

Ottawa, Wednesday, May 2, 2001

**Inquiry No.: NQ-2000-006**

IN THE MATTER OF an inquiry, under section 42 of the *Special Import Measures Act*,  
respecting:

**GARLIC, FRESH OR FROZEN, ORIGINATING IN OR EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA AND VIETNAM, EXCLUDING FRESH  
GARLIC SUBJECT TO THE FINDING MADE IN THE CANADIAN  
INTERNATIONAL TRADE TRIBUNAL INQUIRY NO. NQ-96-002**

**FINDING**

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping of garlic, fresh or frozen, originating in or exported from the People's Republic of China and Vietnam, excluding fresh garlic subject to the finding made in the Canadian International Trade Tribunal Inquiry No. NQ-96-002, has caused material injury or retardation, or is threatening to cause material injury to the domestic industry.

This inquiry is pursuant to the issuance by the Commissioner of the Canada Customs and Revenue Agency of a preliminary determination dated January 2, 2001, and of a final determination dated April 2, 2001, that the aforementioned goods originating in or exported from the People's Republic of China and Vietnam have been dumped.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods originating in or exported from the People's Republic of China and Vietnam has caused material injury to the domestic industry.

Peter F. Thalheimer  
Peter F. Thalheimer  
Presiding Member

Patricia M. Close  
Patricia M. Close  
Member

Zdenek Kvarda  
Zdenek Kvarda  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

The statement of reasons will be issued within 15 days.

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|-------------------------------|---|
| Place of Hearing:             | Ottawa, Ontario   |
| Dates of Hearing:             | April 2 and 3, 2001   |
| Date of Finding:              | May 2, 2001   |
| <br>Tribunal Members:         | <br>Peter F. Thalheimer, Presiding Member<br>Patricia M. Close, Member<br>Zdenek Kvarda, Member   |
| <br>Director of Research:     | <br>Sandy Greig   |
| <br>Lead Researcher:          | <br>W. Douglas Kemp   |
| <br>Researchers:              | <br>Daryl Poirier<br>Stephen Fryer  |
| <br>Economist:                | <br>Ihn Ho Uhm  |
| <br>Statistical Officers:     | <br>Lise Lacombe<br>Rhonda Heintzman  |
| <br>Counsel for the Tribunal: | <br>Philippe Cellard<br>Dominique Laporte   |
| <br>Registrar Officer:        | <br>Pierrette Hébert  |
| <br><b>Participants:</b>      | <br>Richard A. Wagner<br>Patricia M. Harrison<br>for Garlic Growers Association of Ontario<br><br><b>(Representing Domestic Producers)</b><br><br>Jeffrey G. Velander<br>for Gyma Inc.<br><br>Teriene Tsang<br>for Victoria International Trading Inc.<br><br><b>(Importers/Exporter)</b> |

Ottawa, Thursday, May 17, 2001

Inquiry No.: NQ-2000-006

**GARLIC, FRESH OR FROZEN, ORIGINATING IN OR EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA AND VIETNAM, EXCLUDING FRESH  
GARLIC SUBJECT TO THE FINDING MADE IN THE CANADIAN  
INTERNATIONAL TRADE TRIBUNAL INQUIRY NO. NQ-96-002**

*Special Import Measures Act* — Whether the dumping of the above-mentioned goods has caused material injury or retardation, or is threatening to cause material injury to the domestic industry.

**DECISION:** The Canadian International Trade Tribunal hereby finds that the dumping of garlic, fresh or frozen, originating in or exported from the People's Republic of China and Vietnam, excluding fresh garlic subject to the finding made in the Canadian International Trade Tribunal Inquiry No. NQ-96-002, has caused material injury to the domestic industry.

|                           |   |
|---------------------------|---|
| Place of Hearing:         | Ottawa, Ontario   |
| Dates of Hearing:         | April 2 and 3, 2001   |
| Date of Finding:          | May 2, 2001   |
| Date of Reasons:          | May 17, 2001  |
| Tribunal Members:         | Peter F. Thalheimer, Presiding Member<br>Patricia M. Close, Member<br>Zdenek Kvarda, Member |
| Director of Research:     | Sandy Greig   |
| Lead Researcher:          | W. Douglas Kemp   |
| Researchers:              | Daryl Poirier<br>Stephen Fryer  |
| Economist:                | Ihn Ho Uhm  |
| Statistical Officers:     | Lise Lacombe<br>Rhonda Heintzman  |
| Counsel for the Tribunal: | Philippe Cellard<br>Dominique Laporte   |
| Registrar Officer:        | Pierrette Hébert  |
| <b>Participants:</b>      | Richard A. Wagner<br>Patricia M. Harrison<br>for Garlic Growers Association of Ontario      |

**(Representing Domestic Producers)**

Jeffrey G. Velander  
for Gyma Inc.

Teriene Tsang  
for Victoria International Trading Inc.

