Mallinckrodt wins Canada contrast media dumping case

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Ruling finds company's sales hurt by Nycomed and Bracco practices Two medical product companies may have to pay antidumping duties on their contrast media since the Canadian International Trade Tribunal found their sales practices adversely affected the domestic market and Mallinckrodt Canada--the country's sole producer of nonionic contrast agents. As of last month, goods sold to Canada by the two importers, Nycomed Amersham Canada and Bracco Diagnostics Canada, will be subject to Canadian antidumping duties if the selling price to Canada of certain products is below the normal value of the goods in the U.S. Bracco's Isovue and Nycomed Amersham's Visipaque and Omnipaque were the subjects of the investigation, according to the CITT's report on the case, published this month. One member of the three-person tribunal cast a dissenting vote in the finding.

Since 1998, Searle, based in Puerto Rico, has produced Omnipaque and Visipaque for the Canadian market under an arrangement with Nycomed Amersham Imaging, headquartered in Princeton, NJ. Bracco Diagnostics Canada acts as the Canadian marketing organization for certain of its parent company's products, including the contrast agents in the case. According to the report, Isovue is produced by Bristol-Myers Squibb in the U.S. under an arrangement with Bracco, whose U.S. diagnostics business is headquartered in Princeton as well.

Mallinckrodt Canada is a subsidiary of Mallinckrodt Inc., headquartered in St. Louis. Mallinckrodt also exports iodinated contrast media to Europe, Central and South America, Australia, and Asia. NAFTA rules dictate that prices of goods should be the same in each North American country. The Canada Customs and Revenue Agency may be collecting antidumping duties when the disputed products enter Canada, depending on Nycomed's and Bracco's Canadian prices. The final amount of antidumping duties will depend on what Nycomed and Bracco end up charging Canadian hospitals for the contrast media.

"If they sell at a price that the Canada Customs and Revenue Agency determines is fair, there will be no dumping duties," said Richard Chung, an officer of the agency. The duty will be the difference between the price at which the contrast is sold to the U.S. and the price at which it is sold to Canada.

"If the contrast media is sold for $100 in the U.S. and $90 in Canada, then the antidumping duty would be $10," Chung said.

Mallinckrodt Canada employs 250 people and is the sole producer of nonionic contrast media for hospitals in that country. Canada's health system is funded by the government, but hospitals purchase supplies and equipment on an individual basis, said Jean-Pierre Robert, executive vice president of Mallinckrodt Canada.

When establishing contrast media selling prices, suppliers use published price lists, which contain unit selling prices for each product configuration and container size. Various discounts are applied to the list prices to arrive at a final selling price. Suppliers may offer additional incentives, such as educational packages, research and development support, and a variety of discounts and rebates, according to the CITT report.

Nycomed and Bracco sold their contrast agents in Canada for 40% below what they charged for the products in the U.S., Robert said. The contrast agents in the dispute are used in CT procedures. "Very often you will see pricing (of drugs) lower in Canada because of our healthcare (system), but certainly not in that magnitude," he said.

Mallinckrodt company officials said the Canadian contrast agent market was relatively stable until 1993. In 1994, however, "aggressive bidding at unprecedented low pricing from both Bracco and Nycomed and their predecessors were found in the Canadian market," according to the CITT report. Although Nycomed and Bracco were entitled to price aggressively, Mallinckrodt Canada argued that these companies could do so only up to a point. When Nycomed and Bracco began to sell the
contrast agents at markedly lower prices in Canada, they "crossed the line" and caused Mallinckrodt Canada material injury, according to the CITT report.

Robert said his company started noticing the adverse effects of the Bracco and Nycomed price differences in 1996, and Mallinckrodt asked the CITT to investigate in 1999. During the investigation, CITT members heard testimony from radiologists, purchasers of contrast media, and an importer who had been subpoenaed by one of the parties.

According to the CITT report, Nycomed and Bracco said Mallinckrodt Canada's loss of sales was "of its own making."

Bracco did not respond to questions about the CITT findings by press time, but in the CITT report, both Nycomed and Bracco said Mallinckrodt began a "price war" in Canada in 1993–1994 that destabilized the market. Each company noted that its selling prices and revenue declined while the CITT investigated Mallinckrodt's claim.

Jean-Pierre Huot, general manager of Nycomed Amersham Canada, said his company is disappointed with the CITT's decision and will appeal.
"There is great concern that this decision will increase the cost of healthcare in Canadian hospitals by reducing legitimate competition," Huot said.

Dr. Richard Levinson, president of the American Public Health Association in Washington, DC, is an expert on the Canadian health system. He said he isn't familiar with this particular case, but is familiar with policies of the Canadian government that limit healthcare spending.
"Canada is much more stringent (with healthcare funding than the U.S.) This has led to growing discontent by the public, and drug manufacturers are now taking advantage of this," he said.
"Hospitals will find something that is higher quality and less expensive to get the biggest bang for their buck."

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