

SOUR (TART) CHERRIES ORIGINATING IN OR EXPORTED FROM  
THE UNITED STATES OF AMERICA

Finding of the Canadian International Trade Tribunal  
in Inquiry No. CIT-2-88  
under Section 42 of the Special Import Measures Act

Place of Hearing: Ottawa, Ontario

Public Hearing: January 3 and 4, 1989  
January 30, 1989

Participants: Peter Clark  
Chris Hines  
for Ontario Tender Fruit Producers'  
Marketing Board  
Vineland Station, Ontario  
L0R 2E0  
  
and for British Columbia Fruit Growers'  
Association  
B.C. Tree Fruits Limited  
Kelowna, British Columbia  
V1Y 1J6

**(Complainants)**

Paul R. Richardson  
Purchasing Manager  
E.D. Smith & Sons, Limited  
Winona, Ontario  
L0R 2L0

**(Importer)**

January 30, 1989

CANADIAN INTERNATIONAL TRADE TRIBUNAL\*

Panel:

Presiding Member: Howard Perrigo  
Member: Robert J. Bertrand, Q.C.  
Member: Raynald Guay

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\*The Canadian Import Tribunal ceased to exist on December 31, 1988, and was replaced by the Canadian International Trade Tribunal.

Monday, the 30th day of January 1989

PANEL:                   HOWARD PERRIGO, PRESIDING MEMBER  
                              ROBERT J. BERTRAND, Q.C., MEMBER  
                              RAYNALD GUAY, MEMBER

INQUIRY UNDER SECTION 42 OF  
THE SPECIAL IMPORT MEASURES ACT RESPECTING:

SOUR (TART) CHERRIES ORIGINATING IN OR EXPORTED FROM  
THE UNITED STATES OF AMERICA

FINDING

The Canadian Import Tribunal has conducted an inquiry under the provisions of subsection 42(1) of the Special Import Measures Act consequent upon the issue by the Deputy Minister of National Revenue for Customs and Excise of a preliminary determination of dumping dated September 30, 1988, and of a final determination of dumping dated December 16, 1988, respecting sour (tart) cherries originating in or exported from the United States of America.

Pursuant to subsection 43(1) of the Special Import Measures Act and paragraph 57(2)(a) of the Canadian International Trade Tribunal Act, the Tribunal hereby finds that the dumping of the aforementioned goods has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

Presiding Member:       Howard Perrigo  
  Howard Perrigo

Member:                   Robert J. Bertrand, Q.C.  
  Robert J. Bertrand, Q.C.

Member:                   Raynald Guay  
  Raynald Guay

Witnessed:               Robert J. Martin  
  Robert J. Martin  
  Secretary

The Statement of Reasons will be issued within 15 days.

Statement of Reasons to accompany the finding issued on January 30, 1989.

Ottawa, Ontario, February 10, 1989

Robert J. Martin,  
Secretary

INQUIRY UNDER SECTION 42 OF  
THE SPECIAL IMPORT MEASURES ACT RESPECTING:

SOUR (TART) CHERRIES ORIGINATING IN OR EXPORTED FROM  
THE UNITED STATES OF AMERICA

PANEL:                   HOWARD PERRIGO, PRESIDING MEMBER  
                              ROBERT J. BERTRAND, Q.C., MEMBER  
                              RAYNALD GUAY, MEMBER

STATEMENT OF REASONS

Howard Perrigo, Presiding Member

The Canadian Import Tribunal, pursuant to subsection 42(1) of the Special Import Measures Act, has conducted an inquiry subsequent to the preliminary determination of dumping made by the Deputy Minister of National Revenue for Customs and Excise respecting the importation into Canada of sour (tart) cherries originating in or exported from the United States of America.

The Secretary of the Canadian Import Tribunal was given notice of the preliminary determination in a letter from the Director General, Assessment Programs Division, National Revenue, Customs and Excise, dated September 30, 1988, and received on the same day. The notice was published in Part I of the Canada Gazette of October 8, 1988.

The Deputy Minister's investigation was initiated as a result of a complaint filed by the Ontario Tender Fruit Producers' Marketing Board of Vineland Station, Ontario, supported by the B.C. Fruit Growers' Association (B.C. Tree Fruits Limited) of Kelowna, British Columbia. The investigation period covered imports of the subject goods from July 1, 1987, to June 30, 1988.

