



OTTAWA, May 14, 2015

STATEMENT OF REASONS

Concerning an expiry review determination under
paragraph 76.03(7)(a) of the *Special Import Measures Act*
regarding

**CERTAIN WHOLE POTATOES
IMPORTED FROM THE UNITED STATES OF AMERICA,
FOR USE OR CONSUMPTION IN THE PROVINCE OF
BRITISH COLUMBIA**

DECISION

On April 29, 2015, pursuant to paragraph 76.03(7)(a) of the *Special Import Measures Act*, the President of the Canada Border Services Agency determined that the expiry of the order made by the Canadian International Trade Tribunal on September 10, 2010, in Expiry Review No. RR-2009-002, would likely result in the continuation or resumption of dumping of certain whole potatoes imported from the United States of America, for use or consumption in the province of British Columbia.

**Cet Énoncé des motifs est également disponible en français.
This Statement of Reasons is also available in French.**

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EXECUTIVE SUMMARY

[1] On December 30, 2014, the Canadian International Trade Tribunal (Tribunal), pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), initiated an expiry review with respect to its order made on September 10, 2010, in Expiry Review No. RR-2009-002,¹ concerning certain whole potatoes imported from the United States of America (United States), for use or consumption in the province of British Columbia (B.C.).

[2] As a result of the Tribunal's notice, on December 31, 2014, the Canada Border Services Agency (CBSA) commenced an investigation to determine whether the expiry of the order is likely to result in the continuation or resumption of dumping of the goods.

[3] The British Columbia Vegetable Marketing Commission (BCVMC) provided information on behalf of its member producers defending the position that the expiry of the order is likely to result in the continuation or resumption of dumping of the goods. Conversely, no parties provided information in support of the position that the expiry of the order is not likely to result in the continuation or resumption of dumping of the goods.

[4] The CBSA also received complete submissions from five potato producer agencies under the BCVMC and one importer of the subject goods. Two exporter responses were received without accompanying non-confidential versions and were considered to be incomplete.

[5] An analysis of the information on the record shows that:

- the subject goods were dumped while the order was in effect;
- overall demand is decreasing;
- there is a surplus of United States supply;
- United States selling prices have fallen below production costs;
- the major United States producers are located within close proximity to the B.C. market and United States exporters have well established channels of distribution in the B.C. market;
- no other trade measures were in effect during the period of review (POR); and,
- United States exporters are likely to continue to sell large volumes into the B.C. market at dumped prices in the foreseeable future.

[6] For the foregoing reasons, the President of the Canada Border Services Agency (President), having considered the information on the record, determined on April 29, 2015, pursuant to paragraph 76.03(7)(a) of SIMA that the expiry of the order in respect of certain whole potatoes imported from the United States, for use or consumption in the province of British Columbia is likely to result in the continuation or resumption of dumping of the goods.

¹ Exhibit 9 NC Order and *Statement of Reasons* (RR-2009-002).

BACKGROUND

[7] This case was originally two separate dumping investigations concerning whole potatoes.

[8] The first case was initiated on September 30, 1983, following a complaint filed by the BCVMC. A preliminary determination of dumping was made on March 5, 1984. On June 4, 1984, the Anti-dumping Tribunal (subsequently known as the Canadian International Trade Tribunal) issued an injury finding with respect to whole potatoes with netted or russeted skin, excluding seed potatoes, in non-size A, from the state of Washington (Washington), for use or consumption in the province of B.C.² A final determination of dumping was made by the Deputy Minister of National Revenue for Customs and Excise on October 12, 1984. At that time, the legislation required the Tribunal to render its final decision regarding injury prior to the final determination of dumping.

[9] A second investigation was initiated on October 18, 1985, with regard to whole potatoes from the United States for use or consumption in the province of B.C., excluding seed potatoes and excluding those potatoes covered by the previous finding. A preliminary determination of dumping was made on December 20, 1985, and a final determination of dumping was made on March 20, 1986. The Tribunal issued an injury finding on April 18, 1986.³

[10] Since the original investigations, there have been five expiry reviews that have resulted in the case being continued with or without amendments. The CBSA has also conducted several re-investigations to update the normal values and export prices for enforcement purposes. Anti-dumping duties have been assessed throughout this period when necessary.

[11] The first expiry review resulted in an order issued by the Tribunal on September 14, 1990, in Review No. RR-89-010,⁴ continuing the two findings without amendments. On September 14, 1995, in Review No. RR-94-007,⁵ the order was continued with amendments to exclude imports during the period from May 1 to July 31, inclusive, of each calendar year. On September 13, 2000, in Review No. RR-99-005,⁶ the order was continued without amendments. On September 12, 2005, in Review No. RR-2004-006,⁷ the order was continued with amendments to exclude red potatoes, yellow potatoes, exotic potato varieties and white and russet potatoes in 50-lb cartons in certain count sizes. On September 10, 2010, in Review No. RR-2009-002,⁸ the order was continued without amendments.

² Exhibit 4 NC Finding and *Statement of Reasons* (ADT-4-84).

³ Exhibit 23 NC Finding and *Statement of Reasons* (CIT-16-85).

⁴ Exhibit 5 NC Order and *Statement of Reasons* (RR-89-010).

⁵ Exhibit 6 NC Order and *Statement of Reasons* (RR-94-007).

⁶ Exhibit 7 NC Order and *Statement of Reasons* (RR-99-005).

⁷ Exhibit 8 NC Order and *Statement of Reasons* (RR-2004-006).

⁸ Exhibit 9 NC Order and *Statement of Reasons* (RR-2009-002).

