

20. For purposes of this inquiry, the subject goods are defined as unprocessed grain corn (hereinafter grain corn), excluding seed corn (for reproductive purposes), sweet corn, and popping corn, originating in or exported from the United States.

21. The CBSA defined the production of the subject goods as the growth, harvest and drying of whole kernel grain corn to approximately 15.5 percent moisture content. This percentage is the upper moisture content limit to which the grain corn can be dried for it to be considered subject goods.

22. Grain corn includes whole kernel grain corn and grain corn that has been milled to a limited degree such that the milled grain corn, regardless of its physical form, preserves all the constituent parts of whole kernel grain corn and is chemically identical to whole kernel grain corn. White dent corn is also included as part of the product definition.

23. Grain corn mixed with other grains and oilseed (such as millet) that can be separated from the grain corn after importation is also considered subject goods.

24. The subject goods are classified under the following classification numbers of the schedule to the *Customs Tariff*:³ 1005.90.00.11, 1005.90.00.12, 1005.90.00.13, 1005.90.00.14, 1005.90.00.19 and 1005.90.00.99, as well as 1104.23.00.00 with respect to sliced corn only.

Additional Product Information

25. The majority of corn grown in North America is grain corn. Its main use is for animal feed, but it is also used to make a variety of products, such as alcohol (including spirits and fuel ethanol), corn syrup and sweeteners, corn starch, human and pet food, and industrial products.

26. The most common variety of grain corn in North America is known as dent corn. It is also called field corn. Dent corn is a variety of corn with a kernel that is indented at maturity and that contains both hard and soft starches. A less common variety of grain corn is flint corn, which has hard, rounded or short and flat kernels. Flint corn is used for the same purposes as dent corn.

3. S.C. 1997, c. 36.

Excluded Products

27. The following products were excluded from the product definition:

Seed corn (for reproductive purposes): corn seed specifically grown for reproductive purposes that typically has a seed treatment applied.

Sweet corn (or green corn): corn that is eaten fresh, canned, or frozen. Sweet corn contains more sugar than other corn and is harvested when the plant is immature and the kernels still soft. Corn on the cob and corn canned for human consumption are sweet corn.

Popping corn: a variety of corn that has small ears and small pointed or rounded kernels that, on exposure to dry heat, are popped by the expulsion of the contained moisture, and form a white starchy mass many times the size of the original kernel.

High moisture corn: grain corn with a moisture content of approximately 24 to 26 percent, which is stored in oxygen-limiting silos without being dried. It is used for animal feed almost exclusively on the farm where it is grown and is not normally traded or used for industrial purposes.

Silage/forage corn: grain corn that does not have the kernel separated from the husk. The plant is chopped in its entirety, including the stalk, the leaves, and the husk. It is used for animal feed almost exclusively on the farm where it is grown and is not normally traded or used for industrial purposes.

Processed corn: processed grain corn in which one or more of the constituent parts of the whole kernel grain corn, such as the bran layer or pericarp, germ, tip cap or endosperm has been removed.

Production Process

28. Planning for corn planting begins in the fall of each year, as producers review their crop rotation plans for the next year. In Ontario, the standard crop rotation includes corn, soybeans and winter wheat. In Quebec, it is common practice to seed corn for two consecutive years, followed by soybeans in the third year. The standard rotation crops in Manitoba are corn, canola, wheat and beans. Farmers then review yield data to choose the variety of corn that is most suited to their production area. Corn seed is often purchased in late fall or early winter to meet purchase discount deadlines and to ensure a wide variety of choice. Buyers may also coordinate with growers to plant the varieties that are most suitable to their needs.

29. Corn is generally planted between late April and mid-May, whenever soil temperatures are sufficiently high to germinate the seed. Seeding rates vary by region. In Ontario, corn is planted at a rate of 28,000 to 35,000 plants per acre. In Quebec, the targeted planting rate is 30,000 to 35,000 plants per acre. In Manitoba, corn is planted at a rate of 24,000 to 28,000 plants per acre.

30. In June and July, producers fertilize, cultivate and chemically spray corn for weed and pest control. During the growing months, producers monitor corn fields to check for disease or pest infestations. If necessary, pesticide is applied.

31. Grain corn is harvested when the kernels are hard (generally when the moisture content is between 20 and 27 percent), usually from September through October. At harvest, the husk is removed, and the corn kernels are separated from the cob. At this point, the grain corn may be sold for certain commercial uses, stored in special oxygen-limiting silos for on-farm use as animal feed or dried. Dried grain corn is dried to approximately 14 percent moisture content, typically using propane driers, and then it is marketed or stored. Once stored, dried grain corn must be monitored and aerated to maintain optimum temperature and moisture levels. Under these conditions, dried grain corn can be stored long term without quality deterioration. Some

dried grain corn is sold at harvest time; however, most producers store their corn on-farm or at grain elevators and sell at regular intervals throughout the year. Alternatively, dried grain corn may be stored and used on-farm in animal feed.

DOMESTIC PRODUCERS

32. The CCP represent approximately 26,100 grain corn producers. In the 2005-2006 crop year,⁴ the last crop year for which harvest data are available, 372 million bushels of grain corn were produced in Canada. Over 97 percent of this production took place in Ontario and Quebec. Virtually all of the remaining production took place in Manitoba.

33. The OCPA, the FQPCC and the MCGA are entirely member funded through producer check-off systems.

IMPORTERS AND EXPORTERS

34. The CBSA identified 144 potential importers of the subject goods. The Tribunal sent questionnaires to 29 importers that collectively imported approximately 84 percent of the subject goods by volume; replies were received from 26 importers. Sixteen respondents identified themselves as brokers or resellers. The remaining importers identified themselves as distillers or industrial, food or feed users of grain corn.

35. The CBSA's statement of reasons identified 383 exporters of the subject goods.

PRODUCT DISTRIBUTION

36. Sales of grain corn can follow a number of different distribution channels. Domestic grain corn may be sold by the producer directly to end users, such as distilleries, ethanol plants and feed mills, or to other farmers who use it to feed their livestock. Farmers may also sell grain corn directly to feed mills, to brokers that supply these same processors and end users, or to grain elevators and grain handlers, which in turn ship grain corn to all of the above, as well as export grain corn to the United States and overseas. Producers also use grain corn as feed on the farm where it is produced.

37. End users of the subject goods may import them directly from producers in the United States or buy them from a reseller, such as a broker or grain elevator, that may be located in either Canada or the United States.

POSITIONS OF THE PARTIES

38. This section is intended to outline a number of key submissions made by the parties. It is not intended to be exhaustive.

CCP

39. The CCP argued that imports of the subject goods have caused price depression and price suppression; reduced incomes, returns on investment and cash flows; a loss of market share; a reduction in planted acreage; and increased burdens on government support programs.

4. The crop year is from September 1 to August 31.

40. The CCP argued that import volumes of the subject goods caused injury and that import price levels of the subject goods also caused injury. It argued that the legislation does not require the injury factors to be manifest throughout the period of inquiry (e.g. no requirement for a constant increase of imports of the subject goods or constant price deterioration of the like goods). It submitted that the Tribunal's jurisprudence indicates that the necessary causal relationship can still exist even where import prices of the subject goods are not undercutting domestic prices.

41. The CCP argued that the combined margin of dumping and amount of subsidy would equate to \$1.44 per bushel, which works out to 41 percent of the current Canadian price for grain corn. Based on this combined margin of dumping and amount of subsidy, it argued that the subject goods clearly had an effect in the Canadian marketplace.

42. The CCP submitted that the factors set out in *SIMA*, the *Special Import Measures Regulations*⁵ and the World Trade Organization (WTO) agreements relate to the effect of the imported subject goods in the market of the importing country. It argued that the Tribunal is not directed to inquire into whether the subsidy programs in the exporting country are causing injury and that the effect of the U.S. Farm Bill is not a legal factor that the Tribunal should consider under subsection 37.1(1) of the *Regulations*. It submitted that the Tribunal should not assess the subsidy programs to determine whether they have an effect on prices. It also submitted that the Tribunal should not question the CBSA's determination.

43. With respect to evidence given by experts for certain parties opposed to an injury finding, the CCP generally argued that the experts should not have removed from their analyses all the U.S. subsidies on field crops; wrongly assumed that the land that is currently in the Conservation Reserve Program (CRP) would be brought back into production; and did not use the appropriate supply and demand elasticities and coupling factors. Furthermore, the CCP indicated that the experts relied heavily on the analysis of authors employed by the U.S. Department of Agriculture and that such expert evidence relied on the Food and Agricultural Policy Research Institute (FAPRI) model which, the CCP submitted, is not an appropriate model to use in this instance.

