



OTTAWA, April 6, 2010

4214-28
AD/1387

STATEMENT OF REASONS

Concerning the initiation of an investigation into the dumping of

**GREENHOUSE BELL PEPPERS ORIGINATING IN OR EXPORTED
FROM THE NETHERLANDS**

DECISION

On March 22, 2010, pursuant to subsection 31(1) of the *Special Import Measures Act*, the President of the Canada Border Services Agency caused an investigation to be initiated respecting the alleged injurious dumping of greenhouse bell peppers originating in or exported from the Netherlands.

Cet énoncé des motifs est également disponible en français. Veuillez vous reporter à la section « Information ».

This Statement of Reasons is also available in French. Please refer to the "Information" section.

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SUMMARY

[1] On January 29, 2010, the Canada Border Services Agency (CBSA) received a complaint from Ontario Greenhouse Vegetable Growers (OGVG) on behalf of its members. The complaint alleged that greenhouse bell peppers originating in or exported from the Netherlands were being dumped and that the dumping of these goods was causing injury to the Canadian industry.

[2] The complaint contained evidence to support the allegations that the imports of greenhouse bell peppers from the Netherlands into Canada have been dumped, and that the dumping of greenhouse bell peppers has caused injury and is threatening to cause injury to the Canadian industry. On February 19, 2010, pursuant to subsection 32(1) of the *Special Import Measures Act*¹ (SIMA), the CBSA informed the complainant that the complaint was properly documented. The CBSA also notified the Government of the Netherlands that it received a properly documented complaint.

[3] On March 22, 2010, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated an investigation respecting the dumping of greenhouse bell peppers originating in or exported from the Netherlands. The President was of the opinion that there is evidence that greenhouse bell peppers originating in or exported from the Netherlands had been dumped, and evidence that discloses a reasonable indication that the dumping has caused injury or is threatening to cause injury.

INTERESTED PARTIES

Complainant

[4] The complainant, OGVG, is an association which represents the major proportion of greenhouse bell pepper producers in Canada. The complainant's address is:

Ontario Greenhouse Vegetable Growers
245 Talbot Street West, Suite 103
Leamington, Ontario
N8H 1N8

Other Canadian Producers

[5] The CBSA identified five other potential domestic producer associations of greenhouse bell peppers in Canada: the British Columbia Greenhouse Growers' Association, the Alberta Greenhouse Growers Association, the Red Hat Cooperative in Alberta, the Saskatchewan Greenhouse Growers Association and the Greenhouse Growers Association of Nova Scotia.

¹ Special Import Measures Act, R.S.C. 1985, c. S-15

Exporters

[6] The CBSA has identified 44 potential exporters of the subject goods from the CBSA's Customs Commercial System (CCS) import data and the complaint.

Importers

[7] The CBSA has identified 23 potential importers of the subject goods from CCS import data and the complaint.

PRODUCT INFORMATION

Definition

[8] For the purpose of this investigation, the subject goods are defined as:

“Greenhouse bell peppers originating in or exported from the Netherlands.”

Additional Product Information²

[9] Greenhouse bell peppers are greenhouse grown bell peppers of the family *solanaceae*, species *Capsicum Annum L.* A greenhouse is a controllable dynamic system, managed for intensive production of high quality, fresh market produce. Greenhouse production allows for crop production under very diverse conditions. By controlling a number of variables such as air temperature, root zone temperature, vapour pressure deficit, fertilizer feed, carbon dioxide enrichment, selection of growing media, and plant maintenance, the greenhouse growers aim to obtain maximum performance from the crop over the production season. High fruit quality and yield of coloured bell peppers are difficult to obtain in open field environments. Therefore, they are usually produced in protected environments such as high passively ventilated greenhouses.

[10] When young, the majority of bell peppers are a rich, bright green, but there are also yellow, orange, red, purple, brown, white and lilac bell peppers, among others. Green peppers are these same products at an unripe stage of fruit development.

[11] Bell peppers vary from 3½ to 5½ inches long and from 2½ to 4 inches wide.

Production Process³

[12] Greenhouse bell pepper production is based on a full year cycle. The transplants go into the production greenhouse in approximately mid to late December at 6 weeks of age, the first pick of fruit begins in about late March / early April and continues to the following December.