[12] On November 10, 2014, the Tribunal issued a notice of expiry⁹ of the Tribunal's order in Expiry Review No. RR-2009-002 and invited comments from all interested parties. On the basis of the information filed during the expiry process, the Tribunal was of the opinion that an expiry review of the order was warranted. Therefore, on December 30, 2014, pursuant to subsection 76.03(3) of SIMA, the Tribunal initiated an expiry review of its order.

[13] On December 31, 2014, the CBSA commenced an expiry review investigation to determine whether the expiry of the order is likely to result in the continuation or resumption of dumping of the goods from the United States.

PRODUCT DESCRIPTION

[14] The goods subject to this expiry review are defined as:

whole potatoes, excluding seed potatoes, excluding imports during the period from May 1 to July 31, inclusive, of each calendar year; and excluding red potatoes, yellow potatoes and exotic potato varieties, regardless of packaging, and white and russet potatoes imported in 50-lb cartons in the following count sizes: 40, 50, 60, 70 and 80, imported from the United States of America, for use or consumption in the province of British Columbia.

[15] Hereafter, the subject and the like goods will be referred to as "potatoes".

CLASSIFICATION OF IMPORTS

[16] The subject goods are normally, but not exclusively, classified under the following Harmonized System (HS) classification numbers:

0701.90.00.10
0701.90.00.20

[17] This listing of HS codes is for convenience of reference only. Refer to the product definition for authoritative details regarding the subject goods.

PERIOD OF REVIEW

[18] The POR for the CBSA's expiry review investigation covers three crop years from August 1 to July 31, 2011-2014, inclusive, along with the period from August 1 to November 30, 2014.

⁹ Exhibit 15 NC Notice of Expiry of Order (LE-2014-003).

REGIONAL MARKET

[19] The Tribunal order relates to potatoes imported into a regional market, namely, the province of B.C.

[20] In accordance with SIMA, two conditions must be met for the existence of a regional market. As per subsection 2(1.1) of SIMA, they are that:

- the producers in that market sell all or almost all of their production of like goods in the market; and,
- the demand in that market is not to any substantial degree supplied by producers of like goods located elsewhere in Canada.

[21] Further, where subsection 2(1.1) of SIMA applies, subsection 42(5) of SIMA provides that the Tribunal shall not find that the dumping of the goods has caused injury or is threatening to cause injury unless:

- there is a concentration of those goods into the regional market; and
- the dumping of those goods has caused injury or is threatening to cause injury to the producers of all or almost all of the production of like goods in the regional market.

[22] On December 2, 2014, in response to the Tribunal's notice of the expiry review of the order, the BCVMC submitted that B.C. continues to be a regional market because almost all of the potatoes grown in that province are sold in the B.C. market and the demand in that market is not to any substantial degree supplied by producers of like goods located elsewhere in Canada. More specifically, it detailed that, since the last Tribunal order was issued on September 10, 2010, its producers have marketed a majority of their subject potatoes in the B.C. market. When the volumes marketed by B.C. producers through on-farm stands, farmer's markets and manifest sales to smaller outlets are also taken into account, these percentages increase to levels well above the range accepted by the Tribunal in determining that B.C. is a regional market.¹⁰

[23] Further, at the last expiry review, the Tribunal concluded that, based on the data collected from its questionnaires and Statistics Canada, total shipments of potatoes from other provinces in Canada did not, to any substantial degree, supply the demand for potatoes in the B.C. market.¹¹

[24] The Tribunal will again give consideration to the issue of regional market as part of its expiry review to determine whether the continued or resumed dumping is likely to result in injury.

¹⁰ Exhibit 53 NC Additional supporting documents, B4 - Public Initial Submission of BCVMC with attachments dated December 2, 2014, pages 35-37.

¹¹ Exhibit 9 NC Order and *Statement of Reasons* (RR-2009-002), page 13.

BRITISH COLUMBIA INDUSTRY

[25] There are approximately 55 producers¹² of potatoes in the province of B.C.

[26] The BCVMC is a commission established by legislation under the *Natural Products Marketing (B.C.) Act* empowered to regulate the production and marketing of certain vegetables grown in B.C., including potatoes. It administers this legislative scheme by way of a sub-delegation of powers to various sales agencies in the province, of which the producers are members. These agencies, namely, the BC Fresh Vegetables Inc. (formerly the Lower Mainland Vegetable Distributors Inc.), the Okanagan Grown Produce Ltd., the Island Vegetable Co-operative Association, the Vancouver Island Produce Ltd. and Vancouver Island Farm Products Inc., provide producers with a provincial sales outlet for their product and derive virtually all of their revenue from marketing potato and vegetable crops. Potato sales represent a significant portion of this revenue.¹³

[27] Unlike virtually all other potato producing regions in North America, B.C.'s potato sector does not have a processing industry. It is strictly geared toward the production of fresh potatoes for the table stock market. As a result, potato producers rely solely on fair market access to the fresh potato market, i.e., the table potato and food service markets, within B.C. to survive.¹⁴

[28] In contrast, 66%-68% of the potatoes produced in the United States during the POR were sold to the potato processing industry, with the remaining portion sold to the fresh potato market. In Washington, this percentage increases to approximately 87%.¹⁵

[29] Potatoes destined for the processing industry can be sold in the fresh potato market; however, many varieties grown for the fresh market can only be sold in the fresh market as they are unsuitable for processing.¹⁶ Accordingly, fresh and processed potatoes produced in the United States compete directly with fresh potatoes produced in B.C.