**(Importers/Exporter)**

**Witnesses:**

Wayne Passmore  
ClenAgra Inc.

Warren Ham  
Flat Creek Farms Inc.

Michael J. Columbus  
New Crop Development Specialist  
Ontario Ministry of Agriculture,  
Food and Rural Affairs

Rose Viaene  
House of Peppers

Gary Almasi  
Gary & Jim Almasi Farms

Leigh Allossery  
Jennalee Farms

Frank Schroyens  
Frank Schroyens & Sons

James E. Rowe  
Perth Garlic Farms Limited

Gary Moggach  
Ontario Farmers Garlic Inc.

Frank Stagliano  
Category Specialist  
Produce Procurement  
Loblaw Companies East

Address all communications to:

Secretary  
Canadian International Trade Tribunal  
Standard Life Centre  
333 Laurier Avenue West  
15th Floor  
Ottawa, Ontario  
K1A 0G7

Ottawa, Thursday, May 17, 2001

Inquiry No.: NQ-2000-006

IN THE MATTER OF an inquiry, under section 42 of the *Special Import Measures Act*,  
respecting:

**GARLIC, FRESH OR FROZEN, ORIGINATING IN OR EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA AND VIETNAM, EXCLUDING FRESH  
GARLIC SUBJECT TO THE FINDING MADE IN THE CANADIAN  
INTERNATIONAL TRADE TRIBUNAL INQUIRY NO. NQ-96-002**

TRIBUNAL: PETER F. THALHEIMER, Presiding Member  
PATRICIA M. CLOSE, Member  
ZDENEK KVARDA, Member

**STATEMENT OF REASONS**

**BACKGROUND**

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,<sup>1</sup> has conducted an inquiry into whether the dumping in Canada of the subject goods, defined as garlic, fresh or frozen, originating in or exported from the People's Republic of China (China) and Vietnam, excluding fresh garlic subject to the finding made in the Canadian International Trade Tribunal Inquiry No. NQ-96-002,<sup>2</sup> has caused material injury or retardation or is threatening to cause material injury to the domestic producers of garlic.

On October 31, 2000, the Commissioner of the Canada Customs and Revenue Agency (the Commissioner), following a complaint filed by the Garlic Growers Association of Ontario (GGAO), initiated an investigation into the alleged injurious dumping of the subject goods. On November 1, 2000, the Tribunal issued a notice advising interested parties that, pursuant to subsection 34(2) of SIMA, it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping had caused material injury or retardation or was threatening to cause material injury. On December 29, 2000, pursuant to subsection 37.1(1) of SIMA, the Tribunal determined that the evidence disclosed a reasonable indication that the dumping of the subject goods had caused material injury to the domestic industry. On January 2, 2001, the Commissioner issued a preliminary determination of dumping.

On January 3, 2001, the Tribunal issued a notice of commencement of inquiry.<sup>3</sup> As part of the inquiry, the Tribunal sent questionnaires to Canadian growers, importers and purchasers of fresh or frozen garlic and to the China Chamber of Commerce of Importers & Exporters of Foodstuffs, Native Produce and Animal By-products (China Chamber of Commerce) and the Trade Office of the Embassy of Vietnam. The Tribunal's period of inquiry covered the years 1998 to 2000, inclusive.

On April 2, 2001, the Commissioner issued a final determination of dumping regarding the subject goods.

1. R.S.C. 1985, c. S-15 [hereinafter SIMA].
2. *Fresh Garlic Originating in or Exported from the People's Republic of China (final injury inquiry)* (21 March 1997) NQ-96-002 (CITT) [hereinafter 1997 finding].
3. C. Gaz. 2001.I.49.

Public and in camera hearings were held in Ottawa, Ontario, on April 2 and 3, 2001. The GGAO made submissions and was represented by counsel at the hearing. In addition to hearing the testimony of several witnesses for the GGAO, the Tribunal heard testimony from a new crop development specialist with the Ontario Ministry of Agriculture, Foods and Rural Affairs (Ontario Ministry of Agriculture), who was subpoenaed by counsel for the GGAO. At the Tribunal's request, witnesses for Ontario Farmers Garlic Inc., Perth Garlic Farms Limited and Loblaw Companies East also testified.

Notices of appearance were received from Gyma Inc. and Victoria International Trading Inc. (Victoria International). Neither party appeared at the hearing. However, Victoria International made two submissions to the Tribunal. In addition, on January 16, 2001, Victoria International requested an opportunity to make representations on the public interest in the event of a finding of injury.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, the public and protected pre-hearing staff reports, all briefs, witness statements, exhibits filed by the parties throughout the inquiry and their replies to the requests for information, as well as the transcripts of the proceedings. The record of this inquiry also includes the record of preliminary injury inquiry No. PI-2000-002. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and undertaking with the Tribunal in respect of the use, disclosure, reproduction, protection and storage of confidential information on the record of the proceedings, as well as the disposal of such confidential information at the end of the proceedings or in the event of a change of counsel.