Upon receipt of the Notice of Preliminary Determination of Dumping, the Secretary sent a Notice of Commencement of Inquiry to the Deputy Minister, the Government of the United States of America, the Canadian growers and processors, the importers and exporters of the subject goods, and others on the Canadian Import Tribunal's mailing list. This notice was published in Part I of the Canada Gazette of October 15, 1988.

On December 16, 1988, the Canadian Import Tribunal received the Notice of Final Determination of Dumping dated the same day. The notice was made available to participants at the commencement of the hearing and was published in Part I of the Canada Gazette of December 24, 1988.

On December 31, 1988, sections 16 to 37 and 41 to 62 of the Canadian International Trade Tribunal Act (Bill C-110) came into effect. As a result, the Canadian International Trade Tribunal (the Tribunal) was established and the Canadian Import Tribunal ceased to exist on that day. Transitional provisions of the Act provide, however, that members of the Canadian Import Tribunal continue to have jurisdiction with respect to any matter pending before it. Such powers are contained in section 57 of the Canadian International Trade Tribunal Act. It is, therefore, in accordance with such transitional provisions that this finding is made.

Public hearings were held by the Tribunal in Ottawa, Ontario, on January 3, 4 and 30, 1989.

The short supplementary hearing of January 30, 1989, was held to give the parties an opportunity to examine, and respond to, additional information with respect to the U.S. industry which was not in the record of the hearings held on January 3 and 4.

## THE PARTICIPANTS

The complainants, the Ontario Tender Fruit Producers' Marketing Board, representing the Ontario growers and processors, and the British Columbia Fruit Growers' Association (B.C. Tree Fruits Limited), acting on behalf of the B.C. growers and its processing arm, were represented by counsel at the hearing, submitted evidence and argument, and called witnesses who testified in support of the claim of material injury due to dumping. The complaint was supported by both growers and processors and, in fact, one of Canada's largest processors testified before the Tribunal.

A representative of E.D. Smith & Sons, Limited (E.D. Smith), a larger grower, processor and importer, appeared independently before the Tribunal and gave evidence and argument regarding the situation of the Canadian sour cherry industry.

## THE PRODUCT

The product under consideration in this inquiry is described in the Deputy Minister's preliminary determination of dumping as sour (tart) cherries originating in or exported from the United States of America.

The sour cherry is a small, round or heart-shaped fruit, bright red in colour, which encloses a smooth pit. The unique characteristic of this fruit is its sour or tart taste which restricts its use as a fresh fruit suitable for eating, and generally requires that it be processed to make it suitable as a food item.

For the purpose of this inquiry, sour cherries include fresh chilled or frozen product prepared from mature cherries of the red sour varietal group (e.g. Montmorency, North Star, English Morello and Meteor varieties) packed with or without sugar, dextrose or glucose solids which may be added as a sweetener.

Sour cherries are produced in orchards of various sizes. The orchards are planted with two-year old trees at prescribed spacing levels. The first six years are termed the "non-bearing" years with limited production of fruit. The trees begin to produce fruit in their fourth year, gradually increasing until reaching "full-bearing" production in the seventh year. Peak production is reached from the seventh to fifteenth year at which time fruit production gradually declines so that eventually trees must be replaced.

The major sour cherry growing areas in North America are situated at sites near the Great Lakes both in the province of Ontario as well as the states of Michigan, New York and Wisconsin. Sour cherries are also grown in Pennsylvania, Utah, Oregon and Washington, as well as the Okanagan Valley in the province of British Columbia.

Sour cherries ripen relatively early in the growing season and are ready for harvest in mid-July in Canada, and earlier in certain U.S. locations. At the time of harvest, the fruit is extremely delicate and difficult to handle. To aid in handling and processing, sour cherries are immediately chilled after harvest in tanks of cold water and shipped for processing. The processor cleans the fruit and performs destemming and pitting. Sour cherries are then packed for sale in pails of various sizes as "fresh chilled" product or packed in pails, covered with a sugar cap, frozen and then stored, pending sale to buyers. A very small amount of crop is also offered to consumers on a pick-your-own basis.

