

Ottawa, Friday, January 31, 2003

**Expiry Review No. RR-2002-002**

IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, concerning certain prepared baby foods originating in or exported from the United States of America;

AND IN THE MATTER OF a request from counsel for H.J. Heinz Company of Canada Ltd. that Professor James Brander and Jennifer Ng be permitted, as experts, access to all confidential information on the record.

**ORDER**

WHEREAS, pursuant to subsection 45(3) of the *Canadian International Trade Tribunal Act*, confidential information may be disclosed by the Canadian International Trade Tribunal (the Tribunal) to experts acting under the control or direction of counsel, subject to directives from the Tribunal governing the use of such information;

WHEREAS access to confidential information of record in this matter is required to assist in the preparation of an expert report;

WHEREAS the Tribunal qualifies Professor James Brander as an expert in trade economics and Ms. Jennifer Ng as an expert in her capacity as a team member assisting Professor Brander;

THE TRIBUNAL ORDERS THAT:

1. Counsel may disclose to Professor Brander and Ms. Ng the confidential information filed by H.J. Heinz Company of Canada Ltd. (Heinz), Gerber Products Company (Gerber) and Novartis Consumer Health Canada Inc. (Novartis) and the Commissioner of Competition as it relates to Heinz, Gerber and Novartis. No access is to be provided to third-party confidential information.
2. In order to draft their report, Professor Brander and Ms. Ng shall have access to the said confidential information at the Vancouver office of the law firm of Stikeman Elliott, under the direction and control of Ms. Rachel V. Hutton, and if necessary, prior to and during the hearing, at the Ottawa office of Stikeman Elliott, under the direction and control of the lead counsel in this case.
3. Prior to obtaining access to the said confidential information, Professor Brander and Ms. Jennifer Ng shall sign the attached Undertaking and Acknowledgement. Lead counsel for Heinz in Ottawa and Ms. Hutton, counsel for Heinz in Vancouver, shall countersign the said document to acknowledge that Professor Brander and Ms. Ng are working under their direction and control.
4. Counsel for Heinz shall explain the terms of this order to Professor Brander and Ms. Ng prior to disclosure of any confidential information.
5. The Undertaking and Acknowledgement for Professor Brander and Ms. Ng shall provide that they:
  - (a) use the specified confidential information exclusively for purposes of the subject proceeding;
  - (b) not disclose, except to counsel for Heinz and to the Tribunal in their report or testimony in this proceeding, any confidential information to which they have been given access;
  - (c) not photocopy any document received that contains any confidential information;

- (d) save confidential information only on the hard drive of a stand-alone or laptop computer that is not connected to any computer network or accessible in any manner through another computer or other means and erase, at the completion of these proceedings, all confidential information saved on the stand-alone or laptop computer and file with the secretary of the Tribunal a certificate confirming the destruction of the said information; and
- (e) return to counsel for Heinz at the end of the hearing, all confidential information, including any notes, charts, tables and memoranda created based on confidential information.

Patricia M. Close

Patricia M. Close  
Presiding Member

Zdenek Kvarda

Zdenek Kvarda  
Member

Ellen Fry

Ellen Fry  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**CANADIAN INTERNATIONAL TRADE TRIBUNAL**

**UNDERTAKING AND ACKNOWLEDGEMENT**

IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, concerning certain prepared baby foods originating in or exported from the United States of America;

WHEREAS the Tribunal issued an order dated January 31, 2003, directing that the person to whom disclosure is made shall not disclose any of the confidential information to any person and shall not use the confidential information for any purpose, other than in and for the purpose of this expiry review.

**UNDERTAKING**

We, James Brander and Jennifer Ng, undertake:

- a) to use the information disclosed under the conditions of this undertaking exclusively for purposes of the subject proceeding;
- b) not to disclose, except to counsel for Heinz and to the Tribunal in our report or testimony in this proceeding, any confidential information to which we have been given access;
- c) not to photocopy any document received that contains any confidential information;
- d) to keep confidential the information disclosed under the conditions of this undertaking;
- e) to save confidential information only on the hard drive of a stand-alone or laptop computer that is not connected to any computer network or accessible in any manner through another computer or other means, and erase, at the completion of these proceedings, all confidential information saved on the stand-alone or laptop computer and file with the Secretary of the Tribunal a certificate confirming the destruction of the said information; and
- f) to return to counsel for Heinz any notes, tables and memoranda created based on that confidential information at the end of our participation in this proceeding.

**ACKNOWLEDGEMENT**

We hereby acknowledge that disclosure by us of some or all of the confidential information to which we have been given access could result in economic harm to Gerber and Novartis.

Signature: \_\_\_\_\_

Name: **Professor James Brander** \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2003.

Signature: \_\_\_\_\_

Name: **Jennifer Ng** \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2003.

**Countersigned by counsel for Heinz – Ottawa office**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2003.

**Countersigned by counsel for Heinz – Vancouver office**

Signature: \_\_\_\_\_

Name: **Rachel V. Hutton** \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2003.