## **RESULTS OF THE COMMISSIONER'S INVESTIGATION**

The Commissioner's investigation into this matter covered all shipments of the subject goods imported into Canada during the period from July 1, 1999, to June 30, 2000 (the Commissioner's period of investigation). The Commissioner found that the subject goods were dumped and that the margins of dumping were not insignificant.

The review of imports from China carried out by the Canada Customs and Revenue Agency (CCRA) revealed that 99.5 percent of the subject goods had been dumped at margins of dumping ranging from 2.6 to 92.7 percent, expressed as a percentage of the normal value.<sup>4</sup> The weighted average margin of dumping was 68.1 percent. The CCRA's review of imports from Vietnam revealed that 100 percent of the subject goods had been dumped at margins ranging from 45.3 to 72.8 percent, expressed as a percentage of the normal value. The weighted average margin of dumping was 55.7 percent.

## **PRODUCT**

### **Product Definition and Description**

The subject goods are garlic, fresh or frozen, originating in or exported from China and Vietnam, excluding fresh garlic from China subject to the 1997 finding.

The subject goods include all strains of garlic, of both the *ophioscorodon* (hardneck) and *sativum* (softneck) subspecies. The subject goods include whole garlic bulbs; individual cloves, unpeeled or peeled; garlic sprouts; and garlic stems. The garlic may be cured, trimmed and cleaned. Garlic delivered in cold storage (chilled garlic) is considered "fresh" garlic. The garlic may also be frozen. The subject goods do not include dehydrated garlic, garlic flakes, garlic powder, garlic paste or similar processed garlic.

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4. The CCRA determined the weighted average normal value for the entire period of investigation to be \$1.96/kg for the subject goods from both China and Vietnam. CCRA, *Final Determination of Dumping*, Tribunal Exhibit NQ-2000-006-04, Administrative Record, Vol. 1 at 133.024 and 133.025.

Garlic is grown in order to harvest the bulb, which develops underground in much the same way as an onion does. A garlic bulb is made up of numerous layers of skin wrapped around a number of individual segments called cloves, which usually number from 4 to 15. Garlic is used principally as a food product and for seasoning.

### **Production Process**

Garlic grown in Canada is predominantly of the hardneck variety. It is planted in the fall of the year and is somewhat better suited to successful production in regions having cold winters. Softneck garlic can also be planted in the fall where winter protection exists, either through extensive snowfall or through artificially provided winter cover. Softneck garlic may also be planted in the spring, although this does result in reduced yields. The vast majority of garlic grown across Canada is of the “Music” strain, a continental variety developed in southern Ontario. Garlic is usually harvested in mid- to late July, depending on the strain and geographical location. Once garlic bulbs are harvested, they are cured to reduce the moisture content and to improve storage and handling characteristics. Garlic destined for the fresh retail market is then trimmed, cleaned and graded.

As earlier indicated, chilled garlic is considered to be fresh garlic. The term “chilled” means that the temperature of a product has been reduced, generally to around 0°C, without the product being frozen. As garlic contains only approximately 64 percent water, its non-water constituents will significantly depress the freezing point below 0°C. Garlic stored at -2.2°C to -2.7°C, for example, is chilled garlic.<sup>5</sup>

Frozen garlic is prepared using clean bulbs of fresh garlic. These bulbs are peeled and separated into cloves which are then washed, blanched and frozen. The term “frozen” means that the product has been cooled to below its freezing point, until it is frozen throughout. Products individually quick-frozen, including garlic, are cooled to and stored at -18°C. Products may be individually quick-frozen or frozen by other methods.<sup>6</sup>

### **DOMESTIC GROWERS**

The commercial production of garlic for the fresh market began in Canada, in the province of Ontario, during the period from 1984 to 1988. Today, garlic is grown commercially in all provinces except Newfoundland. The major production area is southwestern Ontario.

The GGAO has 96 members who are, in large part, full-time farmers in the province of Ontario who grow garlic as part of their selection of crops. The GGAO is the only organized garlic producer association in Canada. Based on a survey of the 1999-2000 production conducted by the GGAO, its members constituted over 68 percent of the total Canadian production of garlic (by acreage).

### **EXPORTERS AND IMPORTERS**

During the Commissioner’s period of investigation, 49 exporters shipped the subject goods to Canada, and 29 importers imported the subject goods into Canada.<sup>7</sup>

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5. Tribunal Exhibit NQ-2000-006-35, Administrative Record, Vol. 1 at 174-7. This exhibit references the *Customs Tariff* and the *Codex Alimentarius* Commission.

6. *Ibid.*; Tribunal Exhibit NQ-2000-006-A-17 (protected), Administrative Record, Vol. 12.