44. With respect to world prices, the CCP submitted that the Tribunal's jurisprudence indicates that low world prices are of no significance in the context of *SIMA* if it is determined that imports of the subject goods are causing injury to the domestic industry. The CCP argued that, in its injury analysis, the Tribunal should consider only the effect of the imports of the subject goods on grain corn production destined for the commercial market and that production for on-farm use is not relevant.

45. With respect to the exchange rate as an "other factor" of injury, the CCP submitted that the negative impact of the exchange rate from 2003 to 2005 would account for between 21 and 22 percent of the decrease in the Canadian price of the subject goods, which, it argued, ought to be compared to the combined margin of dumping and amount of subsidy of 41 percent determined by the CBSA to be applicable to the subject goods.

46. With respect to the argument of the parties opposed that the Tribunal should consider regional markets, the CCP argued that subsection 2(1.1) of *SIMA* requires that the Tribunal make a finding of exceptional circumstances in order for a regional market to exist and that the parties opposed had not tendered any evidence in this regard. It also submitted that, in any event, the decision is still at the discretion of the Tribunal and that this provision should not be used by the parties opposed as a defensive provision. Rather, it is for the domestic industry to request a regional market case.

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

47. Regarding the threat of injury, the CCP attached importance to the factor under paragraph 37.1(2)(c) of the *Regulations*, namely, the freely disposable capacity of the exporting country and the availability of other export markets to absorb any increase in capacity. In this regard, it emphasized the massive grain corn production capacity of the United States, its geographic proximity, the open border policy, and the magnitude of the margin of dumping and amount of subsidy.

Parties Opposed to a Finding of Injury

48. The parties opposed to a finding of injury argued that imports of the subject goods were not causing injury to the domestic producers of like goods.

49. The parties opposed submitted that domestic grain corn used on the farm on which it is grown constitutes like goods to the subject goods. They submitted that such grain corn accounted for approximately 40 percent of total domestic grain corn production and argued that this segment of production was not injured.

50. The parties opposed argued that the evidence provided by the Canadian producers was unreliable and misleading, given that it relied on the income statements of only 5 of approximately 27,000 grain corn producers.

51. The parties opposed argued that the Tribunal could not and should not cross-cumulate and that it should conduct a separate causation analysis for dumping and subsidizing. Regarding the factors that the Tribunal must consider under subsection 37.1(1) of the *Regulations*, the parties opposed argued the following:

- there was no increase in imports of the subject goods in absolute or relative terms over the period of inquiry;
- imports of the subject goods did not undercut the price of like goods or depress or suppress the price of like goods;
- there is no statistically significant correlation between increased imports of the subject goods and any price suppression or price depression; in fact, the price of domestic grain corn actually increased with increased imports of the subject goods;
- there is no direct evidence of any lost sales of domestic grain corn due to imports of the subject goods;
- there is a reasonable volume of imports of the subject goods selling at or above the price of like goods in Canada;
- the number of grain corn farmers in Canada is increasing; and
- the margins of dumping and amounts of subsidy were grossly inflated.

52. The parties opposed argued that there was no causal connection between the effects of the U.S. subsidies and the alleged injury to the Canadian producers of domestic grain corn. They submitted that the evidence established that the subsidy programs were largely decoupled from production and that they did not promote increased production. The parties opposed argued that the expert report and testimony of Prof. Daniel A. Sumner, University of California, should not be relied upon because of deficiencies in his analysis, such as the following: failing to consider the appropriate years over which the analysis was conducted; ignoring the impact of crop rotation; failing to consider the impact of the CRP on reducing corn

acreage; using inflated supply-elasticity values; and failing to consider the impact of the removal of subsidies on all field crops (since the subsidy programs are not specific to corn) in his econometric model as opposed to assuming non-subsidization of corn crops alone.

53. The parties opposed argued that any injury suffered by domestic producers resulted from other factors, such as the following:

- a significant appreciation in the exchange rate between the Canadian dollar and the U.S. dollar over the period of inquiry;
- serious climatic problems resulting in poor crop performance, particularly in Manitoba, during the past two seasons;
- the severe downgrading of wheat and barley crops in Western Canada to feed grade status, putting downward price pressure on the price of domestic grain corn;
- competition among domestic producers themselves to supply customers in Canada;
- the quality of domestic grain corn for specific uses;
- the unreliability and insufficiency of supply of domestic grain corn;
- the fact that the price of domestic grain corn is linked to the Chicago Board of Trade (CBOT) price, which is a world price and reflects the extraordinary grain corn crop yields in the United States over the past two years;
- the European Union's decision to ban genetically modified grains, which has also increased the supply of grain corn on the world market and depressed prices; and
- the price effects which were part of the normal grain corn price cycle.

54. The parties opposed submitted that the domestic industry was really based upon regional markets and that the test for the existence of a regional market in respect of Western Canada had been met, as set out in subsection 2(1.1) of *SIMA*. It was argued by one party that the Tribunal should conduct a separate injury analysis for each of Ontario, Quebec and Western Canada because national income statements could not be constructed and because of the significant differences between the markets in terms of yield rates, price, import penetration, product mixes, production and capacity restraints, acreage constraints, lack of interprovincial grain corn movement and government support programs.

55. The parties opposed argued that, if the Tribunal found injury, regional exclusions should be made for the provinces west of the Ontario-Manitoba border or, in the alternative, for British Columbia and Alberta. They argued the following:

- Manitoba does not produce sufficient quantities of unprocessed grain corn to supply customers in Manitoba or further west;
- Manitoba does not have a reliable supply of unprocessed grain corn due to climatic conditions;
- grain corn is not shipped east or west across the Ontario-Manitoba border;
- the transportation of grain corn to Western Canada is prohibitively expensive; and
- the logistics of transporting grain corn from Eastern Canada to provinces west of the Ontario-Manitoba border would not meet the just-in-time delivery requirements of grain corn users.

56. On the issue of threat of injury, the parties opposed argued the following: (i) there had been no significant rate of increase of dumped or subsidized goods imported into Canada; (ii) there is no freely disposable capacity and no likely increase in that capacity of production due to agronomic limitations on acreage, limits on increasing seeded acres and limits on yields; (iii) prices of imports of the subject goods are uniformly above domestic prices and are not having a significant depressing or suppressing effect; (iv) there is an increasing Canadian demand for domestic grain corn and decreasing carry-out stocks; (v) average grain corn prices are forecast to increase throughout the 2005-2007 period; (vi) there is an increasing U.S. demand for grain corn, resulting in decreasing U.S. inventories and a decreasing stock-to-use ratio; and (vii) increasing grain corn futures prices combined with increased global consumption and reduced global production all point to diminishing the likelihood of any injury from imports of the subject goods.

57. Finally, the parties opposed requested that, if the Tribunal made a finding of injury, it immediately commence a public interest inquiry.

ANALYSIS

58. Pursuant to subsection 42(1) of *SIMA*, the Tribunal is required to inquire as to whether the dumping and subsidizing of the subject goods have caused injury or retardation⁶ or are threatening to cause injury. “Injury” is defined in subsection 2(1) as “material injury to a domestic industry”. “Domestic industry”, in turn, is defined in part as “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”. Injury and threat of injury are distinct findings, and the Tribunal does not need to make a finding relating to threat of injury under subsection 43(1) unless it first makes a finding of no injury. Finally, if it finds injury or threat of injury, the Tribunal must decide whether to grant any exclusions from its finding.

59. Before conducting its injury analysis, the Tribunal will determine what are the like goods to the subject goods and what domestic producers constitute the domestic industry. The Tribunal will also consider the following issues raised by parties to this inquiry: the standing of the domestic producers; whether the Tribunal should conduct its injury analysis on the basis of regional markets; whether the Tribunal should make an assessment of the cumulative effect of the dumping and the subsidizing of the subject goods; and whether the Tribunal should consider the effects of U.S. subsidies on the volume of production and the price of U.S. grain corn and the volume of production and price of domestic grain corn.

Like Goods

60. 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 goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

6. Retardation is defined in subsection 2(1) of the *SIMA* to mean “material retardation of the establishment of a domestic industry”. In the present case, the domestic industry produces a significant quantity of like goods. The domestic industry is established and, therefore, it is not necessary to consider retardation. See, for example, *Preformed Fibreglass Pipe Insulation* (19 November 1993), NQ-93-002 (CITT) at 21, 22; *Fresh Garlic* (21 March 1997), NQ-96-002 (CITT) at 18; *Oil and Gas Well Casing Made of Carbon Steel* (4 July 2001), RR-2000-001 (CITT) at 11.

