

LEGAL NOTICE No. 220

REPUBLIC OF TRINIDAD AND TOBAGO

THE ANTI-DUMPING AND COUNTERVAILING DUTIES ACT, 1992 AND
THE ANTI-DUMPING AND COUNTERVAILING DUTIES REGULATIONS, 1996

NOTICE

*Made by the Minister in accordance with section 24 of the Anti-dumping
and Countervailing Duties Act*

PRELIMINARY DETERMINATION BY THE HONOURABLE
MINISTER OF TRADE ARISING OUT OF THE
INVESTIGATION INTO THE ALLEGATION OF DUMPING
OF MACARONI AND SPAGHETTI ORIGINATING IN COSTA
RICA

Act No. 11 of 1992
L. N. No 25 of 1996

IN ACCORDANCE with the Anti-dumping and Countervailing Duties Act, (hereinafter referred to as “the Act”) and the Anti-dumping and Countervailing Duties Regulations, 1996 (hereinafter referred to as “the Regulations”) the Minister of Trade, Industry and Consumer Affairs, has made a preliminary determination that he has reasonable cause to believe that the goods, macaroni and spaghetti, originating in the Costa Rica are goods in respect of which he may make an Order imposing duty.

AND WHEREAS the Minister is required by section 24(2) to give notice of his preliminary determination.

NOTICE is hereby given of the preliminary determination.

CASE HISTORY

By Legal Notice No. 302 of 1998, the Anti-dumping Authority of the Ministry of Trade, Industry and Consumer Affairs (hereinafter referred to as “the Authority”) announced the initiation of an Anti-dumping investigation concerning imports of macaroni and spaghetti, originating in Costa Rica.

COMPLAINT

The investigation was initiated as a consequence of a complaint lodged on 3rd February, 1998 by the local manufacturer of macaroni and spaghetti, Cereal Products Limited which alleged that imports of macaroni and spaghetti originating in Costa Rica are being dumped on the local market.

The official complaint provided *prima facie* evidence of dumping of the said product and of injury, which was considered sufficient to justify the initiation of a proceeding. The details of the evidence are provided below under the heading “dumping”.

THE PRODUCT

The products, macaroni and spaghetti, which was the subject of the investigation, are currently classified under the Customs H.S. Code 1902.19.

The products are made from a blend of semolina flour and bakers flour mixed with water, extruded through a die into various shapes and dried. The producers of spaghetti and macaroni in Trinidad and Tobago are Cereal Products Limited and Nestlé Trinidad and Tobago Limited.

PROCEDURE

Having determined that the complaint has been lodged on behalf of the local industry in respect of which the complainant accounts for 50% of domestic production, and having received no opposition from the local industry to the complaint, the Authority officially notified the complainant, the exporter, the importers known to be concerned, and the representatives from the exporting country that a preliminary hearing would be held on 27th July, 1998. The Authority officially advised of the receipt of the said complaint, and gave the said parties and all parties directly concerned the opportunity to make their views known. The complainant was required to provide further evidence of the normal value. Upon receipt of that information, the initiation of the investigation was commenced on 31st December, 1998 and questionnaires were dispatched to all interested parties. The exporter and the local importers requested, and were granted, an extension for the completion of the questionnaire. The completed questionnaire was subsequently received from the exporter along with a written submission challenging several aspects of the investigation. The Government of Costa Rica adopted the views of the exporter and communicated same to the Authority. The Authority addressed the issues raised by the exporter and communicated its view that there was sufficient evidence of dumping and injury to pursue the investigation.

Bilateral negotiations between the Governments of Costa Rica and Trinidad and Tobago were initiated to establish a Bilateral Commission as a substitute for the investigation. These negotiations were not supported by the complainant and the Authority was obliged under the domestic Anti-Dumping Legislation to proceed expeditiously with regard to reaching a preliminary determination. The Authority had written to the Government of Costa Rica and the exporter seeking their co-operation to visit the exporting company, Roma Prince S.A. for the purpose of verifying the information in the questionnaire. No response to date has been received in respect of that request.

The investigation of dumping and injury covered the period from January, 1996 to July, 1998.

DUMPING

Normal Value

The normal value was established by receipts showing the prices of macaroni and spaghetti purchased in Costa Rica. Macaroni and spaghetti from Costa Rica, bearing different brand names were considered to be essentially the same product after an assessment was made of their ingredients, for the purpose of the investigation. The normal value for both products was adjusted to arrive at an estimated price for a 400 gram pack which was exported to Trinidad and Tobago, but was not available at the time of purchase of the said products in Costa Rica. There was also an adjustment by the complainant to arrive at an ex-factory price.

Export Price

In establishing the export price the Authority took into consideration information submitted by the complainant. The complainant, in the absence of direct documentary evidence of the export price, added the C.I.F. costs to the ex-factory prices to arrive at an estimate of the export price. In order to verify the correct export price the Anti-dumping Authority obtained invoices showing the actual export prices of macaroni and spaghetti from Costa Rica and applied that data to its calculations.