²OGVG Complaint (NC), Exhibit 002, Page 1

³OGVG Complaint (NC), Exhibit 002, Appendix 1

[13] The greenhouses are empty for only 2 or 3 weeks during the year to allow for the removal of the old crop, the thorough cleaning of the greenhouse and to set up the greenhouse for the new crop. One crop a year is grown, that is, production for the entire year is based on the same set of plants. Normally, it takes approximately 20 weeks (4 months), from seeding the crop to first pick.

Classification of Imports

[14] The subject goods are normally imported under the following Harmonized System (HS) classification number: 0709.60.90.10.

[15] The subject goods are imported free of regular duties.

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

LIKE GOODS

[17] Subsection 2(1) of SIMA defines “like goods”, in relation to any other goods, as goods that are identical in all respects to the other goods, or in the absence of identical goods, goods for which the uses and other characteristics closely resemble those of the other goods.

[18] Greenhouse bell peppers produced by the complainant have the same physical characteristics and end uses as the subject goods imported from the Netherlands. The goods produced in Canada and in the Netherlands are fully interchangeable. Subject goods imported from the Netherlands compete directly with like goods produced by the complainant. Therefore, the CBSA has concluded that the greenhouse bell peppers produced by the Canadian industry constitute like goods to the subject goods.

[19] The various colours and sizes of greenhouse bell peppers are produced using the same process, have similar physical characteristics, and have the same end use. After considering these factors and all other relevant information, the CBSA is of the opinion that the subject goods constitute only one class of goods.

CANADIAN INDUSTRY

[20] According to the complainant, there are four producer associations in Canada that include greenhouse bell pepper growers: the OGVG, the British Columbia Greenhouse Growers' Association, the Alberta Greenhouse Growers Association and the Red Hat Cooperative in Alberta⁴. The CBSA has identified another two greenhouse producer

⁴ OGVG Complaint (NC), Exhibit 002, Page 5

associations that represent pepper growers, and would, in all likelihood, include bell pepper producers. They are the Saskatchewan Greenhouse Growers Association and the Greenhouse Growers Association of Nova Scotia.

[21] In terms of volume, OGVG producers account for approximately 58% of all peppers grown in Canada, while the British Columbia Greenhouse Growers' Association represents approximately 39%. These two associations, therefore, account for the vast majority of domestic production. Alberta growers account for approximately 2% of domestic pepper production, while all other producers represent less than 1% of total production. The CBSA considers these proportions to be representative of the domestic greenhouse bell pepper market.

OGVG⁵

[22] The OGVG was formed in 1967 with the mandate to provide market access for producers and ensure opportunity for economic success. It represents greenhouse growers spanning from Windsor to Niagara and as far north as Ottawa.

[23] Ontario leads all of North America in greenhouse vegetable production, with more than 1820 acres devoted to tomatoes, cucumbers and peppers. All Ontario greenhouse vegetable marketers/shippers and growers are required to go through a third party certification process to ensure all the required steps are taken to reduce food safety related risks.

[24] The OGVG represents a significant majority of production in Canada of greenhouse bell peppers. It is a marketing board formed by the *Ontario Farm Products Marketing Act*, R.S.O. 1990, Chapter F-9, as amended. It licenses both growers and marketers of products grown in Ontario. It currently represents 236 greenhouse growers in Canada. Of these, 41 produced greenhouse bell peppers in 2009. There are no other commercial greenhouse growers of bell peppers in Ontario, due to the operation of the marketing board legislation.

British Columbia Greenhouse Growers' Association

[25] The British Columbia Greenhouse Growers' Association represents greenhouse vegetable farmers in British Columbia (B.C.). Their growers produce 96% of all of B.C.'s greenhouse vegetable production. Of this production, 43% of all produce grown is bell peppers.

Other Canadian Producers

[26] As indicated earlier, the following producer associations represent a very small proportion of the overall market for greenhouse bell peppers in Canada: the Alberta

⁵ OGVG Complaint (NC), Exhibit 002, Page 4

STANDING

[27] Pursuant to subsection 31(2) of SIMA, the following conditions must be met in order for an investigation to be initiated:

- (a) The complaint is supported by domestic producers whose production represents more than 50% of the total production of like goods by those domestic producers who express either support for or opposition to the complaint; and
- (b) The production of the domestic producers who support the complaint represents 25% or more of the total production of like goods by the domestic industry.