61. In considering the issue of like goods, the Tribunal considers a number of factors, including the physical characteristics of the goods (such as appearance), their method of production, their market characteristics (such as substitutability, pricing and distribution), and whether the goods fulfil the same customer needs (i.e. uses).⁷

62. Domestic grain corn of the same description as the subject goods is not identical in all respects to the subject goods because there is a range of differences in the properties of the grain corn that relates notably to taste and kernel hardness. These differences have an impact on certain end uses.

63. However, the evidence indicates that domestic grain corn, of the same description as the subject goods, offered for commercial sale, closely resembles the subject goods in terms of physical characteristics, method of production, market characteristics (substitutability, similar pricing and distribution) and end uses. Therefore, for the purposes of this inquiry, the Tribunal finds that domestic grain corn for commercial sale, of the same description as the subject goods, constitutes like goods to the subject goods.

64. Further, the evidence indicates that domestic grain corn for commercial sale with a moisture content greater than approximately 15.5 percent, but in all other respects of the same description as the subject goods, is also like goods. Except for its moisture content, that grain corn closely resembles the subject goods in terms of physical characteristics. Apart from the fact that that grain corn is not dried, or is not dried to the same moisture level as the subject goods, the method of production of that grain corn is also similar to that of the subject goods. That grain corn also exhibits similar market characteristics (e.g. relating to pricing of the subject goods) and fulfils similar end uses (animal feed and wet milling) to those of the subject goods. Accordingly, the Tribunal finds that grain corn for commercial sale with a moisture content greater than approximately 15.5 percent, but in all other respects of the same description as the subject goods, is also like goods.

65. In determining the scope of like goods, the Tribunal has previously found that there is no distinction to be made between goods sold on the commercial market and goods of the same description that are used for further internal processing or consumption.⁸ In this inquiry, the Tribunal finds that the grain corn of the same description as the subject goods for on-farm use and the grain corn of the same description as the subject goods, but with a moisture content greater than approximately 15.5 percent for on-farm use, constitute like goods. Grain corn for on-farm use closely resembles the subject goods in terms of appearance and method of production. It is substitutable for the subject goods in its end use as animal feed.

Domestic Industry

66. Domestic industry is defined in subsection 2(1) of *SIMA* as follows:

“domestic industry” means, other than for the purposes of section 31 and subject to subsection (1.1), 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 except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

7. *Fasteners* (7 January 2005), NQ-2004-005 (CITT), paras. 66-67; *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT), paras. 33-37; *Certain Solder Joint Pipe Fittings (Binational Panel)* (13 February 1995), CDA-93-1904-11 (Ch. 19 Panel) at 11.

8. *Grain Corn* (7 March 2001), NQ-2000-005 (CITT) at 16 [*Grain Corn II*]; *Flat Hot-rolled Carbon Steel Sheet Products* (31 May 1993), NQ-92-008 (CITT) at 18.

67. Casco/CPI argued that the Tribunal should find that “domestic producers” include grain elevators and other third parties that dry grain corn to approximately a 15.5 percent moisture content. The evidence, however, indicates that commercial market sales of grain corn are transacted on a “dry” basis. Domestic grain corn farmers deliver grain corn to local grain elevators either for sale or for storage until sale. When delivered to the grain elevator, the grain corn may have been dried to approximately a 15.5 percent moisture content or the farmer pays the grain elevator to have it dried to a moisture content of approximately 15.5 percent.⁹ In other circumstances, wet grain corn is delivered directly to Casco/CPI, where it is used in its wet milling process without drying. The Tribunal finds that the collective production of those domestic grain corn farmers that produce the like goods constitutes a major proportion of the total domestic production of the like goods. Therefore, these grain corn farmers constitute the domestic industry.

Standing

68. Casco/CPI argued that the CCP, as a complainant, does not have standing, since it does not represent a sufficient portion of the domestic industry. On the question of representation, the Tribunal has previously held that whether there existed the level of support necessary for the CBSA to initiate an investigation is not an issue that is properly before the Tribunal. The Tribunal is without jurisdiction to reconsider the CBSA’s determination pursuant to subsection 31(2) of *SIMA*.¹⁰

69. In *Bacteriological Culture Media*,¹¹ the Tribunal considered the relationship between subsection 31(2), subparagraph 42(1)(a)(i) and the definition of “domestic industry” in subsection 2(1) of *SIMA*. It stated as follows:

... Although, prior to the World Trade Organization (WTO) amendments to *SIMA*, the Tribunal did, in most cases, treat the “major proportion” issue as a standing requirement, [the Tribunal] is of the view that the recent inclusion of a specific standing requirement before Revenue Canada in subsection 31(2) of *SIMA* now makes it clear that there is no such requirement before the Tribunal. In other words, the relevant provisions of *SIMA* go to the issue of injury and not standing.¹²

...

70. The reference to “domestic industry” in subparagraph 42(1)(a)(i) of *SIMA* does not require “support” by domestic producers to trigger the Tribunal’s jurisdiction. The definition of “domestic industry” in subsection 2(1), and the thresholds therein, relate to the composition of the domestic industry for the purpose of the injury analysis.

Regional Markets

71. Certain parties opposed argued that the conditions for conducting a regional market inquiry existed and that the Tribunal should conduct a separate injury assessment for each regional market. The CCP argued that the standard national market provisions should apply.

9. *Transcript of Public Hearing*, Vol. 2, 21 March 2006, at 430-32.

10. See *Grain Corn II* at 12-13.

11. (31 May 1996), NQ-95-004 (CITT) [*BCM*].

12. See *BCM* at 10.

72. The regional market provisions are found in subsections 2(1.1) and 42(5) of *SIMA*, which read as follows:

(1.1) In exceptional circumstances, the territory of Canada may, for the production of any goods, be divided into two or more regional markets and the domestic producers of like goods in any of those markets may be considered to be a separate domestic industry where

(a) the producers in the market sell all or almost all of their production of like goods in the market; and

(b) the demand in the market is not to any substantial degree supplied by producers of like goods located elsewhere in Canada.

...

(5) Where subsection 2(1.1) applies in respect of the dumping or subsidizing of goods to which the preliminary determination applies, the Tribunal shall not find that the dumping or subsidizing of those goods has caused injury or retardation or is threatening to cause injury unless

(a) there is a concentration of those goods into the regional market; and

(b) the dumping or subsidizing of those goods has caused injury or retardation or is threatening to cause injury to the producers of all or almost all of the production of like goods in the regional market.

73. The regional market provisions are an exception to the general rules and permit, in exceptional circumstances, a finding of injury in respect of domestic producers within a separate regional market, in which the injury is caused by the specific effects of dumped and subsidized imports. In recognition of its exceptional character, a higher threshold for injury (i.e. injury to the producers of all or almost all of the production of like goods in the regional market) must be satisfied when a regional market analysis is conducted.

74. One of the purposes of the regional market provisions is to permit protection to be granted to domestic producers in a separate regional market when it would not be possible to demonstrate injury to domestic producers within the national market. Given the exceptional nature of a regional market case, stricter thresholds are applicable than in a national market case. However, the regional market provisions are not intended to raise the threshold for a determination of injury where a dumping or subsidizing complaint is brought on the basis of a national market, even if separate regional markets could be identified within the national market. In the case before the Tribunal, the domestic industry has not sought to use the regional market provisions, and the Tribunal will not impose them. Therefore, the Tribunal will conduct its analysis on the basis of a national market.

Cross-cumulation

75. Maple Leaf submitted that the Tribunal is under an obligation to consider the issue of causation with respect to the dumping and subsidizing separately. To support its position, it referred to the wording of subsection 42(1) of *SIMA* that describes the Tribunal's mandate in an injury inquiry and to Canada's international obligations under WTO agreements.

76. Paragraph 42(1)(a) of *SIMA* provides as follows:

(1) The Tribunal, forthwith after receipt by the Secretary pursuant to subsection 38(3) of a notice of a preliminary determination, shall make inquiry with respect to such of the following matters as is appropriate in the circumstances:

(a) in the case of any goods to which the preliminary determination applies, as to whether the dumping or subsidizing of the goods

(i) has caused injury or retardation or is threatening to cause injury.

...

77. Maple Leaf submitted that the use of the word “or” in paragraph 42(1)(a) of *SIMA* means that the Tribunal is to determine whether either dumping or subsidizing, by itself, has caused injury, not whether dumping and subsidizing taken together have caused injury.

78. The Tribunal does not agree with Maple Leaf’s interpretation of paragraph 42(1)(a) of *SIMA*. Subsection 2(7) concerns provisions, such as paragraph 42(1)(a), which contain references to both dumped and subsidized goods. Subsection 2(7) provides as follows:

(7) Where, by its terms, any provision of this Act applies to both dumped and subsidized goods, the application of the provision

(a) to subsidized goods shall not be taken into account in an investigation, inquiry or other proceeding or matter under this Act relating to the dumping of goods; and

(b) to dumped goods shall not be taken into account in an investigation, inquiry or other proceeding or matter under this Act relating to the subsidizing of goods.