7. CCRA, *Final Determination of Dumping*, Tribunal Exhibit NQ-2000-006-04, Administrative Record, Vol. 1 at 133.020.

## MARKETING AND DISTRIBUTION

Growers market their crops individually. The industry has no marketing agency. Growers negotiate prices directly with their customers. Some growers sell through agents or to other growers who then resell the garlic. A number of growers also export to the United States.

The GGAO estimates that domestically produced garlic is sold in the following proportions in six market segments: 25 percent to retailers, 25 percent to wholesalers, 22 percent to restaurants and food services, 15 percent to processors, 5 percent directly to the public and 8 percent for seed.

## POSITION OF PARTIES

The GGAO submitted that the dumping of fresh and frozen garlic from China and Vietnam, excluding fresh garlic subject to the 1997 finding, has caused or is threatening to cause material injury to the domestic producers of garlic.

The GGAO submitted that, as indicated in CCRA's final determination of dumping, the volume of the dumped subject goods as well as the margins of dumping have been substantial. The GGAO also indicated that, prior to the 1997 finding against garlic from China, the majority of the garlic from China had entered Canada during the July-December period. It pointed out that, however, since that finding, garlic from China has been imported mainly during the January-June period. For their part, imports of garlic from Vietnam had entered Canada mostly during the January-June period prior to the finding and then shifted to being imported mainly within the July-December period.

The GGAO submitted that the dumping of the subject goods caused material injury to the Canadian producers by way of price erosion, price suppression, lost sales, increased inventories and financial injury. The GGAO argued that the dumped garlic from China was the price leader in the market and that, given the large volume imported at low prices, it caused the price of garlic in Canada to erode significantly. The GGAO also submitted that the domestic producers were prevented from increasing their prices in the face of the market price level that was set by the dumped garlic from China. According to the GGAO, the price erosion and suppression were material because the sales of garlic from China were made at prices below the domestic producers' costs of production.

The GGAO claimed that the evidence clearly established that the domestic producers lost sales to the garlic from China. Many of the domestic producers had to sell at very low prices to mitigate their losses. Acres planted were reduced substantially in 2000, meaning that the harvest in 2001 would also be reduced substantially. The GGAO also pointed out that the inventories of the growers had increased significantly. In respect of financial injury, the GGAO argued that the domestic producers experienced decreasing gross farm returns. In 1998, the industry's gross farm return was \$170,000. In 2000, the industry lost a million dollars, a material loss in the view of the GGAO.

With respect to imports of garlic from Vietnam, the GGAO submitted that they constituted a significant force in the market, having represented in 1999 more than the total net production of the Canadian industry. The GGAO also noted that these imports were sold in the market at low dumped prices. The GGAO argued that the cumulated dumped imports from China and Vietnam caused the material injury suffered by the domestic producers.

The GGAO submitted that no other factor, be it the weather, imported garlic from non-subject countries, Canadian planting methods or overproduction in Canada, caused injury to the domestic producers. The GGAO argued that the material injury suffered by the domestic producers was due solely to the dumping of the subject goods.



In written submissions filed with the Tribunal, Victoria International argued that no injury to the domestic industry had occurred during the first six months of the year. Victoria International contended that the low price of garlic in the Canadian market in 2000 was essentially due to an oversupply of garlic in China and an oversupply of garlic from China and Vietnam in Canada. Victoria International submitted that, in these circumstances, the importers and wholesalers had to sell below cost in order to reduce the loss of perishable products. Victoria International argued that the supply of garlic in storage in China was getting low and that prices will gradually increase.

Victoria International submitted that, since the volume of domestic production is so small, imports are relied on to supply most of the market. According to Victoria International, it is unnecessary to apply anti-dumping duties to garlic from China during the January-June period since it is not the harvesting season for Canadian garlic and there is no supply of Canadian-grown garlic during that period. Victoria International submitted that, considering the low volume of the Canadian production, a year-round application of the finding against China would only benefit the exporters from countries other than China and Vietnam.

## ANALYSIS

Pursuant to subsection 42(1) of SIMA, the Tribunal is required to make inquiry as to whether the dumping of the subject goods has caused injury or retardation or is threatening to cause injury. "Injury" is defined in subsection 2(1) as "material injury to a domestic industry." "Domestic industry," in turn, is described in part in that same subsection as "the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods." The Tribunal must therefore determine, prior to its determination of injury, what are the like goods and which domestic producers constitute the domestic industry. The Tribunal will then proceed to determine the effects of the dumping of the subject goods on the domestic industry. The Tribunal will then determine whether those effects amount to material injury, retardation or threat of material injury. As well, the Tribunal will examine other factors to ensure that it does not attribute to the dumping any injury caused by other factors.

### Like Goods and Classes of Goods

Subsection 2(1) of SIMA defines "like goods," in relation to any other goods, as follows:

- (a) goods that are identical in all respects to the other goods, or
- (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods (such as appearance), their method of manufacture, their market characteristics (such as substitutability, pricing and distribution) and whether the goods fulfil the same customer needs.