[28] The OGVG has consulted its members and has received approval to file a complaint regarding the alleged dumping of greenhouse bell peppers originating in or exported from the Netherlands.

[29] The CBSA contacted the British Columbia Greenhouse Growers' Association for the purpose of determining whether they support the OGVG's filing of the dumping complaint. The British Columbia Greenhouse Growers' Association has canvassed their members, and has indicated its support for the OGVG's complaint.⁶

[30] Based on an analysis of information provided in the complaint and additional information received from the British Columbia Greenhouse Growers' Association, the CBSA has determined that the complaint is supported by 100% of the domestic producers who expressed an opinion regarding the complaint. In addition, the CBSA is satisfied that the complaint is supported by domestic producers whose production represents more than 50% of the total production of like goods. The CBSA is satisfied that the standing requirements of subsection 31(2) of SIMA have been met.

CANADIAN MARKET

[31] The Canadian market for greenhouse bell peppers is supplied by domestic production as well as imports. As noted earlier, domestic production is mostly supplied by greenhouse growers in Ontario and B.C.

[32] Imports of greenhouse bell peppers mainly originate from Mexico, the Netherlands, Spain and the United States. From 2006 to 2008, Mexico was the largest exporter of greenhouse peppers to Canada, followed by the Netherlands.

⁶ Letter of support provided by the British Columbia Greenhouse Growers' Association, March 10, 2010.

[33] The following table provides statistics with regard to the total imports of greenhouse peppers from all countries from 2006 to 2008 and provides details regarding the top four countries of origin. The data was derived from information provided by Statistics Canada.

Canada's Total Imports from All Countries						
Peppers of the Genus Capsicum or Pimenta, Greenhouse, Fresh or Chilled						
HS CODE:	VALUE (\$ Can)			QUANTITY (KGM)		
0709.609010	2006	2007	2008	2006	2007	2008
TOTAL:	44,111,059	62,022,244	66,153,977	14,938,535	18,674,780	22,178,968
Mexico	17,265,548	37,520,541	43,645,060	6,583,890	11,083,387	15,122,094
Netherlands	11,957,454	11,594,843	9,616,614	3,540,556	3,643,314	3,065,086
Spain	7,130,590	3,640,447	5,851,481	2,424,950	976,189	1,632,207
United States	4,185,679	6,815,281	2,996,552	1,357,120	2,298,921	1,196,286

[34] The above table tends to understate the impact of Dutch subject peppers on the Canadian market, due to issues of seasonality. Mexican imports, while significant, are countercyclical to Canadian production. Their imports tend to appear in the Canadian market from December through March of each year, a time when both Canadian and Dutch peppers have minimal participation in the Canadian market. On the other hand, Dutch subject goods tend to be imported during a season that runs from the beginning of April through mid-December, though smaller volumes may be exported in non-peak months. The Netherlands has a selling season for greenhouse bell peppers that is similar to the Canadian marketing season.

[35] Canadian greenhouse pepper growers normally sell their products (i.e., like goods) domestically through licensed marketers. The licensed marketers may then sell peppers wherever they wish, and much of the domestic production is ultimately destined for the United States. For those sold for domestic consumption, they are sold to retailers which are primarily larger grocery stores, as well as to wholesalers who supply the food service industry. Importers of greenhouse peppers also sell the subject goods to the same group of retailers and wholesalers.

[36] In estimating the size of the Canadian market, the CBSA analyzed the Canadian production provided by the complainant, its own CCS import data, statistics regarding Canadian exports of greenhouse peppers to the United States from the United States Department of Agriculture (USDA), as well as data published by Statistics Canada. While this data includes a small amount of greenhouse peppers that are not bell peppers, the CBSA believes that these statistics nevertheless paint a reasonably accurate picture of the greenhouse bell peppers market. The CBSA's analysis reveals that greenhouse bell peppers represent the vast majority of all peppers produced in Canada, as well as those imported into Canada.

[37] Based on the above, the CBSA finds that the estimate of the apparent Canadian market provided by the OGVG is reasonable.

EVIDENCE OF DUMPING

[38] The complainant alleges that greenhouse bell peppers from the Netherlands are being injuriously dumped into Canada. Dumping occurs when the normal value of the goods exceeds their export price to importers in Canada.