[30] In both Canada and the United States, the bulk of the potato harvest occurs from August to October, with potatoes that are not sold immediately being stored in storage sheds, where some varieties can be kept until the beginning of the following summer.

¹² Exhibit 53 NC Additional supporting documents, B4 - Public Initial Submission of BCVMC with attachments dated December 2, 2014, page 33.

¹³ Exhibit 53 NC Additional supporting documents, B4 - Public Initial Submission of BCVMC with attachments dated December 2, 2014, page 4.

¹⁴ Exhibit 53 NC Additional supporting documents, B4 - Public Initial Submission of BCVMC with attachments dated December 2, 2014, page 33.

¹⁵ Exhibit 53 NC Additional supporting documents, B4 - Public Initial Submission of BCVMC with attachments dated December 2, 2014, page 39.

¹⁶ Exhibit 53 NC Additional supporting documents, B4 - Public Initial Submission of BCVMC with attachments dated December 2, 2014, page 9.

BRITISH COLUMBIA MARKET

[31] The B.C. potato market during the POR is estimated as follows by value (Table 1) and percentage (Table 2):

Table 1

ESTIMATED B.C. MARKET

Source	2011 Crop Year (CAD)	2012 Crop Year (CAD)	2013 Crop Year (CAD)
B.C. Production Sales	25,130,016	24,036,646	26,324,083
Other Canadian Production sold in B.C.	327,230	288,761	342,877
Imports from the United States into B.C.			
· California	1,041,180	758,491	1,007,419
· Idaho	9,913	38,286	227,541
· Oregon	508,665	428,004	564,681
· Washington	5,706,041	3,303,159	5,812,326
· All other states	0	22,764	8,802
Total Imports from the United States into B.C.	7,265,799	4,550,704	7,620,769
Total Imports from all other Countries	0	0	0
Total B.C. Production Sales and Imports from the United States	32,395,815	28,587,350	33,944,852
Total B.C. Market	32,723,045	28,876,111	34,287,729

NOTE: The crop year is from August 1st to July 31st each year. Statistics shown are for potatoes subject to anti-dumping enforcement.

Other Canadian production sold into B.C. was estimated by the CBSA at 1% of the total B.C. market, based on information provided by the Tribunal at the last expiry review.¹⁷

¹⁷ Exhibit 9 NC Order and *Statement of Reasons* (RR-2009-002), page 13.

Table 2

**ESTIMATED B.C. MARKET
(In Percentage of Value)**

Source	2011 Crop Year	2012 Crop Year	2013 Crop Year
B.C. Production Sales	76.8%	83.2%	76.8%
Other Canadian Production sold in B.C.	1.0%	1.0%	1.0%
Imports from the United States into B.C.			
· California	3.2%	2.6%	2.9%
· Idaho	0.0%	0.1%	0.7%
· Oregon	1.6%	1.5%	1.6%
· Washington	17.4%	11.4%	17.0%
· All other states	0.0%	0.1%	0.0%
Total Imports from the United States into B.C.	22.2%	15.8%	22.2%
Total Imports from all other Countries	0.0%	0.0%	0.0%
Total B.C. Production Sales and Imports from the United States	99.0%	99.0%	99.0%
Total B.C. Market	100.0%	100.0%	100.0%

[32] Market statistics used to estimate the B.C. market are expressed by value only, and do not include volume. The reason for this is that the volume data obtained from the CBSA database is not expressed in a consistent unit of measurement. Quantities are often expressed in different units of measure, such as metric tons, hundredweight (cwt), number of packages, etc. Accordingly, the CBSA data could not be used to calculate total volume or perform any meaningful calculations of unit value.

B.C. Industry

[33] Overall, the B.C. producers' share of the apparent B.C. market remained stable at over 75% during the entire POR. The B.C. producers' share of the market value was 76.8% in 2011 crop year, increased to 83.2% in 2012 and returned to 76.8% in 2013.

Imports

[34] The volume of subject goods imported from the United States represented 22.2% of the apparent B.C. market in 2011 crop year. The volume of imports declined to 15.8% in 2012 and jumped back to 22.2% in 2013.

[35] There were no imports of the subject goods from any other countries during the POR.

CASE ENFORCEMENT

[36] In the making of a determination regarding the likelihood of continued or resumed dumping, the President may consider, pursuant to paragraph 37.2(1)(a) of the *Special Import Measures Regulations* (SIMR), whether there has been dumping of the goods while an order in respect of the goods is in effect and, if applicable:

- (i) the period during which the dumping occurred;
- (ii) the volume and prices of the dumped and non-dumped goods;
- (iii) the margin of dumping; and
- (iv) for non-dumped goods, the amount by which the export prices exceed the normal value of the goods.

[37] Dumping occurs and anti-dumping duties are payable when export prices are less than the normal values of the goods. The margin of dumping is the amount by which the normal value exceeds the export price.

[38] In examining these factors, it is important to understand how normal values and export prices were determined during the POR, in light of the specific circumstances surrounding this case.

[39] Throughout the entire POR, normal values were determined by means of a ministerial specification, pursuant to section 29 of SIMA, on the basis of published cost of production data, using total costs and expenses associated with growing and harvesting potatoes, an amount for packing and selling the goods, and a reasonable amount for profit. Normal values were determined in this manner because no exporters provided company specific cost and sales data during the re-investigations. Some general information regarding costs, such as cost studies, was provided by the trade associations. This information was given due consideration by the CBSA in determining the normal values.