79. In the Tribunal’s opinion, this provision means that, when the CBSA has made a determination of dumping only, the Tribunal does not have to take into account the wording in paragraph 42(1)(a) of *SIMA* that concerns subsidizing. Similarly, when the CBSA has made a determination of subsidizing only, the Tribunal does not have to take into account the wording in paragraph 42(1)(a) that concerns dumping. However, when the CBSA makes a determination of dumping and subsidizing, the Tribunal is required to take into account the wording in paragraph 42(1)(a) that relates to dumping and subsidizing.

80. Therefore, when the CBSA makes a determination of dumping and subsidizing, the Tribunal must inquire as to whether the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic industry. The *Regulations* prescribe the factors to consider in conducting that inquiry. Subsection 37.1(a) provides as follows:

...

37.1(1) For the purposes of determining whether the dumping or subsidizing of any goods has caused injury or retardation, the following factors are prescribed:

(a) the *volume of the dumped or subsidized goods* and, in particular, whether there has been a significant increase in the volume of imports of the dumped or subsidized goods . . .

(b) the *effect of the dumped or subsidized goods on the price of like goods* and, in particular, whether the dumped or subsidized goods have significantly;

(i) undercut the price of like goods,

(ii) depressed the price of like goods, or

(iii) suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred;

(c) the resulting impact of the dumped or subsidized goods on the state of the domestic industry . . . [Emphasis added]

81. Subsection 37.1(2) of the *Regulations* concerns the threat of injury analysis and also refers to the *dumped or subsidized goods*. For its part, paragraph 37.1(3)(a) provides as follows: “For the purpose of determining whether the *dumping or subsidizing of any goods* has caused injury or retardation, or is threatening to cause injury, the following additional factors are prescribed: (a) whether a causal relationship exists between the dumping or subsidizing of the goods and the injury, retardation or threat of injury, *on the basis of the factors listed in subsections (1) and (2)*.” [Emphasis added]

82. The factors referred to above indicate that, in its inquiry, the Tribunal must consider the volume, the price effect and the impact on the domestic industry of the *goods* that have been found by the CBSA to be dumped or subsidized.

83. In this inquiry, the same goods have been found by the CBSA to be both dumped and subsidized. Consequently, the Tribunal can only perform a single injury analysis concerning the impact of those goods on the domestic industry.¹³

84. To conduct a single injury analysis is in conformity with section 37.1 of the *Regulations*. It is also consistent with Canada’s international obligations under Article 3 of the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*¹⁴ and Article 15 of the *WTO Agreement on Subsidies and Countervailing Measures*¹⁵ that are incorporated into Canadian law by this section of the *Regulations*.

Effects of U.S. Subsidies

85. A significant amount of evidence was adduced during this inquiry with respect to the effects of certain U.S. subsidies on the volume of U.S. production and the price of U.S. grain corn and the volume of production and price of domestic grain corn.

86. As mentioned above, subsection 42(1) of *SIMA* requires the Tribunal to inquire as to whether the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury. The factors prescribed in subsections 37.1(1) and 37.1(3) of the *Regulations* and reproduced above require that, in determining whether the subject goods have caused injury to the domestic industry, the Tribunal consider the volume of subject goods imported into Canada, the effect of those subject goods that have been found by the CBSA to be dumped and subsidized on the price of like goods and the resulting impact of the subject goods on the state of the domestic industry. This prescribed analysis is consistent with the *Subsidies Agreement*,¹⁶ and it is the analysis that the Tribunal has conducted below. Neither the *Regulations* nor the *Subsidies Agreement* requires that the Tribunal examine the effects of the U.S. subsidies

13. *Grain corn II* at 13-14; *Black Granite Memorials of All Sizes and Shapes and Black Granite Slabs in Thicknesses Equal to or Greater than Three Inches* (19 July 1999), RR-98-006 (CITT) at 12-13.

14. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm>.

15. *Ibid.* [*Subsidies Agreement*].

16. Article 15.1 of the *Subsidies Agreement* provides as follows: “A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the *subsidized imports* and the effect of the *subsidized imports* on prices in the domestic market for like products and (b) the consequent impact of *these imports* on the domestic producers of such products.” [Emphasis added] [Footnote omitted]

per se in its analysis concerning injury to the domestic industry in the past.¹⁷ With respect to the analysis as to whether there is a threat of injury to the domestic industry, paragraph 37.1(2)(a) of the *Regulations* requires that the Tribunal consider the nature of the subsidy in question and the effects that it is likely to have on trade.¹⁸ The Tribunal deals with that issue in its threat of injury analysis.

INJURY

87. The *Regulations* prescribe that, in determining whether the dumping and subsidizing of the subject goods have caused injury to the domestic industry, the Tribunal consider the volume of subject goods, their effect on the price of like goods and their impact on the domestic industry.

Volume of Subject Goods

88. Paragraph 37.1(1)(a) of *SIMA* requires that the Tribunal consider the volume of subject goods and, in particular, whether there has been a significant increase in the volume of imports of the subject goods, either in absolute terms or relative to the production or consumption of the subject goods.

89. In its final determination, the CBSA found that 99 percent of imports of the subject goods were dumped and that all production of grain corn in the United States was subsidized during the period of investigation.

90. During the Tribunal's period of inquiry, imports of the subject goods declined from a high of 131 million bushels in 2001-2002 to 75 million bushels in 2003-2004.¹⁹ In 2004-2005, imports increased to 87 million bushels. Imports of the subject goods declined again in the first quarter of the 2005-2006 crop year compared to the same period in 2004-2005, from 28 million bushels to 17 million bushels. The decline in the first quarter of 2005-2006 may be due in part to the chilling effect on imports of the initiation of the dumping and countervailing duty investigation by the CBSA in September 2005.

91. The ratio of the volume of subject goods to the volume of domestic grain corn production followed a similar declining trend to that of the volume of imports. In 2001-2002, the volume of subject goods represented 40 percent of domestic grain corn production.²⁰ This ratio declined to 20 percent in 2003-2004, and then increased to 25 percent in 2004-2005.

92. Sales of the subject goods declined from 127 million bushels in 2001-2002 to 73 million bushels in 2003-2004.²¹ In 2004-2005, sales of the subject goods increased to 84 million bushels. The market share of the subject goods accounted for 38 percent of the apparent market in 2001-2002, then declined to 24 percent in 2003-2004, before increasing to 28 percent in 2004-2005.

17. In *United States—Subsidies on Upland Cotton* (8 September 2004), WT/DS267/R (WTO), para. 7.1227, the Panel found that, in the context of the analyses required by Articles 5(c) and 6.3(c) of the *Subsidies Agreement*, it is the “effect of the subsidy” that must be considered and not the effects of the “subsidized product”. The Panel stated that the language in Articles 5 and 6 was in contrast with the language in Part V of the *Subsidies Agreement* (e.g. Article 15.1) which indicates that, in an injury analysis, regard must be had to the “effect of the subsidized imports”.

18. Article 15.7(i) of the *Subsidies Agreement* contains the same requirement.

19. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 27.

20. *Ibid.* at 25, 27.

21. *Ibid.* at 29.

93. Based on the above, the Tribunal finds that, over the period of inquiry, the volume of subject goods decreased. Notwithstanding the increase in imports of the subject goods in 2004-2005, the volume of imports of the subject goods remained significantly lower than in 2001-2002 and lower than in 2002-2003.²² Therefore, the Tribunal finds that there has not been a significant increase in the volume of imports of the subject goods.

Effects of the Subject Goods on Prices

94. Pursuant to paragraph 37.1(1)(b) of the *Regulations*, the Tribunal must consider the effects of the subject goods on the price of domestic grain corn and, in particular, whether the subject goods have significantly undercut, depressed or suppressed the price of domestic grain corn.

95. Having considered the evidence on the record, the Tribunal finds that domestic sellers of grain corn cannot obtain a price that exceeds the delivered price of grain corn from the United States.²³ Indeed, over that price level, a practically unlimited supply of U.S. grain corn becomes available to buyers in Canada.²⁴ The evidence before the Tribunal indicates that buyers are unwilling to pay any more than the U.S. delivered price for grain corn. In exceptional circumstances, certain buyers may offer a small premium to local producers that can meet just-in-time requirements, or to local producers that can supply grain corn with specific qualities.²⁵

96. The importance of the availability of U.S. supply and the ease with which imports occur is illustrated by the fact that Canadian prices for domestic grain corn are expressed as the CBOT nearby futures contract²⁶ price plus a local “basis”. The local basis reflects the cost of U.S. currency, transportation costs between the location of the seller and that of the buyer, and an adjustment for local supply and demand conditions. The evidence on the record indicates that, all other things being equal, the local basis tends to be lower, or even negative, when supply of domestic grain corn is abundant relative to demand. When local supply is tight, buyers bid up the basis to attract sellers and ensure a steady supply of grain corn for feed, food and industrial uses. As the local basis strengthens, the subject goods are imported into the Canadian market in increasing volumes. Thus, the delivered price in Canada for the imports of the subject goods establishes a *de facto* ceiling above which the selling price for domestic grain corn has been unable to rise.