[39] The normal value of goods sold to importers in Canada is generally based on the domestic selling prices of like goods in the country of export pursuant to section 15 of SIMA, or on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits, pursuant to paragraph 19(b) of SIMA.

[40] The export price of goods sold to importers in Canada is generally based on the lesser of the adjusted exporter's sale price for the goods or the adjusted importer's purchase price, pursuant to section 24 of SIMA. These prices are adjusted where necessary by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods, as provided for in subparagraphs 24(a)(i) to 24(a)(iii) of SIMA.

[41] Estimates of normal value and export price are discussed below.

Estimated Normal Value

[42] The complainant provided estimates of normal values on the basis of paragraph 19(b) of the SIMA. That is, the complainant estimated normal values based on the estimated cost of production of the goods, plus an amount for general, selling and administrative expenses, and an amount for profit.

[43] The complainant used the 2009 production cost data of a specific Ontario greenhouse grower as a benchmark to estimate the cost for greenhouse bell peppers produced in the Netherlands. As an industrialized country, it is believed that the cost structure in the Netherlands would be very similar to that of Ontario greenhouse bell pepper growers. According to the complainant, the grower chosen has a cost structure that provides a conservative and reasonable estimate of the cost of producing greenhouse bell peppers in Canada.

[44] Based on the assumption that the cost of production of greenhouse bell peppers in the Netherlands would be very similar to that of Ontario greenhouse bell pepper growers, the CBSA finds the complainant's estimates of normal values to be reasonable.

[45] The CBSA estimated normal values on the basis of the costing data found in the complaint provided by the OGVG. In order to provide for a conservative estimate of the normal value and the resulting margins of dumping, the CBSA did not include an amount for profit to the estimated costs of production and sale.

Estimated Export Price

[46] The export price of imported goods is generally determined in accordance with section 24 of SIMA as being an amount equal to the lesser of the exporter's selling price for the goods and the price at which the importer has purchased or agreed to purchase the goods, adjusted by deducting all costs, charges and expenses resulting from the exportation of the goods.

[47] The complainant estimated export prices based on a series of six invoices to customers in Canada for subject goods from the Netherlands. From these prices, an amount was deducted for a margin to be earned by the Canadian importer, as well as an estimate of air freight expenses⁷, as the invoices indicate that the prices are on a delivered basis.

[48] The CBSA reviewed its CCS import data to confirm the complainant's estimates of export prices for the subject goods. The CBSA's estimated export prices confirm the complainant's estimates of export prices for the subject goods. As such, the CBSA considers the complainant's estimates of export prices to be reasonable.

[49] For purposes of its analysis, the CBSA used its CCS import data to estimate export prices. The CBSA's review included all importations under HS classification number 0709.60.90.10 during the period November 2008 to October 2009. Of the examined import entries, where a proper product description could be found, the CBSA determined that almost all imports under this HS classification number consisted of bell peppers.

Estimated Margin of Dumping

[50] The CBSA estimated the margin of dumping by comparing its estimated total normal value with the estimated total export price obtained from CCS import data for all importations during the period November 2008 to October 2009.

[51] Based on this analysis, it is estimated that the subject goods from the Netherlands were dumped. The overall weighted average margin of dumping is estimated to be 124%, expressed as a percentage of export price.

NEGLIGIBILITY AND INSIGNIFICANCE

[52] Under section 35 of SIMA, if, at any time before the President makes a preliminary determination, the President is satisfied that the margin of dumping of the goods of a country is insignificant or the actual and potential volume of dumped goods of

⁷ Due to the perishable nature of the subject goods, they are normally shipped by air from the Netherlands to Canada.

a country is negligible, the President must terminate the investigation with respect to that country. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% of the export price is defined as insignificant and a volume of dumped goods is considered negligible if it accounts for less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the dumped goods. The CBSA performed “negligibility” and “insignificance” tests based on the available data, as shown below. While these figures do include greenhouse peppers that are not bell peppers, the CBSA is satisfied that the inclusion of goods that are not subject goods does not have a material impact on negligibility and insignificance tests. The estimates made at the time of initiation indicate that the volume of allegedly dumped goods from the Netherlands is not considered negligible and that the estimated margin of dumping is not regarded as insignificant.