Most processors in both Canada and the United States freeze the product after packing. The product is subsequently sold to industry users who further process it into cherry pie filling, jam and other bakery and confectionery goods. The product may also be "individually quick frozen" (IQF) and packaged for specialty uses. In the United States, sour cherries are also canned as well as processed into juice for the domestic market. The predominant practice in both countries is, however, to pack the product in plastic or metal pails, to cover the cherries with a sugar cap and then to freeze the product for eventual sale. The sugar cap acts to prevent oxidation while the product is in freezer storage. The majority of product exported to Canada has been shipped in a frozen state. Frozen sour cherries have a long shelf life as opposed to the raw product or even the "fresh chilled" product. For this reason the majority of product sold in both countries is in the frozen state.

#### THE CANADIAN INDUSTRY

Ontario, with 83.5 per cent of 1987 production, and British Columbia, with 16.5 per cent, are the only producing Canadian provinces of sour cherries.

There are some 375 producer members of the Ontario Tender Fruit Producers' Marketing Board who are served by licensed pitting and freezing processors. Of the 17 processors in Ontario, 5 accounted for 80 per cent of processed production in 1987. In British Columbia, the 50 growers belong to a co-operative with a processing arm, Sun-Rype Products Ltd.

With a few exceptions, most pitting and freezing processors grow a portion of their own requirements. Markets for the frozen product include pie filling processors and the bakery trade. A small portion of production moves through the wholesale trade to the end user, either as a frozen product or a chilled pitted product.

In Ontario, sour cherries are committed through the brokerage trade to end users (i.e. the bakery trade) at pack time, for the following 12 months. The broker acts as an agent to expedite the transaction between buyer and seller, including the arrangement for shipping and the transportation of product to meet the buyer's specifications.

There is only one sour cherry processor in British Columbia, Sun-Rype Products Ltd. located in Kelowna. As a result, all good quality cherries are processed and stored until sales are generated. Growers receive payment based upon the selling price generated by the co-operative.

Annual marketed production of Canadian sour cherries over the 10-year period ending in 1987 has averaged just over 13.6 million pounds; however, there have been significant year-to-year fluctuations.

The peak year for marketed production was 1980, at 20.7 million pounds, followed by 15.7 million pounds in 1987. Unlike the United States, where production levels have been trending upward, average annual Canadian production has declined slightly over the five-year period ending in 1987 when compared with the previous five years. Of significance is the fact that, in 1987, actual crop size in Ontario was 21.6 million pounds while marketed production was 13.1 million pounds. This means that 8.5 million pounds were left unharvested. A similar situation occurred in the United States when 73 million pounds of sour cherries were left unharvested in 1987.

In Ontario, the authority to establish the price of sour cherries is held by the Ontario Tender Fruit Producers' Marketing Board, which reviews pertinent factors in the marketplace and sets a legal minimum binding price for the sour cherry crop. At harvest time, processors purchase sour cherries to meet end-user commitments for the upcoming 12-month period. In most instances, brokers, acting as intermediaries, arrange to contract supply on behalf of end-user clients.

It is important to note that the prices Ontario growers and processors receive for their product are heavily influenced by the prices paid to U.S. growers and processors. For the growers, the price negotiated by the Ontario Tender Fruit Producers' Marketing Board is closely related to the U.S. production and marketing situation. These prices take into consideration the best information on U.S. prices plus an allowance for duty, exchange and transportation. Since processors do not pack on speculation, purchases by processors from growers are determined by their customers' requirements. As there are only a few major end users, these companies negotiate their price based upon the known landed U.S. price into Canada and thus they have the ability to exert significant price pressure on processors.

In British Columbia, the only pitter processor is a grower-owned co-operative. As a result, the return to the grower is the selling price of processed cherries less

direct production costs and general overhead which is approximately 10 per cent of sales. Since the processing arm is grower owned, returns to growers have been historically three to four cents per pound higher than in Ontario. However, prices in British Columbia are also affected by U.S. price levels and thus a serious reduction in the return to growers occurs when prices fall, as they did in 1987.