The domestically grown garlic is not identical in all respects to the subject goods. The Tribunal notes that the domestically grown garlic is predominantly of the hardneck variety, while the subject goods are predominantly of the softneck variety. The Tribunal agrees, however, with its determination in the 1997 finding that the domestically grown garlic closely resembles the subject goods. This is so, notably, in terms of appearance, substitutability and end uses. As such, for the purposes of this inquiry, the Tribunal finds that domestically grown garlic of the same description as the subject goods constitutes like goods to the subject goods.

The subject goods as defined by the CCRA in this inquiry, as opposed to those in the 1997 finding, include not only fresh but also frozen garlic.<sup>8</sup> According to the GGAO, fresh and frozen garlic are essentially the same product. However, during the preliminary injury inquiry, the China Chamber of Commerce and Gyma submitted that fresh and frozen garlic constituted separate classes of goods. The Tribunal concluded that it was unable to come to the conclusion that there were two classes of goods on the basis of the existing record. Nevertheless, the Tribunal was of the view that the arguments made in support of two separate classes of goods deserved further consideration. As a consequence, the Tribunal requested the CCRA to collect information on the dumping of fresh garlic, frozen garlic, and fresh and frozen garlic combined. Similarly, the Tribunal collected information on the same basis for its injury analysis.

At the hearing, the GGAO submitted that fresh and frozen garlic are physically identical products and that they have the same nutritional characteristics. The GGAO argued that fresh and frozen garlic are substitutable one for the other and compete with each other in the industrial market. They are used by food processors as an ingredient for their products, such as salsa, pizza toppings and spaghetti sauce. Fresh and frozen garlic are purchased from the same brokers and suppliers. The GGAO submitted that, given those facts and pursuant to the Tribunal's typical analysis of the issue of class of goods, fresh garlic and frozen garlic should be seen as constituting a single class of goods.

In addressing the issue of class of goods, the Tribunal must determine whether the alleged separate classes of goods constitute "like goods" to each other. Consequently, in determining whether there is more than one class of goods, the Tribunal will look at factors similar to the ones that have been mentioned above in connection with the issue of like goods.<sup>9</sup> If the alleged separate classes of goods constitute "like goods" to each other, they will be regarded as comprising a single class of goods.<sup>10</sup> In the event that the Tribunal found that there exist two separate classes of goods, separate injury analyses would have to be conducted in respect of each class of goods.

Looking first at the composition and physical characteristics of fresh and frozen garlic, the Tribunal is of the view that, although frozen garlic is frozen and can be stored for a longer period, both fresh and frozen garlic have the same initial composition.<sup>11</sup> In addition, the evidence indicates that fresh garlic does not undergo significant changes during the freezing process except for the freezing itself.<sup>12</sup> Moreover, the testimony heard during the hearing was to the effect that fresh and frozen garlic have the same nutritional characteristics.<sup>13</sup> Regarding market characteristics, while fresh garlic is sold as bulbs or cloves and frozen garlic is only sold as cloves, the evidence indicates that cloves from both fresh and frozen garlic are sold to the food processing industry.<sup>14</sup> Fresh and frozen garlic cloves are used for the same purposes in the food industry and are interchangeable for many applications.<sup>15</sup> Fresh and frozen garlic thus fulfil the same needs of the processing industry.<sup>16</sup> As such, the Tribunal found that this inquiry relates to a single class of goods.

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8. There is evidence on the record that frozen garlic is also produced in Canada. Domestic Growers Exhibit A-17 (protected), Administrative Record, Vol. 12; Tribunal Exhibit NQ-2000-006-10.11A (protected), Administrative Record, Vol. 4 at 201.2.

9. See, for example, *Certain Hot-rolled Carbon Steel Plate (final injury inquiry)* (27 June 2000), NQ-99-004 (CITT) at 18.

10. *Thermal Insulated Board (final injury inquiry)* (11 April 1997), NQ-96-003 (CITT).

11. *Transcript of Public Hearing*, Vol. 15, 2 April 2001, at 96 and 97.

12. *Ibid.*

13. *Ibid.* at 97 and 145.

14. *Ibid.* at 98.

15. *Ibid.*; Tribunal Exhibit NQ-2000-006-10.11A (protected), Administrative Record, Vol. 4 at 201.2; Domestic Growers Exhibit A-14 (protected), Administrative Record, Vol. 12; Domestic Growers Exhibit A-15, Administrative Record, Vol. 11; Domestic Growers Exhibit A-16, Administrative Record, Vol. 11.

16. *Supra* note 14.

Consequently, the Tribunal will have to determine whether the dumping of the subject goods, taken as a whole, has caused material injury or retardation or is likely to cause material injury to the domestic industry.