97. Given the nature of the Canadian grain corn market and the key influence exerted by imports of the subject goods, it is not surprising that the data on the record do not indicate price undercutting by the imports of the subject goods. Indeed, this is a virtual truism since the delivered price of U.S. grain corn sets

22. Imports of the subject goods in 2002-2003 amounted to 98 million bushels. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 27.

23. *Transcript of Public Hearing*, Vol. 4, 23 March 2006, at 1180-81; *Transcript of Public Hearing*, Vol. 5, 24 March 2006, at 1322-23.

24. Over the period of inquiry, the United States accounted for approximately 40 percent of total world production and approximately 60 percent of total world exports of grain corn. Ending stocks in 2004-2005 totalled over 2.1 billion bushels. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 84, 86; Manufacturer’s Exhibit A-10 at 29, Administrative Record, Vol. 11; Manufacturer’s Exhibit A-06 at 2, Administrative Record, Vol. 11.

25. *Transcript of Public Hearing*, Vol. 4, 23 March 2006, at 1293-94; *Transcript of Public Hearing*, Vol. 1, 20 March 2006, at 223.

26. Futures contract months for grain corn are December, March, May, July, and September. The last day of trading is the business day prior to the 15th calendar day of the contract month.

the price at which domestic producers try to sell their grain corn. To be competitive, domestic producers must accept prices that are competitive vis-à-vis delivered U.S. grain corn. However, if domestic producers are unwilling to sell their grain corn at prices competitive with the price ceiling imposed by imports of the subject goods, they will, in most cases, not sell at all.

98. Parties opposed submitted that, given the higher weighted average unit selling values for the subject goods, they could not be depressing or suppressing the price of domestic grain corn. In the Tribunal's opinion, the observed gap between the weighted average prices of the imported subject goods and the weighted average prices for domestic grain corn may be attributed to a number of different causes. As indicated above, imports of the subject goods are pulled into the domestic market in increased quantities as the basis (and thus price) is bid up. Therefore, the average unit value of the subject goods will tend to be higher than that of domestic grain corn. In addition, the Tribunal heard evidence that indicates that a certain portion of domestic production is sold at lower prices as wet grain corn to wet millers that can benefit from increased production efficiencies from the use of wet grain corn.²⁷ Domestic grain corn is also sometimes sold to grain elevators at discounted prices to reflect costs of drying to approximately 15.5 percent moisture content and, thus, sold at a lower price than the imported subject goods which have been dried.²⁸ Further, the weighted average annual prices are aggregate figures that may mask differences in timing and product mix.

99. The pricing evidence before the Tribunal demonstrates that, as the price of the subject goods changes in the Canadian market, the price of domestic grain corn follows the same trend. As can be seen from the table, the weighted average selling/purchase price of imports²⁹ was \$3.85³⁰ per bushel in 2001-2002³¹. The weighted average unit value of sales from domestic production averaged \$3.54 per bushel in that year. In 2002-2003, the weighted average unit value of sales/purchases from imports increased to \$4.23 per bushel, or 10 percent, while the weighted average unit value of sales from domestic production increased to \$3.95 per bushel, or 12 percent. In 2003-2004, the weighted average unit value of sales/purchases from imports declined to \$3.87, or 9 percent, and the weighted average unit value of sales from domestic production declined by 9 percent as well, to \$3.59 per bushel. In 2004-2005, the weighted average unit value of sales/purchases from imports declined by a further 10 percent to \$3.48, while the weighted average unit value of sales from domestic production declined by 19 percent to \$2.92 per bushel.

27. *Transcript of Public Hearing*, Vol. 1, 20 March 2006, at 16, 17.

28. *Ibid.* at 17, 18.

29. Selling/purchase price of imports: this value originates from a survey by the Tribunal of importers of record, including resellers of grain corn (e.g. brokers and grain elevators), as well as end users (e.g. wet millers and distillers). The weighted average unit value of imports is a composite of the weighted average unit value of sales by resellers of grain corn and the weighted average unit cost of imports by end users. The weighted average unit value of imports is denoted in the table as the "Selling/Purchase Price of Imports". *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 31.

30. All unit values are expressed in Canadian dollars unless otherwise indicated.

31. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 31.

Grain Corn Unit Values and Exchange Rate				
	(\$/bushel)			
	2001-2002	2002-2003	2003-2004	2004-2005
Levels				
Exchange Rate	1.5732	1.4796	1.3313	1.2325
Purchase Cost of Imports (\$)	3.68	4.13	3.64	3.44
Purchase Cost of Imports (US\$)	2.34	2.79	2.73	2.79
Selling/Purchase Price of Imports (\$)	3.85	4.23	3.87	3.48
Selling/Purchase Price of Imports (US\$)	2.45	2.86	2.91	2.82
Sales from Domestic Production (\$)	3.54	3.95	3.59	2.92
(% change)				
Exchange Rate		(6)	(10)	(7)
Cost of Imports (\$)		12	(12)	(5)
Cost of Imports (US\$)		19	(2)	2
Selling/Purchase Price of Imports (\$)		10	(9)	(10)
Selling/Purchase Price of Imports (US\$)		17	2	(3)
Sales from Domestic Production (\$)		12	(9)	(19)

Source: Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 28, 31, 79.

100. There was a price gap between domestic weighted average sales prices and the weighted average selling/purchase price of imports throughout the period of inquiry. In considering the price gap, the Tribunal notes that, during the 2001-2002 to 2003-2004 period, the gap between domestic sales prices and the selling/purchase price of imports was fairly stable at approximately \$0.29 per bushel. In 2004-2005, this price gap increased to \$0.56 per bushel, almost double that of the previous three crop years. The evidence on the record does not explain the widening of the price gap. In the absence of supporting evidence, it is not possible to attribute the widening of the gap to the subject goods.

101. Parties opposed argued that the entire price effect of the subject goods on the domestic sales prices could be attributed to the strengthening of the Canadian dollar against the U.S. dollar during the Tribunal's period of inquiry and that the injury caused to the domestic industry by the currency appreciation should not be attributed to the subject goods.

102. While the CCP recognized that currency fluctuations have an impact on grain corn trade, it argued that the domestic industry suffered material injury as a result of imports of the subject goods notwithstanding the effects attributable to the appreciation of the Canadian dollar. Further, the CCP submitted that, given the combined margin of dumping and subsidizing determined by the CBSA, the exchange rate appreciation did not explain the injury from dumping and subsidizing.

103. In the Tribunal's opinion, as indicated by paragraph 37.1(1)(b) of the *Regulations*, it is price undercutting by the subject goods or price depression/suppression caused by the subject goods which is considered in determining whether imports of the subject goods have had price effects on the like goods, not the margin of dumping or amount of subsidy determined by the CBSA.³² In the present case, the evidence

32. There is no requirement under paragraph 37.1(1)(b) of the *Regulations* that, in conducting its price effect analysis, the Tribunal consider the margin of dumping or amount of subsidy determined by the CBSA.

discussed below indicates that, when the effects of an appreciating Canadian dollar are removed, the prices of the subject goods are shown to have increased initially and then remained relatively stable throughout the remainder of the Tribunal's period of inquiry. Therefore, the injurious effects of the declining prices of the subject goods during the period of inquiry are attributable to currency fluctuations.

104. In examining this issue, the Tribunal considered the weighted average selling/purchase prices of the subject goods expressed in U.S. dollars,³³ thus eliminating the price movements attributable to the appreciation of the Canadian dollar. As the table indicates, the weighted average selling/purchase price of the subject goods was US\$2.45 in 2001-2002. The weighted average selling/purchase price increased to US\$2.86 in 2002-2003, or 17 percent, and increased by an additional 2 percent in 2003-2004 to US\$2.91. In 2004-2005, the weighted average selling/purchase price for the subject goods declined by US\$0.09 to US\$2.82 per bushel, or 3 percent.

105. The Tribunal also examined the purchase cost of the subject goods³⁴ to address concerns raised by the CCP concerning the appropriate trade level of sales of the subject goods to which sales of domestic grain corn should be compared. The weighted average purchase cost of the subject goods, when expressed in U.S. dollars, showed a substantial increase between 2001-2002 and 2002-2003, from US\$2.34 per bushel to US\$2.79 per bushel, or 19 percent, similar to the increase in the weighted average selling/purchase price of the subject goods expressed in U.S. dollars. The weighted average purchase cost of the subject goods also remained relatively stable over the 2002-2003 to 2004-2005 period, as did the weighted average selling/purchase price of the subject goods expressed in U.S. dollars.