#### THE COMPOSITION OF THE CANADIAN INDUSTRY

In addressing the issue of who constitutes the Canadian industry, it is important to understand the highly interdependent nature of sour cherry processing and growing. To ignore this level of interdependence and define the industry as comprising only processors would disregard the agricultural and economic realities of this sector. The industry structure is highly integrated with each step having a sole purpose, the production of a single product - sour cherries. This production process is accurately characterized as a single, continuous line of production, starting with only one raw material that yields only one commercially significant end product. Thus, this process is distinguishable from, for example, those in the industrial sector characterized by a high degree of interdependence between parts/components suppliers and manufacturers. Sour cherries are not transformed into different articles throughout the process, but rather remain substantially unchanged from the grower level and on through the primary processing stage, where sour cherries are frozen and put into pails for eventual sale to companies which further process them into pie filling and jam.

In addition to integration, there is a high level of interlocking ownership in the Canadian sour cherry industry with nearly all processors being also growers.

For these reasons, it is clear to the Tribunal that the Canadian industry is comprised of both growers and processors and that any injury incurred by processors in the form of price erosion would be either borne by themselves or shifted to their suppliers, other growers, and thus would directly and negatively impact on the Canadian industry.

#### THE U.S. INDUSTRY

In 1987, the American market for sour cherries was approximately 15 times the size of the Canadian market. The state of Michigan, the largest grower of cherries, represents 75 to 80 per cent of total U.S. production. Other producing states include New York, Utah, Wisconsin, Oregon and Pennsylvania. Harvesting in any given area lasts for about three weeks. In the United States, sour cherries are available from July 1 to mid-August; however, the product in its frozen state is available throughout the year.

The majority of growers, processors and marketers are closely linked through co-operatives and joint ownerships in the United States. The price the grower receives for his/her cherries depends on supply and demand, and is influenced by the effectiveness of the processing arm. In addition, the grower is not paid for his/her crop until it is sold. As a result, growers share in the carrying costs of inventory until the goods are sold.



U.S. production of sour cherries has fluctuated significantly over the past 10 years with the peak year being 1987, when 359 million pounds were produced. The market was unable to absorb a crop of this size and accordingly approximately 73 million pounds of cherries were left abandoned in that year. Despite the level of abandonment, the U.S. processed pack at 277 million pounds was at a 10-year high.

Prices in the United States are determined by the internal forces of supply and demand with the crop size being the principal determinant. Since 1979, the season average price for frozen sour cherries has fluctuated between a high of 81 cents in 1983 and a low of 29 cents in 1987. In 1983, cherry supply, at 168.8 million pounds, was at its lowest level in the period. By contrast, in 1987, the year when cherry prices were at their 10-year low, cherry supply was at its peak.

The size of the U.S. crop and its consequent effect upon prices are very important to the Canadian sour cherry industry. Prices in Canada bear a historical relationship with U.S. prices which was particularly evident in the 1987 crop year when Ontario grower prices fell by 24 cents (Canadian) per pound while Michigan prices fell by more than 20 cents (Canadian) per pound.

#### THE INDUSTRY POSITION

Counsel representing the Ontario Tender Fruit Producers' Marketing Board and the British Columbia Fruit Growers' Association argued that U.S. imports at dumped prices have suppressed and reduced prices for Canadian sour cherries at the processor level, which is in turn passed back to the growers. Counsel also stated that there is a causal link between the dumping as found by the Deputy Minister and the material injury which takes the form of reduced profits and losses for growers, unharvested acreage, abandonment of production, lost sales and price suppression, and the absorption of carrying charges in order to keep business.

Counsel also argued that processors of sour cherries in Canada are price takers and that their prices are determined to a large extent in the United States. They asserted that some growers have abandoned production after the 1987 crop year and that the large quantities of cherries left unharvested in 1987 (8.5 million pounds) occurred because the return offered by the marketplace was inadequate to warrant harvesting the product.

Concerning future injury, they argued that U.S. production at average yields will continue to exceed U.S. consumption of sour cherries by a considerable margin. This, combined with the existence of high inventories will continue to depress prices in Canada.

It was further submitted that, although prices firmed in both the United States and Canada in 1988/89, the problem still has not been resolved because Canadian growers are not recovering their costs.

Counsel indicated, in summary, that the dumping of sour cherries has caused and is causing material injury to the production in Canada of the subject goods. This dumping, if

not disciplined by the imposition of anti-dumping duties, will continue and cause material injury to the production in Canada of the subject goods.