### Domestic Industry

The GGAO has 96 members who are, in large part, full-time farmers in the province of Ontario. These farmers grow garlic as part of their selection of crops. Based on a survey of production conducted by the GGAO, its members account for over 68 percent of the total Canadian production of garlic (by acreage). The GGAO was supported by an additional 14 producers who are not members of the GGAO. With the inclusion of these 14 producers, the CCRA determined that the complaint was supported by producers representing 84 percent of the total Canadian production (by acreage). Therefore, the Tribunal finds that, for the purposes of this inquiry, the producers supporting the complaint constitute the domestic industry.

### Cumulation

Subsection 42(3) of SIMA provides, in part, that the Tribunal shall make an assessment of the cumulative effect of the dumping of goods that are imported into Canada from more than one country if the following conditions are met:

- (a) the margin of dumping or the amount of the subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and
- (b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and
  - (i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or
  - (ii) like goods of domestic producers.

In considering the issue of cumulation, the Tribunal took into consideration the related provisions of SIMA and the Commissioner's preliminary and final determinations of dumping. The margins of dumping in the case of China and of Vietnam were in excess of the relevant threshold. Therefore, the Tribunal is satisfied that the margins of dumping in relation to the goods from China and Vietnam were not insignificant. With respect to the issue of negligibility, the Tribunal notes that the volume of the dumped subject goods from China and Vietnam surpassed the relevant threshold during the Commissioner's period of investigation.<sup>17</sup> Therefore, the Tribunal is satisfied that the volume of the dumped subject goods from each of the subject countries was not negligible.

The Tribunal looked closely at conditions of competition between imports from China and imports from Vietnam given the dramatic difference in the volume of imports from these two countries. Imports of the subject goods from China were 41 percent of total imports in 1998, 48 percent in 1999 and 72 percent in 2000. In comparison, those from Vietnam went from 1 percent in 1998, to 7 percent in 1999 and

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17. The volumes of dumped goods from China and Vietnam were 57 percent and 6 percent respectively of the total imports of garlic into Canada during the Commissioner's period of investigation. The volume of dumped and undumped garlic imports from each of the subject countries is from the Commissioner's final determination. The volume of non-subject garlic, including fresh garlic from China for July to December 1999, is from Statistics Canada and questionnaire data. Commissioner's *Final Determination of Dumping*, Tribunal Exhibit NQ-2000-006-05 (protected), Administrative Record, Vol. 2 at 26.36 to 26.38; *Public Pre-Hearing Staff Report*, Tribunal Exhibit NQ-2000-006A, Administrative Record, Vol. 1A at 133; Tribunal Exhibit NQ-2000-006-16.14, Administrative Record, Vol. 6 at 139.

1 percent in 2000.<sup>18</sup> Information provided by an exporter from Vietnam indicates a much larger volume of garlic exports to Canada in 2000 than was released in the domestic market in the first ten months of the year, the period covered by the Tribunal's statistical data.<sup>19</sup>

On further reviewing the evidence, the Tribunal finds that the subject goods from China and Vietnam are fungible and compete with each other in the domestic market. The Tribunal notes that, physically, the garlic from China is indistinguishable from the garlic from Vietnam,<sup>20</sup> that they are both imported into Canada by the same importers,<sup>21</sup> that they both appear to be sold by the same retailers<sup>22</sup> and that both are sold at low prices.<sup>23</sup> The Tribunal is also of the view that the subject goods are fungible with the like goods and that they compete with them in the same markets. On the basis of the above, the Tribunal is satisfied that, taking into account the conditions of competition, it is appropriate to make an assessment of the cumulative effect of the dumped goods from China and Vietnam.

## Injury

In an inquiry conducted pursuant to section 42 of SIMA, the Tribunal must determine whether the dumped goods have caused material injury or retardation or are threatening to cause material injury to the domestic industry. Subsection 37.1(1) of the *Special Import Measures Regulations*<sup>24</sup> prescribes certain factors that the Tribunal may consider in determining whether a domestic industry has been materially injured by dumped imports. These factors include the volume of dumped goods and their effect on prices in the domestic market for like goods and the consequent impact of these imports on a number of relevant economic factors and indices that have a bearing on the state of the domestic industry. In this case, the factors that appear to be most relevant to the effects of the dumped goods on the state of the domestic industry are actual or potential declines in output, sales and profits. Subsection 37.1(3) of the SIMA Regulations also requires the Tribunal to assess whether a causal relationship exists between the dumping and the injury and to consider other factors, not related to the dumping, to ensure that the injury caused by those other factors is not attributed to the dumped imports.