[40] Normal values currently in place have been in effect since September 18, 2014, the day that the CBSA concluded its latest re-investigation of normal values. These values are based on the costs of producing like goods during the 2012-2013 crop year. Three university studies from Washington, Idaho and California¹⁸ were used for this purpose. Two of the studies, from Washington and Idaho, referred to the costs of producing russet potatoes while the third, from California, simply referred to the costs of producing potatoes destined for the fresh market. The costs of production were also adjusted to reflect the difference in cost from the date of study to the 2012-2013 crop year. These studies were provided to all participating associations prior to the issuance of the values and no opposition to them was voiced.

¹⁸ Exhibit 57 Pro Normal Value Review Case Summary 2014.

[41] For the period before September 18, 2014, export prices were determined by means of a ministerial specification, pursuant to section 29 of SIMA. As per the ministerial specification, export prices were determined weekly on the basis of the preponderant selling prices, referred to as “mostly” prices, as reported in the *National Potato and Onion Report* (Market News) published by the Federal-State Market News Service, United States Department of Agriculture (USDA). In the absence of a preponderant selling price, export price was specified as the straight average of the price range quoted in the Market News.

[42] The export prices were based on domestic prices in the country of export. This method was considered necessary during the course of a past review when it was revealed that the information on the commercial invoices for sales to Canada was not reliable. In light of this, the prevailing prices in the United States were considered a more accurate assessment of the selling prices to the Canadian importers.

[43] During the latest re-investigation in 2014, an analysis of export prices confirmed that export prices declared on customs documentation were accurate and reflected published market prices. As such, the methodology used to determine the export prices under ministerial specification was modified and since the conclusion of the re-investigation, export prices are based on the declared selling price to Canadian importers as reflected on the customs documentation, adjusted by deducting from the selling price all costs, charges, expenses, duties and taxes described in subparagraphs 24(a)(i) to (iii) of SIMA, which are presented in the customs documentation.

[44] The following chart details the anti-dumping duties collected, within the period the order was in effect:

Table 3

**ANTI-DUMPING DUTIES COLLECTED
(In CAD)**

	Aug. 1, 2011 – Apr. 30, 2012	Aug. 1, 2012 – Apr. 30, 2013	Aug. 1, 2013 – Apr. 30, 2014	Aug. 1, 2014 – Nov. 30, 2014
Total Anti-dumping Duties	82,853	1,049,695	158,149	305,787

[45] Subsequent to the issuance of updated normal values on September 18, 2014, \$96,638 anti-dumping duty was collected, which accounted for 26.2% of the total anti-dumping duty in 2014.¹⁹

¹⁹ Exhibit 49 NC Imports and Enforcement Data.

PARTIES TO THE PROCEEDINGS

[46] On December 31, 2014, the Expiry Review Questionnaires (ERQ) and Notice of Expiry Review Investigation were sent to all known Canadian producers, importers and exporters of the subject goods.

[47] The ERQs requested information relevant to the consideration of the expiry review factors by the President, as found under subsection 37.2(1) of the SIMR. Any persons or governments having an interest in this investigation were also invited to provide a submission regarding the likelihood of continued or resumed dumping of these goods should the order be rescinded.

[48] The BCVMC and its five marketing agencies provided responses to the Canadian producer ERQ. In addition, one importer provided a response to the importer ERQ. The importer, who is also one of the five Canadian producer agencies, did not express an opinion about the likelihood of continued or resumed dumping of the goods should the order be rescinded.

[49] Case arguments were received from the BCVMC, arguing that continued or resumed dumping is likely should the order be rescinded.

[50] No other case arguments or reply submissions were received.

INFORMATION CONSIDERED BY THE PRESIDENT

Administrative Record

[51] The information used and considered by the President for purposes of this expiry review proceeding is contained on the administrative record. The record includes the exhibits listed on the CBSA's Listing of Exhibits and Information, which is comprised of the Tribunal's administrative record at the initiation of the expiry review, CBSA exhibits, and information submitted by interested persons, including information which they believe is relevant to the decision as to whether dumping is likely to continue or resume, if the order is rescinded. This information consists of excerpts from trade magazines and newspapers, orders and findings issued by authorities in Canada and responses to the ERQs submitted by Canadian producers and importers.

[52] For purposes of an expiry review investigation, the CBSA sets a date after which no "new" information submitted by interested parties may be placed on the administrative record or considered as part of the CBSA's investigation. This is referred to as the "closing of the record date" and is set to allow participants time to prepare their case arguments and reply submissions based on the information that is on the administrative record as of the closing of the record date. For the CBSA's expiry review investigation, the administrative record closed on February 18, 2015.

Procedural Issues

[53] There were no procedural issues with regard to this expiry review investigation.

POSITION OF THE PARTIES

Parties Contending that Continued or Resumed Dumping is Likely

Position of the British Columbia Vegetable Marketing Commission

[54] The BCVMC provided a case brief presenting its position, on behalf of its five agencies and all registered B.C. potato producers, that continued or resumed dumping is likely should the order be rescinded. It argued that the order should remain in place.

[55] The BCVMC's position is summarized as follows:

- United States potato producers have regularly and persistently sold large volumes of potatoes at dumped prices into the B.C. market while the 2010 Order has been in effect;²⁰
- the continuing propensity of United States producers to overproduce;²¹
- there is an overall decline in consumer demand for the subject goods;²²
- United States potato processing production is easily diverted to the fresh market;
- overproduction results in a decline in price;
- proximity of the major United States producers to the B.C. market is a significant factor;²³ and
- dependency of the western states on export markets.²⁴

Large Volumes Dumped

[56] The BCVMC stated that, throughout the POR, United States potato producers have regularly and persistently sold and continue to sell large volumes of potatoes subject to the order at dumped prices into the B.C. market while the 2010 Tribunal's order has been in effect. This dumping has occurred frequently, over long periods of time, and at significant margins of dumping.²⁵

²⁰ Exhibit 55 NC Case Brief of the BCVMC, pages 5-14.