Total Imports of Greenhouse Peppers			
November 1, 2008 – October 31, 2009 ⁸			
Country	Imports (kgs)	Percent of Total Imports	Estimated Weighted Average Margin of Dumping (% Export Price)
Netherlands	4,019,946	8.6%	124%
Other Countries	42,499,878	91.4 %	N/A
Total Imports	46,519,824	100.0 %	

EVIDENCE OF INJURY

[53] The complainant has alleged that the subject goods from the Netherlands have been dumped into Canada and that the dumping has caused or is threatening to cause injury to the Canadian industry.

[54] SIMA refers to injury caused to the production of like goods in Canada. The CBSA has accepted that greenhouse bell peppers produced in Canada by the complainant are like goods to those imported from the Netherlands. The CBSA’s injury analysis focuses on the impact of the allegedly dumped goods on the complainant’s production of like goods in Canada.

[55] The complainant alleges that the dumping of these goods is harming Canadian production by causing lost sales, price erosion, price suppression, reduction in gross margins and reduced profitability.

Lost Sales

[56] Since peppers are a perishable commodity, they must be brought to market fairly quickly. According to the OGVG, prices fluctuate to the level that is necessary to clear the market. The complainant has alleged that the Canadian market price is continually being disrupted due to Dutch peppers being offered at extremely low dumped prices.

⁸ Source: CCS import data

[57] The complainant has alleged that with the very high levels of dumping brought about by delivered pricing, in particular, Dutch peppers could not be sold competitively in the Canadian market without dumping. Accordingly, the OGVG states that every sale of Dutch peppers at dumped prices has caused a lost sale for Canadian producers.

[58] The complainant also provided additional details involving the nature of lost sales it has experienced. Furthermore, in light of the price-sensitive nature of the greenhouse bell pepper market and the high freight costs to ship peppers from the Netherlands to Canada, the CBSA has concluded that there is indeed evidence that Dutch producers would not be able to generate sales to Canada at undumped prices. As a result, the CBSA believes there is reasonable evidence that sales that would otherwise have been made by Canadian producers were lost due to the dumping of greenhouse bell peppers from the Netherlands.

Price Erosion

[59] The complainant provided evidence that the annual average price of Dutch peppers is consistently lower than Canadian prices and has been in a continuous decline. The complainant explained that continually decreasing prices for Dutch peppers are forcing Canadian producers to also lower their prices in order to remain competitive.

[60] For instance, where one supermarket chain is selling dumped Dutch peppers, competing supermarkets insist that Canadian product be priced to allow them to compete at the retail level. A single shipment from the Netherlands may thus dictate pricing for all OGVG product being cleared during the following few weeks. The complainant has provided a number of invoices with evidence of very low dumped prices of Dutch peppers that would set a benchmark for pricing at the time of their arrival⁹.

[61] The complainant further demonstrated the significance of the price erosion caused by Dutch peppers by comparing their delivered prices to average Canadian costs of production plus packaging. Based on the evidence provided, it is apparent that Dutch peppers are being sold, landed in Canada, at less than the average cost of production of OGVG members.

[62] In order to provide some perspective on the scope of injury caused by price erosion, the CBSA performed an analysis which compares the difference in revenue earned by Canadian producers had the 2006 Ontario growers average price per kilogram been maintained versus the deflated prices.

[63] Based on this analysis, the CBSA found that the scope of injury caused by price erosion has increased every year. This is due to the fact that the Canadian market for greenhouse bell peppers is undergoing a period of growth with a trend of continually

⁹ OGVG Complaint (NC), Exhibit 002, Appendix 5.

decreasing prices. As a result, it can be inferred that the financial performance of the OGVG and Canadian producers as a whole would have been significantly better had there been no decrease in selling prices.

[64] On the basis of its review of the information and analysis provided by the OGVG, the CBSA believes that there is evidence that the dumping of Dutch greenhouse bell peppers has been eroding prices in the Canadian market and that this has resulted in injury to the Canadian industry.

Price Suppression / Reduction in Gross Margin / Reduced Profitability

[65] Evidence provided by the complainant illustrates the evolution of average prices for Canadian and Dutch peppers. Based on this information, the CBSA has determined that the average price for Canadian product has eroded by 10% between 2007 and 2009. The complainant contends that this is due to the continuously declining Dutch prices, which declined by almost 14% during the same period. During this period, the unit costs of production and sale also declined. However, as the reduction in unit revenue far surpassed the reduction in unit cost, the result was a reduction in gross margin for the Canadian industry.