## State of the Market and Industry

The Tribunal examined the developments in the market for garlic in Canada during the period of inquiry. Key performance indicators for the Canadian garlic market are summarized in Table 1. The volume of the subject goods from China and Vietnam<sup>25</sup> increased markedly during the period of inquiry, from

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18. *Public Pre-hearing Staff Report*, Tribunal Exhibit NQ-2000-006-06A, Administrative Record, Vol. 1A at 136. Because of the small volume of imports of frozen garlic, the percentages for fresh and frozen combined are the same as those for fresh garlic imports shown in this table.
  19. Tribunal Exhibit NQ-2000-006-24.02, Administrative Record, Vol. 5.3 at 21 to 29.
  20. Complaint under SIMA, Initiation of Dumping Investigation, Tribunal Exhibit NQ-2000-006-38, Administrative Volume 1.1 at 88.
  21. *Final Determination of Dumping*, Tribunal Exhibit NQ-2000-006-05 (protected), Administrative Record, Vol. 2 at 26.23 and 26.29.
  22. *Supra* note 20; *Transcript of Public Hearing*, Vol. 2, 3 April 2001, at 235-237; Tribunal Exhibit NQ-2000-006-15.08A, Administrative Record, Vol. 5 at 61.3.
  23. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2000-006-07A, Administrative Record, Vol. 2A at 151 and 161.
  24. S.O.R./84-927 [hereinafter SIMA Regulations].
  25. The subject goods do not include fresh garlic imported from China from July to December of each year under review.

3.8 million kilograms in 1998 to 6.1 million kilograms in 1999 and to 7.3 million kilograms in 2000.<sup>26</sup> In 1998, the subject goods accounted for about 42 percent of the total imports. By 2000, the subject goods accounted for about 73 percent of the total imports.

**Table 1**  
**Key Market and Industry Performance Indicators**  
**Fresh and Frozen Garlic**

|                                   | <b>1998</b> | <b>1999</b> | <b>2000</b> |
|-----------------------------------|-------------|-------------|-------------|
| Area Planted (Acres) <sup>1</sup> | 597         | 889         | 565         |
| Net Production (million kg)       | 0.4         | 0.7         | 1.5         |
| Imports (million kg)              |             |             |             |
| Subject Goods <sup>2</sup>        | 3.8         | 6.1         | 7.3         |
| Non-subject Goods                 | 5.3         | 4.9         | 2.7         |
| Market (million kg)               | 9.4         | 11.5        | 11.2        |
| Market Share (%)                  |             |             |             |
| Domestic Production               | 3           | 4           | 10          |
| Subject Goods <sup>2</sup>        | 40          | 53          | 65          |
| Non-subject Goods                 | 56          | 43          | 24          |
| Total Imports, All Sources        | 97          | 96          | 90          |
| Employment                        | 438         | 590         | 1,105       |
| Market Prices (\$/kg)             |             |             |             |
| Domestic Goods                    | 2.71        | 2.10        | 1.68        |
| Subject Goods <sup>2</sup>        | 1.73        | 1.51        | 1.12        |
| Non-subject Goods                 | 3.10        | 2.76        | 3.40        |
| Gross Farm Return (\$000)         | 170         | (348)       | (1,031)     |

Note 1. For following year's crop.

Note 2. The subject goods do not include fresh garlic imported from China from July to December of each year.

Percentages may not add to 100 due to rounding.

Source: *Public and Protected Pre-hearing Staff Reports*, Tribunal Exhibits NQ-2000-006-06A and NQ-2000-006-07A, Administrative Record, Vols. 1A and 2A.

Import and market numbers are rounded to protect confidentiality.

The seasonal distribution of imports from China has changed since the 1997 finding which resulted in anti-dumping duties being applied for the six-month period between July and December. In the last full year before the 1997 finding, approximately 92 percent of the fresh garlic imported from China entered Canada between July 1 and December 31.<sup>27</sup> After the 1997 finding, the pattern of the imports reversed. In 1998, approximately 70 percent of the fresh garlic imports from China entered Canada between January 1 and June 30, the six-month period that falls outside of the 1997 finding. By 2000, approximately 98 percent of the fresh garlic imported from China entered Canada in the first half of the year and 50 percent

26. As the import data for the months of November and December 2000 were not available from Statistics Canada at the time the *Pre-hearing Staff Report* was prepared, import volumes for 2000 were estimated based on the ratio of January to October import volumes in 1999 to full year imports in 1999.

27. *Supra* note 18 at 140.

of the annual import volume entered in the months of May and June.<sup>28</sup> Imports from Vietnam, from 1998 to 2000, entered Canada primarily during the six-month period from July to December in which the 1997 finding is in place involving garlic from China.<sup>29</sup>

Notwithstanding the large increase in the volumes of imports from the subject countries, fresh and frozen garlic production in Canada increased from 0.4 million kilograms in 1998 to 0.7 million kilograms in 1999 and to 1.5 million kilograms in 2000.<sup>30</sup>

The apparent market for garlic grew by about 22 percent in 1999 before declining marginally in 2000. Domestically grown garlic and the subject goods both increased their respective market shares during this period, while non-subject goods lost market share. The subject goods enjoyed the most growth, increasing their respective market share from 40 percent in 1998 to 65 percent in 2000, while the domestic growers' share increased from 3 to 10 percent. Meanwhile, the share of the market held by non-subject goods dropped from 56 to 24 percent.