²¹ Exhibit 55 NC Case Brief of the BCVMC, pages 20-23.

²² Exhibit 55 NC Case Brief of the BCVMC, pages 25-27.

²³ Exhibit 55 NC Case Brief of the BCVMC, page 27.

²⁴ Exhibit 55 NC Case Brief of the BCVMC, pages 28-29.

²⁵ Exhibit 55 NC Case Brief of the BCVMC, page 4.

[57] The BCVMC provided an analysis of the frequency of dumping and the margins of dumping since the last order was put in place for the three most popular products sold into B.C. from Washington, the 5 x 10 lb, 10 x 5 lb and 20-lb poly bags of russet potatoes. Washington was used for this exercise, since it is the largest exporter of the subject goods and B.C.'s closest neighbour. The normal values used were those that were in effect during the relevant time periods. These values were compared to the actual Washington selling prices to B.C., free on board Vancouver, as per USDA reports.

[58] A summary of the analysis is as follows:

**MARGIN OF DUMPING
5 X 10 LB POLY BAGS OF RUSSET POTATOES²⁶**

Crop Year	No. of Weeks Sold Below Normal Value	Total Weeks in Period	% of weeks with duty	Margin of Dumping	
				Minimum	Maximum
2010-2011	35	39	90%	3%	70%
2011-2012	9	40	23%	3%	45%
2012-2013	39	40	98%	21%	70%
2013-2014	9	40	23%	11%	45%
2014-2015*	29	29	100%	16%	63%

* 2014-15: only 29 dutiable weeks completed at report date.

**MARGIN OF DUMPING
10 X 5 LB POLY BAGS OF RUSSET POTATOES²⁷**

Crop Year	No. of Weeks Sold Below Normal Value	Total Weeks in Period	% of weeks with duty	Margin of Dumping	
				Minimum	Maximum
2010-2011	32	39	82%	1%	45%
2011-2012	5	40	13%	1%	27%
2012-2013	39	40	98%	9%	45%
2013-2014	9	40	23%	1%	27%
2014-2015*	29	29	100%	5%	44%

* 2014-15: only 29 dutiable weeks completed at report date.

²⁶ Exhibit 55 NC Case Brief of the BCVMC, page 8.

²⁷ Exhibit 55 NC Case Brief of the BCVMC, page 11.

**MARGIN OF DUMPING
20 LB POLY BAGS OF RUSSET POTATOES²⁸**

Crop Year	No. of Weeks Sold Below Normal Value	Total Weeks in Period	% of weeks with duty	Margin of Dumping	
				Minimum	Maximum
2010-2011	35	39	90%	3%	70%
2011-2012	9	40	23%	3%	45%
2012-2013	39	40	98%	21%	70%
2013-2014	9	40	23%	11%	45%
2014-2015*	29	29	100%	16%	63%

* 2014-15: only 29 dutiable weeks completed at report date.

[59] Since the CBSA no longer used the “mostly” prices from the National Potato and Onion Report as export prices after September 18, 2014, which was the conclusion of the last re-investigation, and BCVMC does not have access to importers’ actual prices, the margins of dumping in 2014-2015 were estimated, still based on the “mostly” prices as a means of measuring the frequency, duration and scale of dumping occurring in the marketplace.

[60] Based on this analysis, the BCVMC contended that for the crop years from 2010-2014, the 5 x 10 lb poly bags were sold below the normal values 64% of the time, the 10 x 5 lb poly bags were sold below the normal values 61% of the time and the 20 lb poly bags were sold below normal values 64% of the time.

[61] The only periods that the potatoes were sold above the normal values in the five years were the 2011-2012 and 2013-2014 seasons. This is the result of fall fresh potato production in the United States being substantially lower in these two seasons than in 2010, 2012 and 2014.

[62] According to the BCVMC, the results further revealed that, throughout this period, the subject goods were dumped into B.C. by significant margins of dumping. For the 5 x 10 lb poly bags, the margin of dumping ranged from 3% -70%, for the 10 x 5 lb poly bags, the margins of dumping ranged from 1% - 45% and for the 20 lb poly bags, the margins of dumping ranged from 3% -70%.

[63] The BCVMC is of the opinion that the dumping of potatoes from the United States into B.C. has remained high since the last review and the significant margins of dumping during the POR illustrate the likelihood of continued or resumed dumping if the 2010 Tribunal order is rescinded.

²⁸ Exhibit 55 NC Case Brief of the BCVMC, page 14.

Overproduction

[64] The BCVMC stated that United States producers have historically overproduced the subject goods and that current information shows that this is continuing. It indicated that the 2010 Tribunal order has noted this overproduction and oversupply problem and that the situation has not improved since the last Tribunal review.