[66] The OGVG provided evidence which demonstrates that Canadian producers have been forced to sell greenhouse bell peppers below their cost of production since 2007. This translates into a financial loss for the producers on every kilogram of product sold. It is also important to note that the amount lost per kilogram has increased in every year since 2007.

[67] Based on the CBSA's analysis, it can be deduced that Canadian producers would be in a much more favourable financial position had they not been pressured to reduce their prices below the cost of production and consequently incur losses on domestic sales of greenhouse bell peppers. Additionally, the evidence suggests that the OGVG might have been able to increase their selling prices, but for the effect of the dumped product in the marketplace. This analysis supports the OGVG's claim that they have suffered injury by way of price suppression, reduced gross margins and profitability due to the dumping of greenhouse bell peppers from the Netherlands.

Threat of Injury

[68] The OGVG predicts that the injury factors above will continue to have an impact on the domestic market for greenhouse bell peppers if the alleged dumping persists. At the time the complaint was filed, the OGVG argued that this situation would be exacerbated by a recent decision by the United States Department of Agriculture to suspend the import of Dutch peppers into the United States. The OGVG believed that with the American market effectively blocked for the foreseeable future, Dutch peppers could seek other export outlets. They believed that Canada could be a probable target for

the diversion of these goods at dumped prices as it is already an established market for Dutch peppers¹⁰.

[69] Additionally, the complainant points to the freely available capacity of Dutch producers, as well as their ability to quickly infiltrate a new market as being further factors threatening to cause injury. The complainant has stated that between 2008 and 2009, Dutch exports to the United States grew by some 132%. They feel that the ability of Dutch producers to move so much additional production into the American market in such a short time span speaks to how quickly Dutch pepper growers could potentially infiltrate the Canadian market¹¹.

[70] The CBSA has since found that the suspension of Dutch pepper imports into the United States has been lifted. As of January 15, 2010, Dutch peppers have been allowed into the United States, providing they are accompanied by a phytosanitary certificate and an additional declaration stating the consignment originates from a certified place of production that is free of false codling moth.

[71] Although the suspension of Dutch pepper imports into the United States has been lifted, the CBSA understands that to the extent that Dutch producers are unable to meet the new requirements put forth by the United States, they will remain effectively blocked from the United States market for the time being. This is mostly due to the requirements for becoming a certified “pest-free” facility, which can necessitate substantial retrofitting, which is costly and time-consuming to producers.

[72] The CBSA recognizes that many Dutch producers may, in time, undergo the appropriate retrofitting to enable them to meet the new requirements and begin exporting to the United States once again. However, the CBSA believes that, in the meantime, there is a risk that peppers that would otherwise be exported to the United States may be exported to Canada at dumped prices.

[73] The CBSA estimates that given current market and import trends, coupled with the existing barriers on Dutch pepper imports into the United States, the threat of injury argument advanced by the complainant is reasonable.

CONCLUSION

[74] Based on the information provided in the complaint and other available information, including CCS import data, there is a reasonable indication that greenhouse bell peppers originating in or exported from the Netherlands have been dumped and there is a reasonable indication that such dumping has caused or is threatening to cause injury to the Canadian industry. As such, a dumping investigation was initiated on March 22, 2010, pursuant to subsection 31(1) of SIMA.

¹⁰ OGVG Complaint (NC), Exhibit 002, Page 14.

¹¹ OGVG Complaint (NC), Exhibit 002, Page 14.

SCOPE OF THE INVESTIGATION

[75] The CBSA will conduct an investigation to determine whether the subject goods have been dumped.

[76] The CBSA has requested information relating to the subject goods imported into Canada originating in or exported from the Netherlands during the period of January 1, 2009 to December 31, 2009, the selected period of investigation. The information requested from identified possible exporters and importers will be used to estimate normal values and export prices and ultimately to determine whether the subject goods have been dumped.

[77] All parties have been clearly advised of the CBSA's information requirements and the time frames for providing their responses.

FUTURE ACTION

[78] The Tribunal will conduct a preliminary inquiry to determine whether the evidence discloses a reasonable indication that the alleged dumping of the goods has caused or is threatening to cause injury to the Canadian industry. The Tribunal must make its decision within 60 days after the date of the initiation of the investigation. If the Tribunal concludes that the evidence does not disclose a reasonable indication of injury to the Canadian industry, the investigation will be terminated.