#### THE POSITION OF E.D. SMITH

A representative of E.D. Smith, a major grower, processor and importer, appeared independently and indicated that in his opinion, the 1987 market was an anomaly which has since been corrected. Notwithstanding this fact, it was argued that some action is required to protect the domestic industry since the high tree count in the United States will lead to a surplus.

It was further stated that agricultural production is cyclical and that the shortage of cherries in the United States pushed up prices and caused an increase in the number of cherry tree plantings in the late 1970s and early 1980s.

However, it was also argued that, when an anti-dumping duty is imposed, there remains the possibility of retaliatory action by the U.S. authorities. A further concern was that if a duty is imposed on cherries coming in from the United States, there appears to be no deterrent to prevent a U.S. competitor from making pie filling and shipping it across the border.

The representative of E.D. Smith added that while profits were reduced for the industry, it was over a short period of time, and that despite an uncertain future, the industry is on the road to recovery again. Losses for growers that were incurred in 1987 were made up by stabilization payments, and, in 1987, even if there had been no imports of cherries from the United States, Canadian overproduction would still have resulted in abandonment of sour cherries.

E.D. Smith also requested an exemption for IQF cherries on the grounds that these cherries are not generally available in Canada but are available in the United States.

#### CONSIDERATION OF MATERIAL INJURY

In its examination of the Canadian industry's difficulties during the 1987-88 period, it is evident to the Tribunal that the record 1987 U.S. crop is of central significance in this inquiry. The sheer size of that crop, at 359 million pounds (a 20-year high), was simply too much for the market to absorb. This was demonstrated by the level of product abandonment which saw 73 million pounds (20 per cent of the entire crop) left unharvested. Reflecting this surplus, prices in the United States fell to historic lows, and, inevitably, prices in Canada fell in lock step, because buyers in Canada are knowledgeable, able and willing to source processed sour cherries in the United States when it is financially advantageous; indeed, in that crop year, sour cherries were imported from the United States in record volume. Consequently, growers and processors in Ontario and British Columbia suffered a substantial and serious erosion in the prices of their sour cherries. To illustrate, Ontario grower prices fell by 24 cents per pound, and prices for processed product fell by 40 cents per pound in 1987, as compared with the previous year. Sour cherries were selling at prices below their cost of production, and growers sustained considerable financial losses. This price erosion was of such magnitude that even if

imports had been totally displaced by Canadian sour cherries, at such low prices, growers would still have been unable to recoup their costs. The Tribunal is satisfied that the extremely low price levels of U.S. product were the central cause of the growers' losses. These U.S. prices were dumped prices and the weighted average margin of dumping, at 35 per cent, was significant. The scale of the price erosion suffered by the Canadian growers as a consequence of that dumping was of sufficient size to persuade the Tribunal that, on this ground alone, and without taking into account the additional harm suffered by both growers and processors under other heads of injury, material injury has been caused to Canadian production by the dumping of U.S. sour cherries.

During the course of the inquiry it became evident to the Tribunal that prices in Canada reflect prices available in the United States. The close proximity of the U.S. market means that Canadian processors must sell at a price which will enable their product to compete with the U.S. product in the Canadian market. This situation also applies at the grower level, where the Ontario Tender Fruit Producers' Marketing Board must negotiate a price taking into account the market dynamics existing in the United States. These facts underscore the importance of events in the United States to the Canadian sour cherry industry.

The Tribunal also notes that over the past 10 years there have been significant fluctuations in the sour cherry market in the United States. The low year was 1981 when 135 million pounds were grown. This contrasted sharply with 1987, the peak year, when 359 million pounds were grown. During the same 10-year period, grower prices also fluctuated, ranging from 60.4 cents in 1983 to 7 cents in 1987. More recently this market has been characterized by overproduction caused by increased yields per acre which arose from increased plantings in the late 1970s and early 1980s. Yields ranged from a low of 1.5 tons per acre in 1983 to a high of 4.2 tons per acre in 1987. This overproduction led to excessive levels of carry-over stocks. This is demonstrated by the level of the carry over which never exceeded 40 million pounds (20 per cent of sales) in the seven years prior to 1985. In 1986, it surged to 106 million pounds (50 per cent of sales) and remained at over 80 million pounds (29 per cent of sales) in 1987. These large carry overs together with the huge 1987 crop resulted in the supply of sour cherries being at a 10-year high. This, in turn, contributed to the exceptionally low prices for both the fresh and processed product, which in 1987 were at their lowest levels in over 10 years.