[65] The BCVMC provided evidence showing that since 2010, the overall acreage planted in the United States with fall potatoes increased by 5% despite decreasing demand. The increase is entirely driven by the western states, which are in close proximity to the B.C. market. The 2010 potato acreage has since increased by 29% in California, 22% in Washington, 8% in Oregon and 7% in Idaho. In contrast, acreage planted in the remaining states has decreased by 4% since 2010.²⁹

[66] The increased acreage planted has, in turn, contributed to a substantial increase in fall production of United States potatoes. There has been an average annual production in the United States of almost 396 million hundredweight since the last review in 2010. The average annual production increased by approximately 11% between 2010 and 2014. Again, this increase is largely a result of production in the western states. Since 2010, production has increased by 43% in California, 15% in Washington, 12% in Oregon and 20% in Idaho between 2010 and 2014. In contrast, the production in the remaining states has increased by only 1.5% during the same time period.³⁰

[67] The BCVMC stated that the B.C. industry is particularly sensitive to overproduction from the four western states within close proximity of the B.C. market: Washington, Idaho, Oregon and California. Together, these four states accounted for 64% of all United States 2013-2014 fall production³¹ and produced over 100 times more potatoes than are grown in B.C. Washington alone produced dozens of times more potatoes than were grown in B.C.³²

[68] The BCVMC emphasized the enormous size of the United States potato industry relative to the B.C. industry. It stated that United States production capacity, as compared to the B.C. market, is a significant consideration in determining the likelihood of continued or resumed dumping. Any fluctuations in United States production must be considered in context to the size of the much smaller B.C. industry.

²⁹ Exhibit 55 NC Case Brief of the BCVMC, page 20.

³⁰ Exhibit 55 NC Case Brief of the BCVMC, page 21.

³¹ Exhibit 55 NC Case Brief of the BCVMC, page 40.

³² Exhibit 55 NC Case Brief of the BCVMC, page 30.

Decline in Consumer Demand

[69] The BCVMC stated that there has been an overall decline in consumer demand for potatoes in the last few years and recalled that during the 2010 Expiry Review, a witness from the Washington State Potato Commission affirmed that demand for potatoes in North America had been on a general downward trend for many years.³³

[70] It noted that the main contributing factors include a shift away from home prepared foods towards more convenient “fast” foods, the perception that carbohydrates are bad for health and cause weight gain, and changing consumer preferences, stemming from changing age and ethnic demographics in the population.

Processing Production is Easily Diverted to the Fresh Market

[71] Although a decrease in demand for fresh potatoes has a direct effect on the fresh market, the BCVMC pointed out that any decrease in demand for processing potatoes also affects fresh potato sales, as excess processing potatoes are easily diverted to the fresh market.

[72] The BCVMC also explained that in the processing market, potato growers are able to enter into contracts with processors, in advance of planting, in which they agree to grow a certain number of acres of potatoes for a set price. This reduces demand uncertainty for the producers and ensures that their selling price is above their cost of production.

[73] The BCVMC noticed that the vast majority of the potato production in the western states is grown for processing purposes, whereas the B.C. industry only grows potatoes for the fresh market. In the 2010 Tribunal’s Order and *Statement of Reasons*, the Tribunal recognized that about 87% of Washington’s potato production was used in the processing sector, as compared to the 13% that was used in the fresh sector.³⁴ The fresh potato market is a frequent target of these surplus processing potatoes.

[74] The BCVMC emphasized that this is a significant issue as the processing market is considerably larger than the fresh market; therefore, only a very small portion of processing potatoes diverted to the fresh potato market could send the fresh prices tumbling while the United States processing market remains stable and profitable.

Decline in Selling Prices

[75] The BCVMC stated that there is an inverse relationship between the supply of the potatoes and the selling prices of the goods. As supply increases, the selling prices decrease and vice versa. During the POR, both excess potato production and decreased demand caused decreases in selling prices.

³³ Exhibit 9 NC Order and *Statement of Reasons* (RR-2009-002), page 20.

³⁴ Exhibit 9 NC Order and *Statement of Reasons* (RR-2009-002), page 3.

[76] The BCVMC explained that any decline in United States selling prices has a direct impact on the B.C. industry as B.C. potato producers are simply “price takers” in their own market. That is, their selling prices are primarily determined by the landed Vancouver selling prices of United States potatoes, originating primarily from the western states of Washington, Idaho, Oregon and California.

[77] The BCVMC noted that the 2014 high production in the United States has driven down prices since September 2014, to well below the United States cost of production and normal values.

[78] Of particular concern to the BCVMC are price reductions in Washington and Idaho because of the close proximity of these states to the metro Vancouver potato market and the fact that these states have historically been the lowest priced potato suppliers in North America.

Proximity of Major Producers

[79] The BCVMC stated that the close proximity of the United States producers to the B.C. potato market is yet another significant factor that must be considered. It stated that United States potato producers have long targeted the B.C. market because of its close proximity and well established channels of distribution in B.C.

[80] The four western states and more specifically, Washington, being the major exporter and B.C.’s closest neighbour, are of particular concern to the BCVMC.

[81] The BCVMC emphasized that the lower mainland of B.C. and the Vancouver market (where all of the distribution centres for the rest of B.C. are located) is an important outlet for subject goods from the western states. It is the fifth largest market on the west coast of North America and the Vancouver potato market is comparable to Seattle and San Francisco. It is also only four hours by truck from the Columbia Basin, making it the second largest target market for producers from that region.

Dependency on Export Markets

[82] The BCVMC is of the opinion that the United States potato industry is heavily dependent upon its export markets.

[83] The BCVMC reinforced that United States exporters have established distribution networks and relationships with B.C. importers that could be readily used as a foundation to increase its sales should the order be rescinded.

[84] Washington is of particular concern and the BCVMC believes that the Washington potato industry continues to aggressively target and pursue the B.C. market, in constant search for new opportunities, given the supply and demand imbalance situation in the United States.

Parties Contending that Continued or Resumed Dumping is Not Likely

[85] No parties provided a submission in support of the position that continued or resumed dumping is not likely should the order be rescinded.

CONSIDERATION AND ANALYSIS

[86] In making a determination under paragraph 76.03(7)(a) of SIMA whether the expiry of an order is likely to result in the continuation or resumption of dumping of the goods, the President may consider factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant in the circumstance.