[79] If the Tribunal finds that the evidence discloses a reasonable indication of injury to the Canadian industry and the ongoing CBSA investigation reveals that the goods have been dumped, the CBSA will make a preliminary determination of dumping within 90 days after the date of the initiation of the investigation, by June 21, 2010. Where circumstances warrant, this period may be extended to 135 days from the date of the initiation of the investigation.

[80] If, in respect of the named country, the CBSA's investigation reveals that imports of the subject goods have not been dumped, that the margin of dumping is insignificant or that the actual and potential volume of dumped goods is negligible, the investigation will be terminated.

[81] Imports of subject goods released by the CBSA on and after the date of a preliminary determination of dumping may be subject to provisional duty in an amount not greater than the estimated margin of dumping on the imported goods.

[82] Should the CBSA make a preliminary determination of dumping, the investigation will be continued for the purpose of making a final decision within 90 days after the date of the preliminary determination. If a preliminary determination of dumping is made, the

Tribunal will initiate an inquiry to determine whether the dumping of the goods has caused injury or retardation or is threatening to cause injury.

[83] If a final determination of dumping is made, the Tribunal will continue its inquiry and hold public hearings into the question of material injury to the Canadian industry. The Tribunal is required to make a finding with respect to the goods to which the final determination of dumping applies, not later than 120 days after the CBSA's preliminary determination.

[84] In the event of an injury finding by the Tribunal, imports of dumped subject goods released from the CBSA after that date will be subject to anti-dumping duty equal to the applicable margin of dumping on the imported goods.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[85] When the Tribunal conducts an inquiry concerning injury to the Canadian industry, it may consider if dumped goods that were imported close to or after the initiation of an investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry.

[86] Should the Tribunal issue such a finding, anti-dumping duties may be imposed retroactively on subject goods imported into Canada and released by the CBSA during the period of 90 days preceding the date of the CBSA making a preliminary determination of dumping.

UNDERTAKINGS

[87] After a preliminary determination of dumping by the CBSA, an exporter may submit a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated. An acceptable undertaking must account for all or substantially all of the exports to Canada of the dumped goods.

[88] Interested parties may provide comments regarding the acceptability of undertakings within nine days of the receipt of an undertaking by the CBSA. The CBSA will maintain a list of parties who wish to be notified should an undertaking proposal be received. Those who are interested in being notified should provide their name, telephone and fax numbers, mailing address and e-mail address, if available, to one of the officers identified in the "Information" section of this document.

[89] If an undertaking were to be accepted, the investigation and the collection of provisional duty would be suspended. Notwithstanding the acceptance of an undertaking, an exporter may request that the CBSA's investigation be completed and that the Tribunal complete its injury inquiry.

PUBLICATION

[90] Notice of the initiation of this investigation is being published in the Canada Gazette pursuant to subparagraph 34(1)(a)(ii) of SIMA.

INFORMATION

[91] Interested parties are invited to file written submissions presenting facts, arguments and evidence that they feel are relevant to the alleged dumping. Written submissions should be forwarded to the attention of one of the officers identified below.

[92] To be given consideration in this phase of the investigation, all information should be received by the CBSA by April 28, 2010.

[93] Any information submitted to the CBSA by interested parties concerning this investigation is considered to be public information unless clearly marked “confidential”. Where the submission made by an interested party is designated confidential, a non-confidential version of the submission must be provided at the same time. This non-confidential version will be made available to other interested parties upon request.

[94] Confidential information submitted to the President will be disclosed on written request to independent counsel for parties to these proceedings, subject to conditions to protect the confidentiality of the information. Confidential information may also be released to the Tribunal, any court in Canada or a dispute settlement panel under the WTO Agreement or the North American Free Trade Agreement. Additional information respecting the policy on the disclosure of information under SIMA may be obtained by contacting one of the officers identified below or by visiting the CBSA’s Web site.

[95] The investigation schedules and a complete listing of all exhibits and information are available at www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html. The exhibits listing will be updated as new exhibits and information are made available.

[96] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA’s Web site at the address below. For further information, please contact the officers identified as follows:

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Daniel Giasson
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