The oversupply situation coupled with low prices caused imports, which increased in 1986 due to a small Canadian crop, to rise by 142 per cent in 1987. The resulting market penetration by U.S. imports meant that processors' market share declined by approximately 20 points from the market share enjoyed in the 1984 and 1985 pack years. Thus, despite an increase in consumption in 1987, Canadian processors were prevented from sharing in this larger market due to the increased penetration of imports from the United States. Furthermore, erosion of prices led to a deterioration of profits at the processor level and significant losses at the grower level. Customer/end users, which in previous years had committed themselves to buying domestic product, had reduced their purchases because of low-priced offerings from the United States. Although Canadian processors attempted

to meet the price levels of U.S. imports, they felt the effects in a deterioration in profitability. Furthermore, the substantial inroads in the Canadian market made by imported sour cherries following the 1987 crop were at the direct expense of Canadian processors and growers. Of the 8.5 million pounds of sour cherries left unharvested, it is estimated that over 2 million pounds were attributable to the inroads made by U.S. imports. Price offerings from U.S. suppliers continued to be made at low levels during the third and fourth quarters of the 1987 crop year (the first half of the 1988 calendar year), and Canadian end users purchased large volumes of U.S. product. Because end users had purchased significant volumes, they were less willing to make commitments to purchase product from the 1988 crop. Although prices for Ontario processed cherries did firm up somewhat, rising from 45 cents in 1987 to 69 cents in the first quarter of 1988, domestic processors continued to experience significant price pressure from U.S. suppliers.

It is the view of the Tribunal that the scale of the penetration of the Canadian market by U.S. imports could not have been achieved without very low prices. Moreover, these low prices are found to have been dumped prices at significant margins. These margins of dumping meant that U.S. suppliers sold sour cherries in the Canadian market in 1987 and 1988 at depressed price levels. These imports at depressed price levels to which Canadian processors and growers were subjected during these years had an immediate and damaging effect on their market share, sales and profitability. The injury flowing from this dumping is considered by the Tribunal to be material. Based on the evidence, the Tribunal finds that the Canadian industry has suffered past and present injury from the dumping of U.S. sour cherries.

With respect to the future, the U.S. industry, notwithstanding the drought of 1988, appears to be in a period of overproduction relative to demand growth possibilities. Grower prices appear likely to remain low. This is a consequence of expanded planting a few years ago, with substantial amounts of young acreage now moving into the bearing category. The recent increase in bearing acreage, coupled with upward movement in yields, is likely to result in higher production levels. Even with an optimistic forecast of demand growth, industry surpluses are expected. Although declines in annual production such as those which arose in 1988 are always a possibility, it must be recognized that unlike other fruits, sour cherries are inventoried in a processed state. Consequently, processed supplies from a good crop year are carried over as inventory, thereby decreasing the chances of very short supplies during the next few years. With U.S. productive capacity remaining high, the consequences for the Canadian industry in the absence of anti-dumping measures would be one of continuing material injury. The Tribunal concludes therefore that there is a likelihood of material injury.

The Tribunal recognizes that this is an agricultural crop and variables such as tree removal, droughts and other climatic conditions mean that predictions of the future are never certain. For this reason, the Tribunal will conduct an ongoing monitoring of crop and market conditions.

#### REQUEST FOR EXEMPTION

E.D. Smith requested an exemption for IQF cherries, on the ground that IQF cherries are not generally available in Canada but are available in the United States. The Tribunal

is not so persuaded. These cherries are substitutable for "bulk" cherries. If the Tribunal were to exclude IQF cherries, they could be imported into Canada at dumped prices and displace Canadian cherries. Thus the Tribunal is not persuaded that an exemption is warranted.

CONCLUSION

In light of all of the evidence, the Tribunal concludes that the dumping in Canada of sour cherries originating in or exported from the United States has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

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Howard Perrigo  
Howard Perrigo  
Presiding Member

I concur:      Robert J. Bertrand, Q.C.  
Robert J. Bertrand, Q.C.  
Member

I concur:      Raynald Guay  
Raynald Guay  
Member

Witnessed:    René Noël  
René Noël  
Deputy Secretary