[87] Guided by the aforementioned regulations and having examined the information on the administrative record, the following is a summary of relevant factors considered in this analysis:

- whether the goods were dumped while the order was in effect;
- overall demand for the goods;
- performance of the exporters in respect of production, supply and selling prices;
- proximity of the United States industry to the B.C. market and channels of distribution;
- other trade measures; and
- likely performance of the exporters in respect of production, supply and selling prices.

[88] A discussion of these factors is presented below.

Dumping of Goods While Order in Effect

[89] The anti-dumping duties collected throughout the POR are presented in the “Case Enforcement” section. The information discloses that during the POR, there was substantial dumping of the subject goods into the B.C. market. As stated previously, margins of dumping result when export prices are less than the normal values of the goods.

[90] Prior to the issuance of the revised normal values on September 18, 2014, a review had not been conducted since 2009. During this period, the CBSA continued to apply the normal values from the 2009 re-investigation without amendment as the information at hand disclosed that the costs remained relatively constant. In fact, the normal values resulting from the 2014 re-investigation did not change significantly from the prior one.³⁵

³⁵ Exhibit 57 Pro Normal Value Review Case Summary 2014.

[91] After September 18, 2014, the conclusion of the most recent re-investigation, the CBSA has assessed a significant amount of anti-dumping duties on all potatoes.³⁶ Evidence on the record also indicates that United States producers were selling below normal values during the rest of the POR. A total amount of \$1,596,214 in anti-dumping duties, as presented in the “Case Enforcement” section, was assessed during the POR and this confirms that there was dumping of the goods while the order is in effect.

[92] As indicated earlier, the BCVMC also provided its own analysis of the margins of dumping throughout the POR for the three most common selling packages, the 5 x 10 lb, 10 x 5 lb poly bags and 20 lb poly bags of russet potatoes. While the analysis does not reflect the total extent of the dumping for all subject goods, it does indicate that, the goods were dumped during the POR by margins ranging from 3% -70%.

[93] In accordance with this information and the actual anti-dumping duties collected after September 25, 2009, the CBSA is of the opinion that United States producers were unable to sell into B.C. at non-dumped prices during the POR.

Overall Demand

[94] Information on the record indicates that the overall demand for potatoes decreased during the POR.³⁷ The main contributing factors include the shift from home prepared foods to the use of convenience or “fast” foods, the perception that carbohydrates are bad for health and cause weight gain, and the changing consumer preference. This issue was acknowledged during the last expiry review and there is no indication that the situation has changed.

Performance of Exporters

Production

[95] The United States has enormous potato production in comparison to that of the B.C. industry.

[96] The United States fall crop is of specific importance, as this is the crop that the B.C. industry competes with.³⁸ Fall acreage is defined as potatoes planted in the spring and typically harvested in the July through October period, with surplus going into storage and marketed throughout the year up until the next harvest.

[97] The CBSA reviewed fall acreage planted and production statistics from the United States, compiled by the USDA, for the United States as a whole and for the four western states of concern to the B.C. industry.³⁹

³⁶ Exhibit 49 NC Imports and Enforcement Data.

³⁷ Exhibit 55 NC Case Brief of the BCVMC, page 18.

³⁸ Exhibit 53 NC Additional supporting documents, B4 - Public Initial Submission of BCVMC with attachments dated December 2, 2014, page 5.

³⁹ Exhibit 55 NC Case Brief of the BCVMC, pages 20-21.

[98] The information discloses that from 2010 to 2014, the United States averaged approximately 1 million acres of potatoes planted and almost 400 million hundredweight produced. Idaho had by far the largest fall crop, while Washington was second. Since the last expiry review in 2010, planted acreage has increased by approximately 5% in the United States, an increase that is entirely driven by the western states, which are in close proximity to the B.C. market. Since 2010, potato acreage has increased by 29% in California, 22% in Washington, 8% in Oregon and 7% in Idaho.⁴⁰

[99] Increased acreage has, in turn, contributed to a substantial increase in fall production of potatoes from the United States. The average annual production increased by approximately 11% between 2010 and 2014.⁴¹

[100] In general terms, production in Washington, Idaho, Oregon and California is over 100 times the size of B.C.'s production and Washington's production alone is dozens of times the size of the B.C.'s production.⁴² This demonstrates that the United States potato industry has the ability to more than supply the entire B.C. potato market.

Supply

[101] Information on the record supports the fact that the United States potato industry is in surplus as it produces more than it sells. The Tribunal recognized during the last expiry review⁴³ that "there is nothing to indicate that the United Potato Growers of America (UPGA) will be any more successful in getting United States growers to meet its production cutback recommendations in the next two years than it has been in the past two years or, in fact, since its inception in 2004". And there is no evidence on the record that it changed during the POR or will change in the future.

[102] Throughout the POR, increased production is partially explained by the increase in acreage. The oversupply problem is exacerbated by the consistently high potato crop yields that have been realized in the western states. As production increased and demand decreased, the gap between supply and demand widened.

[103] The evidence of overplanting together with increasing yields suggests that the pattern of overproduction in the United States will likely continue.

Selling Prices

[104] The large volume of production and the surplus of supply had a direct impact on the selling prices of the goods in the United States during the POR.

⁴⁰ Exhibit 55 NC Case Brief of the BCVMC, page 20.

⁴¹ Exhibit 55 NC Case Brief of the BCVMC, page 21.

⁴² Exhibit 55 NC Case Brief of the BCVMC, page 30.