106. On the basis of the above data and analysis, the Tribunal finds that selling prices of the subject goods, after accounting for the appreciation of the Canadian dollar, have not declined significantly and, thus, would not have had a significant negative influence on the selling prices of domestic grain corn. The Tribunal concludes that the decline in the selling prices of domestic grain corn is essentially attributable to the appreciation of the Canadian dollar and other factors unrelated to the subject goods³⁵. Therefore, the Tribunal finds that the subject goods have not significantly depressed or suppressed the price of domestic grain corn.

33. The annual weighted average selling/purchase prices of U.S. grain corn imports have been converted to their U.S. dollar equivalents as per the annual average exchange rates reported in the *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 79.

34. The purchase cost of the subject goods is the weighted average unit value of purchases by brokers, grain elevators and end users that import grain corn on their own behalf and is denoted in the table as the "Purchase Cost of Imports". This represents a composite of the weighted average unit value of imports purchased by resellers of grain and the weighted average unit value of imports purchased directly by end users. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 28.

35. As previously noted, the weighted average unit value of sales of domestic grain corn declined by 19 percent, while the weighted average purchase/selling price of the subject goods declined by 10 percent between 2003-2004 and 2004-2005. The additional decline in the weighted average unit value of sales of domestic grain corn increased the price gap between the subject goods and domestic grain corn from approximately \$0.29 per bushel over the 2001-2002 to 2003-2004 period to \$0.56 per bushel in 2004-2005. The additional 9 percentage point decline in price experienced by domestic producers of grain corn could not be attributed to the subject goods, given that the evidence on the record does not explain the widening of the price gap.

Impact on the Domestic Industry

107. Pursuant to paragraph 37.1(1)(c) of the *Regulations*, the Tribunal considers the resulting impact of the subject goods in the light of relevant economic factors and indices that have a bearing on the state of the domestic industry.³⁶ During the period of inquiry, domestic grain corn seeded acreage fell from 3.2 million acres in 2001-2002 to 2.8 million acres in 2004-2005. The largest declines occurred in the 2003-2004 and 2004-2005 crop years.³⁷ The decisions of individual producers as to how much of their land will be allocated to a particular crop are influenced by a number of factors. For example, about 10 percent of the variation in seeded acreage was attributable to crop rotation practices. Growers are also constrained in the amount to which they reduce their seeded acreage to grain corn in favour of other crops by the need to maintain their crop rotations.³⁸ In addition, weather conditions at seeding time may lead to changes in planting decisions.³⁹ However, both oral and written testimony indicated that reduced returns to grain corn production led growers to switch to the production of other crops.⁴⁰ In this regard, the increase in soybean acreage was noted.⁴¹ A witness for ADM Industries agreed during cross-examination that grain corn producers had switched to crops that were less expensive to produce and required a smaller capital outlay and that there is reason to believe that, if profit margins for grain corn improved, producers would plant more grain corn.⁴²

108. In light of the above, it is clear to the Tribunal that the decline in seeded acreage is partly attributable to the declining price levels for grain corn in Canada. However, the Tribunal has already found that the decline in the domestic selling prices of grain corn is essentially attributable to the appreciation of the Canadian dollar and other factors unrelated to the subject goods.⁴³ Therefore, the decrease in seeded acreage cannot be attributed, in any significant way, to the subject goods.

109. During the Tribunal's period of inquiry, average yield per acre in Canada increased steadily from 106 bushels per acre in 2001-2002 to 138 bushels per acre in 2005-2006.⁴⁴ The growth in average yield per acre helped maintain domestic production volumes.⁴⁵ Canadian producers have largely maintained their

36. Paragraph 37.1(1)(c) of the *Regulations* lists the following economic factors and indices: "(i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and (iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme".

37. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19A, Administrative Record, Vol. 1.1 at 110.

38. *Transcript of Public Hearing*, Vol. 2, 21 March 2006, at 436-37, 595.

39. *Ibid.* at 490.

40. Manufacturer's Exhibit A-03 at 2, Administrative Record, Vol. 11; Manufacturer's Exhibit A-04 at 23, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 2, 21 March 2006, at 523.

41. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 100.

42. *Transcript of Public Hearing*, Vol. 5, 24 March 2006, at 1383-84.

43. *Supra* note 35.

44. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 24.

45. Domestic production of grain corn increased steadily from 330 million bushels in 2001-2002 to 377 million bushels in 2003-2004. In 2004-2005, production declined to 348 million bushels, largely as a result of the crop failure in Manitoba, which lowered production in that province by 93 percent from the average of the previous three years, and to a lesser extent in Ontario, where production declined by 4 percent. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 25.

sales of approximately 220 million bushels per year and market share of about 75 percent, after accounting for the crop failure in Manitoba.⁴⁶

110. The price of the domestic grain corn declined in 2003-2004 and 2004-2005. Because production and sales of grain corn increased in 2003-2004, the domestic industry was able to maintain its sales revenues that year, despite lower prices. However, in the following year, sales revenue declined by \$218 million, from \$845 million in 2003-2004, to \$627 million in 2004-2005. Approximately \$75 million of the decline in sales revenue⁴⁷ is due to a decline in sales volume. The remaining portion of the decline in sales revenue, approximately \$144 million, is attributable to lower prices of domestic grain corn.⁴⁸ As detailed below, \$60 million of that sum is attributable to the decline in the price of the subject goods due to the appreciation of the Canadian dollar, \$24 million is attributable to a decrease in the price of the subject goods once the effect of the appreciation of the Canadian dollar is removed, and \$60 million is due to a widening price gap between the subject goods and the domestic grain corn.

111. The weighted average price of domestic grain corn declined from \$3.59 per bushel in 2003-2004 to \$2.92 per bushel in 2004-2005, or \$0.67 per bushel. The appreciation of the Canadian dollar between 2003-2004 and 2004-2005 accounts for \$0.28 of the \$0.67 decline in the price of domestic grain corn, representing a \$60 million decline in sales revenue⁴⁹. Once the effect of the appreciation of the Canadian dollar is accounted for, the decline in the price of the domestic grain corn attributable to the subject goods is \$0.11 per bushel,⁵⁰ representing a loss of revenue of \$24 million,⁵¹ or approximately 3 percent of commercial sales revenues in 2004-2005.

112. Finally, there remains an additional \$0.28 per bushel decline in domestic prices, which reflects a widening of the price gap between the subject goods and the domestic grain corn above and beyond the stable price gap which existed over the 2001-2002 to 2003-2004 period. This decline in domestic prices represents a \$60 million loss in sales revenues. As indicated above, no causal link has been established to attribute this widening price gap to the subject goods. Consequently, this portion of the loss in sales revenue cannot be attributed to the effects of the subject goods.

46. The market share of domestic producers increased from 62 percent of the apparent market in 2001-2002 to 69 percent in 2002-2003 and then increased again to 76 percent in 2003-2004. In 2004-2005, the domestic industry's market share declined to 72 percent of the apparent market. Had Manitoba not experienced a crop failure in 2004-2005 and maintained production at the average levels experienced over the 2001-2002 to 2003-2004 crop years, commercial sales of grain corn would have been approximately 8.0 million bushels higher (based on an average production of 14.3 million bushels and commercial sales representing 58 percent of production) and the domestic industry would have maintained its market share of approximately 75 percent.

47. This decline in sales revenue has been calculated based on the 21 million bushel decline in sales volumes valued at the weighted average selling price of domestic grain corn in 2003-2004 of \$3.59 per bushel. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 25, 29.

48. This decline in sales revenue has been calculated based on the \$0.67 per bushel decline in the weighted average price of domestic grain corn between 2003-2004 and 2004-2005, and the volume of sales of 214 million bushels in 2004-2005. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 29, 31.

49. The weighted average selling/purchase price of the subject goods declined from \$3.87 per bushel in 2003-2004, to \$3.48 per bushel in 2004-2005, or \$0.39 per bushel. As indicated in paragraph 104, the decline in price, when denominated in U.S. dollars, was US\$0.09 per bushel, or CAN\$0.11 per bushel, at an average annual exchange rate of 1.2325 in 2004-2005. The remaining \$0.28 per bushel decline in Canadian dollar denominated prices is therefore attributable to the appreciation of the Canadian dollar.

50. *Ibid.*

51. The decline in price of \$0.11 per bushel on 214 million bushels of sales from domestic production represents a loss of \$24 million in sales revenues. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 29, 79.