Dumping Margin

Following a price comparison between the normal value and the export price, the dumping margin was calculated as a percentage of the C.I.F. (Cost, Insurance, Freight) price. The Authority concluded that there existed a dumping margin of 74%, for imports of macaroni and 59% for imports of spaghetti, originating in Costa Rica.

Injury

Factors relating to dumped imports

1. The volume of dumped imports is estimated to represent between one-third and one-half of the total local market for the two pasta products;
2. In 1996, the dumped imports captured 40% of the local market share, while 1997 it gained 80.8% of the local market share; and
3. The complainant had to reduce prices by approximately 30% in order to compete with the dumped import.

IN ASSESSING THE INDUSTRY'S SITUATION THE UNDER-MENTIONED FACTORS WERE TAKEN INTO CONSIDERATION:

- (a) Cereal Products Limited and Nestlé Trinidad and Tobago Limited are the two long pasta manufacturers in Trinidad and Tobago;
- (b) During the investigation period the Nestlé Plant was not in operation. Prior to December, 1997, this factory produced approximately 50% of the pasta consumed locally;
- (c) The Catelli Pasta Plant in Barbados was also non-functional during the investigation period. This plant dominated the import market from 1993 to 1995;
- (d) The only plant that was fully operational during the investigation period was Cereal Products Limited;
- (e) Cereal Products Limited supplies traders/wholesalers on the domestic market.

FACTORS RELATING TO THE STATE OF THE COMPLAINANT'S COMPANY—
CEREAL PRODUCTS LIMITED

There was a significant impact caused by the dumped imports on Cereal Product Limited's production of macaroni and spaghetti during the period of investigation as follows:

Macaroni

- (a) Production decreased by 5% from 1995 to 1996. Total production rose in 1997 and 1998, however this did not reflect increases in domestic consumption;
- (b) Capacity utilization decreased from 63% in 1995 to 48% in 1996. In 1997, the company assessed 79% of productive capacity and 86% for the period January to July, 1998;
- (c) Stocks increased by 117% from 1995 to 1996. In 1997 there was an marginal decrease from 1996 of 21%. For the period January to July, 1998 stocks decreased by 42% from 1997; and
- (d) Profitability on domestic sales represented approximately 28% of total sales for the investigation period.

Spaghetti

- (a) Production decreased by 10% from 1996 to and 3% in 1997. Production for January to July, 1998, represented 42% of total production for 1997;

- (b) Capacity utilization decreased from 73% in 1995 to 55% in 1996. In 1997, 73% of productive capacity was assessed and for January to July, 1998, 75% was assessed;
- (c) Stocks increased by 172% from 1995 to 1996. In 1997, stocks decrease by 59% and for the period January to July, 1998 stocks further decreased by 24%; and
- (d) Profitability on domestic sales represented approximately 53% of total sales for the investigation period.

FACTORS RELATING TO MACARONI AND SPAGHETTI

- (a) Production levels increased for both products from 1997 as the company was compelled to target the export market;
- (b) The company's domestic sales fell considerably over the period 1996 to mid 1998, however there was a marginal increase in export sales;
- (c) The overall profit and resulting return on investment of the company had declined significantly from 1996 to mid 1998;
- (d) Due to price undercutting of the dumped imports, the company had suffered a negative impact on cash-flow and the cost of financing operations; and
- (e) Over the investigation period employment levels did not increase concurrently with production levels.

In view of the facts stated above and in particular in light of the decline in domestic production, sales and profitability, the Authority concluded for the purpose of its preliminary findings, that Cereal Products Limited has suffered material injury within the meaning of the Act.

CASUAL LINK BETWEEN THE DUMPED IMPORTS AND THE INJURY

The Authority examined whether there was a casual link between the dumped imports and the injury suffered by the domestic pasta industry and whether other factors caused or contributed to that injury.

EFFECT OF THE DUMPED IMPORTS

The Authority found that the volume and market share of the dumped imports was reflected in a continued decrease in the domestic volume and market share of Cereal Products Limited in respect of macaroni and spaghetti. Efforts to reduce prices led to a negative impact on the company's profit, cash-flow and cost of financing.

EFFECTS OF OTHER FACTORS

The Authority considered the possible effects of other factors regarding the situation of Cereal Product Limited. Price discrimination was identified as the main factor for the company's loss of domestic market shares and sales.

CONCLUSION

In light of the above findings, the Authority concluded, for the purpose of its provisional determination, that imports of macaroni and spaghetti originating in Costa Rica were sold at dumped prices and have caused material injury to this industry.

As a result the Minister of Trade, Industry and Consumer affairs in accordance with section 24(1) of the Act has made a preliminary determination that he has reasonable cause to believe that macaroni and spaghetti originating in Costa Rica are goods in respect of which he may ultimately make an order imposing duty.

Made this 26th day of November, 1999.

M. ASSAM
*Minister of Trade and Industry
and Consumer Affairs*