⁴³ Exhibit 9 NC Order and *Statement of Reasons* (RR-2009-002).

[105] Information on the record reveals that there is a strong inverse relationship between the supply of potatoes and the selling prices of the goods. As supply increases, selling prices decrease and vice versa. Throughout the POR, as production and supply increased, selling prices declined.

[106] During the last expiry review, the Tribunal found this inverse relationship between increased potato supply and decreased prices.⁴⁴ Such strong price elasticity means that an increase in production will have a very negative effect on prices if there is no corresponding increase in demand. Similarly, a decrease in the demand will have an equally negative impact on prices if there is no corresponding decrease in supply. As already noted, production and supply increased during the POR while demand decreased.

[107] Supply and demand conditions in the United States determine prices in the Canadian market. The much smaller B.C. regional market and Canadian market are “price takers” when it comes to potato sales.

[108] As indicated earlier, prior to September 18, 2014, export prices were determined based on ministerial specification, using the preponderant selling prices, referred to as “mostly” prices published by USDA. A comparison of the preponderant selling prices taken from USDA Vegetable and Pulses Yearbook Data with the total costs and expenses associated with growing and harvesting potatoes, determined as a result of the last re-investigation, verified that, in many instances, the goods were sold at a loss to the B.C. market.⁴⁵

Proximity to B.C. Market and Channels of Distribution

[109] The United States is Canada’s closest neighbour and largest trading partner. Its major potato producers are located just south of the B.C. border. The lower mainland of B.C. market is the fourth largest market on the west coast of North America and is lucrative to the Washington, Idaho and Oregon industries. Of particular concern, are those producers located in Washington and Idaho because of the large production volumes and historically low selling prices to the B.C. market.

[110] For United States exporters, selling into the B.C. market is very similar to selling in their own market. In fact, 99.7% of all United States fresh potato exports into B.C. come from the western states, with 84.3% of that coming from Washington alone.⁴⁶ The freight differential is believed to be negligible and the exporters have well established channels of distribution in B.C. These distribution networks could be readily used and enhanced to increase sales into the B.C. market should the order be rescinded.

⁴⁴ Exhibit 29 NC Order and *Statement of Reasons* (RR-2004-006), page 18.

⁴⁵ Exhibit 57 Pro Normal Value Review Case Summary 2014.

⁴⁶ Exhibit 53 NC Additional supporting documents, B4 - Public Initial Submission of BCVMC with attachments dated December 2, 2014, page 13.

Other Trade Measures

[111] The CBSA may also consider anti-dumping and other trade measures by other jurisdictions when determining the likelihood of continued or resumed dumping. During the POR, however, no other trade measures were in effect.

[112] While the CBSA considers that anti-dumping measures with respect of the subject goods in other jurisdictions may be indicative of a likelihood of continued or resumed dumping, it does not necessarily agree that the reverse supports the contention that there is a lack of a propensity to continue or resume dumping. Exporters may not have exported significant volumes into these other jurisdictions or these other jurisdictions may not have had a domestic industry that would have supported a dumping complaint.

Likely Future Performance of Exporters

[113] The CBSA is of the opinion that the current surplus conditions in the United States potato market are likely to continue in the foreseeable future. There is no evidence on the record to suggest that the large production and supply will decrease or that demand will increase. As such, there is no indication that the pricing conditions in the potato market will improve significantly and it is quite likely that United States producers will continue to sell potatoes into the B.C. market at dumped prices, as was the case during the POR.

[114] Further, considering these surplus conditions, the proximity of United States producers to the B.C. market and the well-established channels of distribution of United States exporters in that market, the CBSA believes that current export volumes of the subject goods are likely to be maintained, if not increased, in the foreseeable future.

CONCLUSION

[115] In summary, there was dumping of the subject goods while the order was in effect; United States production is large; there is a surplus of United States supply; overall demand is decreasing; United States selling prices have fallen below production costs; United States producers are located within close proximity of the B.C. market; United States exporters have well established channels of distribution in the B.C. market and United States exporters are likely to continue to sell large volumes of subject goods into the B.C. market at low prices in the foreseeable future.

[116] For the purpose of making a determination in this expiry review investigation, the CBSA conducted its analysis within the scope of the factors found under subsection 37.2(1) of the SIMR. Based on the foregoing consideration of pertinent factors and an analysis of the evidence on the record, on April 29, 2015, pursuant to paragraph 76.03(7)(a) of SIMA, the President determined that the expiry of the order made by the Tribunal on September 10, 2010, in Expiry Review No. RR-2009-002, concerning certain whole potatoes imported from the United States, for use or consumption in the province of B.C., is likely to result in the continuation or resumption of dumping of the goods into Canada.

FUTURE ACTION

[117] On April 30, 2015, the Tribunal commenced its inquiry to determine whether the expiry of the order is likely to result in injury or retardation with respect to the goods from the United States. The Tribunal's Expiry Review schedule indicates that it will make its decision by September 9, 2015.

[118] If the Tribunal determines that the expiry of the order with respect to the goods is likely to result in injury, the order will be continued in respect of those goods, with or without amendment. If this is the case, the CBSA will continue to levy anti-dumping duties on imports of dumped potatoes from the United States, for use or consumption in the province of B.C.

[119] If the Tribunal determines that the expiry of the order with respect to the goods is not likely to result in injury, the order will be rescinded in respect of those goods. Anti-dumping duties will no longer be levied on importations of certain whole potatoes from the United States, for use or consumption in the province of B.C., beginning on the date the order is rescinded.

INFORMATION

[120] For further information, please contact the officer listed below:

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