113. In the Tribunal's opinion, the injury in the form of a loss in sales revenue of approximately \$24 million, or approximately 3 percent of total commercial sales in 2004-2005, that resulted from the decline in the prices of the subject goods, once the effects of the exchange rate are removed, is not material in magnitude.

114. Lower sales revenues were alleged to have resulted in increased losses for the domestic industry.⁵² As indicated above, no more than a \$24 million decrease in sales revenue can be attributed to the subject goods. In the Tribunal's opinion, even if that decrease had resulted in an equivalent decrease in profits or increase in losses, this would not be significant in an industry with more than 26,000 domestic producers.⁵³

115. The *Regulations* prescribe that the Tribunal consider in its assessment of injury, as one factor, the "magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods". In this regard, the Tribunal notes that, in the CBSA's statement of reasons for its final determination, issued on March 30, 2006, the United States had weighted average margins of dumping and subsidizing of 26 percent and 18 percent respectively.⁵⁴ The Tribunal is of the view that the combined margin of dumping and amount of subsidy, which represents US\$1.05⁵⁵ per bushel relative to a weighted average export price of US\$2.42⁵⁶, is significant. However, as indicated in this statement of reasons, the Tribunal finds that the dumped and subsidized goods have not caused injury to the domestic industry.

116. As a result of the lower returns from grain corn production, the CCP argued that government farm support programs incurred an increased burden which, under subparagraph 37.1(1)(c)(iii) of the *Regulations*, is a prescribed factor to be considered for the purposes of determining whether the dumping and subsidizing of an agricultural product has caused injury or retardation.

117. The Tribunal acknowledges that most support programs in Canada are no longer crop-specific but instead apply to the whole farm. In this regard, the Tribunal notes that the farm support program data provided by the Department of Agriculture and Agri-Food apply to "corn producing farms," which were defined for these purposes as farms for which more than 50 percent of total sales were derived from the sale of grain corn.

52. Manufacturer's Exhibit A-01 at 9-10, 21, 22, Administrative Record, Vol. 11; Manufacturer's Exhibit A-03 at 2, Administrative Record, Vol. 11. The Tribunal notes that reliable evidence on the cost of production was not available. The provincial grain corn production budget data do not reflect actual producer costs and are not reported consistently on a province by province basis. Equally, the evidence on the financial performance of the five producers who appeared as witnesses for the domestic industry cannot be considered representative of a population of over 26,000 producers. Finally, the survey prepared by the Strategic Council on behalf of Commercial Alcohols Inc. with respect to its reported cost of production estimates is also considered unreliable. Accordingly, the Tribunal could not accurately assess the financial performance of the domestic industry.

53. Similarly, the *Regulations* require the Tribunal to consider return on investment, cash flow, inventories, employment, wages, and growth or ability to raise capital. For the reasons cited above, changes to these indicia of injury attributable to the subject goods are not material.

54. Tribunal Exhibit NQ-2005-001-04A, Administrative Record, Vol. 1B at 84.13, 84.20.

55. The CBSA found that the weighted average amount of dumping represented US\$0.60 per bushel and that the amount of subsidy represented US\$0.45 per bushel. Tribunal Exhibit NQ-2005-001-04A, Administrative Record, Vol. 1B at 84.13, 84.20.

56. The weighted average export price over the CBSA's period of investigation. Tribunal Exhibit NQ-2005-001-04A, Administrative Record, Vol. 1B at 84.13, 84.20.

118. Ad hoc program payments under the Risk Management Fund I & II (RMF I and II), the Transitional Industry Support Program (TISP) and Farm Income Payment (FIP) program appear to have increased marginally in 2004 and 2005.⁵⁷ The Tribunal, however, is unable to conclude whether the payments under the Canadian Agricultural Income Stabilization (CAIS) program have increased, since payments under this program for 2004 and 2005 were only partly disbursed and were therefore not reported by the Department of Agriculture and Agri-Food.⁵⁸

119. In Quebec, payments to grain corn producers under the Farm Income Stabilization Insurance (FISI) Program increased substantially in 2003 and 2004, as market prices for grain corn declined. The net FISI payments reported by La Financière agricole du Québec are net of federal government RMF, TISP, FIP program and CAIS payments to Quebec grain corn producers. These net payments increased from \$35.5 million in 2002 to \$57.9 million in 2003 and then increased again to \$134.9 million in 2004.⁵⁹

120. Similarly, support payments under the Ontario Market Revenue Insurance Program (MRI), increased toward the end of the Tribunal's period of inquiry. In 2000 and 2001, payments were \$15 per acre and \$6 per acre respectively. No payments under the MRI were made in 2002 and 2003. However, in 2004, the last year in which the program was in effect, almost \$50 per acre on 1.7 million acres, or \$84 million, was paid out to Ontario grain corn producers.⁶⁰

121. Manitoba did not have any agricultural support programs that applied to grain corn over the period of inquiry. Thus, in 2004, in Quebec and Ontario, the provincial governments incurred approximately \$219 million in support payments, up almost threefold from payment levels in 2003.

122. Having considered the increased burden on government support programs incurred over the Tribunal's period of inquiry, the Tribunal concludes that this increased burden cannot be attributed to the subject goods. As previously indicated, the loss of revenue experienced by the domestic industry between 2003-2004 and 2004-2005 was essentially related to the appreciation of the Canadian dollar and other factors unrelated to the subject goods.

123. The Tribunal notes that the injury under *SIMA* must be in relation to production of the like goods. As found above, the production of like goods comprises grain corn sold commercially and production that is used on-farm. Although no specific data are collected that measure on-farm use of grain corn, it can be estimated as the difference between total production and commercial sales. The evidence before the Tribunal indicates that, during the period of inquiry, approximately 38 percent of grain corn produced in Canada was used on-farm.⁶¹ As found in previous inquiries respecting grain corn, the Tribunal considers that the like goods consumed on-farm are effectively insulated from most market price fluctuations and are therefore unaffected by the subject goods.⁶²

57. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 17. Farm program support payments were reported on a stabilization year basis, which, for most participants, is the calendar year.

58. Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 17.

59. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 19.

60. Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 20.

61. This figure is based on the average ratio of commercial sales to domestic production over the 2001-2002 to 2004-2005 period. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 25, 29.

62. *Grain Corn II* at 27-28.

124. In assessing whether the injury incurred on the commercial sales of grain corn is material in relation to total production, the Tribunal notes its finding above that the loss of \$24 million in sales revenue attributable to the effects of the subject goods was not material in relation to total commercial sales. It therefore follows that a loss of this magnitude would not be material in relation to total production.

THREAT OF INJURY

125. Having found that the dumping and subsidizing of the subject goods have not caused injury, the Tribunal must now consider whether the dumping and subsidizing of the subject goods are threatening to cause injury. The Tribunal is guided in its consideration by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.⁶³ Further, the Tribunal notes that subsection 2(1.5) of *SIMA* indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping and subsidizing of goods would cause injury are clearly foreseen and imminent.

126. The first factor listed in subsection 37.1(2) of the *Regulations* concerns the nature of the subsidy in question and the effects that it is likely to have on trade. There are three types of subsidy programs in question: (i) Direct and Counter-cyclical Payment Program; (ii) Nonrecourse Marketing Assistance Loan and Loan Deficiency Payments; and (iii) Federal Crop Insurance Program.⁶⁴ Subsidies under these programs are not export subsidies and do not therefore directly encourage increased volumes of exports. The programs were in place throughout the period of inquiry, and there is no indication that, because of their nature, they will result in higher volumes or lower prices for the subject goods in the foreseeable future than during the Tribunal's period of inquiry.

127. When considering the issue of threat of injury, the Tribunal's typical period of analysis is 18 to 24 months into the future. Given that the U.S. Farm Bill that contains the subsidy programs in question will not expire until September 30, 2007 (end of U.S. fiscal year 2007), the Tribunal does not deem it necessary to try to determine what will happen to these subsidy programs after the current U.S. Farm Bill expires. It would be pure speculation to attempt to forecast the nature and impact of the next U.S. Farm Bill.

63. Subsection 37.1(2) of the *Regulations* reads as follows: "For the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury, the following factors are prescribed: (a) the nature of the subsidy in question and the effects it is likely to have on trade; (b) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; (c) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; (d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; (e) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; (f) inventories of the goods; (g) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; (g.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; (g.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and (h) any other factors that are relevant in the circumstances."

64. Tribunal Exhibit NQ-2005-001-04A, Administrative Record, Vol. 1B at 84.19.

128. The *Regulations* also require that the Tribunal consider whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada that indicates a likelihood of substantially increased imports into Canada of the subject goods. As indicated above, the Tribunal has found that, over the period of inquiry, the volume of imports of the subject goods decreased. Even after considering the increase in imports in 2004-2005, the volume of imports of the subject goods remained significantly lower than in 2001-2002 and lower than in 2002-2003. Imports of the subject goods declined again in the first quarter of the 2005-2006 crop year compared to the same period in 2004-2005. As noted previously, this may be due in part to the chilling effect on imports of the initiation of a dumping and countervailing duty investigation by the CBSA in September 2005. On the basis of the data concerning the volume of imports, the Tribunal finds that there has not been a significant rate of increase of subject goods imported into Canada.

129. The Tribunal also considered USDA projections⁶⁵ concerning grain corn acreage, yield, production, consumption, ending stocks and farm prices in the United States in assessing the likelihood of increased imports of the subject goods into Canada.

130. U.S. corn planted acreage is projected to be 80.5 million acres in 2006-2007 and 81.0 million acres in 2007-2008. In 2004-2005 and 2005-2006, there were 80.9 and 81.6 million acres, respectively, of corn planted.⁶⁶ This demonstrates that planted acreage in the United States has been and is expected to remain relatively stable in the near future.

131. Further, the USDA projects yields in the United States of 148 bushels per acre in 2006-2007 and 150 bushels per acre in 2007-2008.⁶⁷ Over the Tribunal's period of inquiry, U.S. grain corn yields ranged from a low of 138 bushels per acre in 2001-2002 to a high of 160 bushels per acre in 2004-2005, before returning to 148 bushels per acre in 2005-2006.⁶⁸ The USDA projections show that, in the next two years, yields are expected to remain relatively stable at 2005-2006 levels.

132. Over the Tribunal's period of inquiry, U.S. production of grain corn ranged from a low of 8.9 billion bushels in 2002-2003 to a high of 11.8 billion bushels in 2004-2005. Production in 2005-2006 was 11.0 billion bushels.⁶⁹ The USDA projects total U.S. production for 2006-2007 to be 10.8 billion bushels and 11.0 billion bushels in 2007-2008.⁷⁰ The USDA projections show that production in the next two years is expected to remain relatively stable compared to 2005-2006 levels.

133. Considering inventories of the subject goods, ending stocks of U.S. grain corn were at 2.1 billion bushels in 2004-2005 and 2.3 billion bushels in 2005-2006.⁷¹ The USDA projects that ending stocks will decrease to 1.9 billion bushels in 2006-2007 and then decline to 1.5 billion bushels in 2007-2008.⁷² The U.S. stocks-to-use ratio⁷³ was 19.8 percent in 2004-2005 and 21.4 percent in 2005-2006 and is projected to decline to 16.8 percent in 2006-2007 and 13.1 percent in 2007-2008.⁷⁴ Evidence before the Tribunal shows that this decrease in ending stocks and stocks-to-use ratio can be partly attributed to a growing demand for

65. Importer's Exhibit M-09, Administrative Record, Vol. 13C.

66. *Ibid.*

67. *Ibid.*

68. *Ibid.*

69. Tribunal Exhibit NQ-2005-001-19, Administrative Record, Vol. 1.1 at 82.

70. Importer's Exhibit M-09, Administrative Record, Vol. 13C.

71. *Ibid.*

72. *Ibid.*

73. The stocks-to-use ratio is defined as ending stocks divided by total consumption.

74. Importer's Exhibit M-09, Administrative Record, Vol. 13C.

fuel alcohol.⁷⁵ Based on the evidence, the Tribunal does not find that there will be increases in U.S. production or ending stocks in the imminent and foreseeable future that will cause increased imports of the subject goods into Canada. Nevertheless, the factors examined above indicate that there will remain significant quantities of grain corn available for export to Canada. The close proximity of major grain corn growing regions in the United States to Canada and the open border between the two countries for trade of grain corn suggest that the price of delivered imports from the United States will continue to set a price ceiling under which the domestic producers have to sell their grain corn. As domestic producers tend to sell their grain corn at prices which are competitive with the delivered price of the subject goods, imports of grain corn from the United States will tend to enter the domestic market in increased volumes when local supplies are tight. Consequently, it is likely that imports of the subject goods will continue to enter Canada primarily to supplement local supply.

134. Pursuant to paragraph 37.1(2)(g.1) of the *Regulations*, the Tribunal also considered the magnitude of the margin of dumping or the amount of subsidy in respect of the dumped or subsidized goods. While the Tribunal recognizes that U.S. subsidies have increased, forecasts included in the USDA outlook and the Hightower report filed by Commercial Alcohols indicate that production is expected to decline and U.S. farm prices are expected to increase. This should not result in lower delivered prices of the subject goods in Canada.

135. With regard to paragraph 37.1(2)(g.2) of the *Regulations*, the Tribunal notes that there are no anti-dumping or countervailing measures imposed in other jurisdictions respecting grain corn from the United States.

136. In considering the question of threat of injury, the *Regulations* also require the Tribunal to consider whether the subject goods are entering Canada at prices that are likely to have a significant depressing or suppressing effect on the price of the like goods and are likely to increase demand for further imports of the subject goods. The weighted average selling/purchase price of imports in the first quarter of 2005-2006 was \$3.08 compared to \$3.48 in the first quarter of 2004-2005. Taking exchange rates into account, the price in the first quarter of 2004-2005 was US\$2.82 per bushel and US\$2.62 per bushel in the first quarter of 2005-2006. The Tribunal notes that these average prices are only reflective of the first quarter of 2005-2006 and that actual prices fluctuate during any crop year. The Tribunal, in conducting its threat of injury analysis, typically considers an 18-to 24-month time frame from the date of its finding. As indicated previously, the USDA forecasts U.S. farm prices of grain corn for the 2006-2007 crop year to be higher and to increase further in 2007-2008. Higher U.S. farm prices can be expected to lead to higher delivered prices in Canada. Given that the delivered price of imports from the United States constitutes a price ceiling for sales of domestic grain corn, the forecast increase in the U.S. farm price should raise the price ceiling. This will permit the price of domestic grain corn to increase as well. Therefore, the Tribunal concludes that the subject goods are not entering Canada at prices that are likely to have a depressing or suppressing effect on the price of domestic grain corn, nor are they likely to stimulate demand for further imports of the subject goods.

137. Based on its analysis of the factors above, the Tribunal is of the view that the evidence on the record does not indicate a clearly foreseen and imminent change in circumstances pursuant to which dumping and subsidizing of the subject goods would cause injury to the domestic industry. In the Tribunal's opinion, imports from the United States will likely continue to supplement local supply. As for the price ceiling formed by the delivered price of imports from the United States, it should increase, resulting in higher prices for domestic grain corn.

75. *Ibid.*

138. Accordingly, the Tribunal finds that the dumping and subsidizing of the subject goods are not threatening to cause material injury to the domestic industry.

CAUSATION

139. Paragraph 37.1(3)(a) of the *Regulations* prescribes that the Tribunal determine whether a causal relationship exists between the dumping or subsidizing of the subject goods and the injury, or threat of injury, on the basis of the factors listed in subsections 37.1(1) and (2). Further, the Tribunal is required to consider, pursuant to paragraph 37.1(3)(b) of the *Regulations*, whether any factors other than dumping or subsidizing of the goods have caused injury or are threatening to cause injury.⁷⁶ The Tribunal has found that fluctuating exchange rates constitute a factor other than dumping or subsidizing that has caused injury.

140. Pursuant to paragraph 37.1(3)(a) of the *Regulations*, the Tribunal has determined that a causal relationship does not exist between the dumping and subsidizing of the subject goods and injury or threat of injury to the domestic industry on the basis of the factors listed in subsections 37.1(1) and (2). The Tribunal finds that the injury suffered during the period of inquiry is attributable to other factors, primarily exchange rate fluctuation and unknown factors that could explain the widening gap between the delivered price of the subject goods and the price of domestic grain corn in 2004-2005.

CONCLUSION

Therefore, pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that the dumping and subsidizing of the subject goods have not caused injury and are not threatening to cause injury to the domestic industry.

Pierre Gosselin
Pierre Gosselin
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Elaine Feldman
Elaine Feldman
Member

76. The Tribunal is required to consider the following other factors, if applicable, pursuant to paragraph 37.1(3)(b) of the *Regulations*: (i) the volumes and prices of imports of like goods that are not dumped or subsidized, (ii) a contraction in demand for the goods or like goods, (iii) any change in the pattern of consumption of the goods or like goods, (iv) trade-restrictive practices of, and competition between, foreign and domestic producers, (v) developments in technology, (vi) the export performance and productivity of the domestic industry in respect of like goods, and (vii) any other factors that are relevant in the circumstances. The Tribunal finds that the evidence on the record does not demonstrate that these listed factors have caused injury.