The domestic growers' average price for sales of garlic from domestic production fell from \$2.71/kg in 1998 to \$2.10/kg in 1999 and then to \$1.68/kg in 2000. The average price for sales of the subject goods<sup>31</sup> was consistently below that of the domestic growers and showed the same downward trend. Their average price fell from \$1.73/kg in 1998 to \$1.51/kg in 1999 and to \$1.12/kg in 2000. In comparison, the average prices for sales of garlic from the United States, Mexico and Argentina were generally above the domestic price.<sup>32</sup> For the United States and Mexico, prices rose in 2000. The average price of garlic from "other" non-subject countries, comprising about 3 percent of imports in 2000, fell from \$2.71/kg in 1998 to \$1.48/kg in 2000, a price that was lower than that from domestic production, but higher than that from the subject goods.<sup>33</sup>

The financial performance of the domestic garlic growers collapsed during this period.<sup>34</sup> In 1998, the growers were profitable with gross farm returns of about \$170,000. In 1999, the domestic growers lost \$348,000. In 2000, their loss increased to \$1,031,000.

The area planted with garlic in Canada by the respondent growers increased from 311 acres in 1997, to 597 acres in 1998 and then to 889 acres in 1999.<sup>35</sup> In 2000, the total acreage planted with garlic dropped below the 1998 levels to 565 acres. This reduction in acreage is the result of certain garlic farmers

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28. *Ibid.*; Tribunal Exhibit NQ-2000-006-32, Administrative Record, Vol. 1 at 153-157.

29. Tribunal Exhibit NQ-2000-006-32, Administrative Record, Vol. 1 at 153-157.

30. Respondent growers accounted for approximately 70 percent of the acreage planted with garlic in 1999. These growers harvested 1.5 million kilograms of garlic in 2000. When accounting for the other 30 percent of the production, the total production of garlic is projected to be approximately 2.2 million kilograms in 2000. Because the numbers reported in this statement of reasons for the domestic growers are those actually reported and are not adjusted to the total production, it is the direction and magnitude of change that are most important to the analysis. *Supra* note 18 at 130.

31. Does not include sales of fresh garlic from imports from China from July to December.

32. *Supra* note 23 at 161.

33. *Supra* note 18 at 175. In 1998 and 2000, there were no sales of frozen garlic from "other" countries in the domestic market.

34. Based on domestic sales from the domestic production.

35. *Supra* note 18 at 129.

reducing the acreage that they planted with garlic, while a number of other garlic farmers stopped growing garlic entirely.<sup>36</sup>

Because garlic planted in one year is harvested in the next, production lags behind changes in acreage by one year. In this case, increases in acreage planted in 1998 and 1999 resulted in production increases in 1999 and 2000.<sup>37</sup> It is expected that the decrease in the acres planted in 2000 will result in less garlic production in Canada in 2001 and a lower volume of sales from domestic production.

In summary, it is clear from the evidence that the domestic growers have suffered a significant deterioration in performance in the form of price erosion and reduced profits. In addition, as plantings were down significantly in 2000, production in 2001 will be down, as will be sales from the domestic production. The Tribunal must now determine whether the dumping has caused all or a part of this deterioration and, if so, whether the effects of the dumping, in and of themselves, constitute material injury.

### **Injury and Causality**

The domestic growers argued that there is a clear causal connection between the eroded prices, the reduced profitability and the reduced plantings experienced by them and the dumped subject goods. In considering the merits of this argument, the Tribunal carefully assessed the information submitted by the parties and the testimony adduced during the hearing. The Tribunal paid particular attention to the rapid increase in the volume of imports of the subject goods in 1999 and 2000, and the significant decline in the price of the subject goods, in the same years.

The volume of imports of the subject goods increased by approximately 60 percent in 1999, compared to 1998, and by another 20 percent in 2000. The volume of imports of fresh garlic from China in the first six months of 2000 was at a record high, 7.2 million kilograms. This volume of imports exceeded the volume of imports from China in all of 1996,<sup>38</sup> the last full year prior to the 1997 finding in which garlic imported from China during the July to December period had injured the domestic garlic growers. As already noted, the information provided by an exporter from Vietnam indicates a volume of garlic exports to Canada in 2000 similar to the volume of imports into Canada from Vietnam in 1999, when Vietnam increased from 1 percent of total imports to 7 percent of total imports.<sup>39</sup>

As previously discussed, there was a significant shift in the pattern of garlic imports from China after the 1997 finding. The evidence shows that, soon after the 1997 finding, the vast majority of garlic from China began entering Canada during the six-month period not covered by the 1997 finding. The evidence also reveals that, from 1998 to 2000, most imports from Vietnam landed in Canada in the July to December period when anti-dumping duties significantly reduced the volume of non-subject garlic from China that was landed in Canada.

The Tribunal also notes that in 2000, as stated above, approximately 50 percent of the garlic from China entered the Canadian market during the months of May and June, just prior to the period in which the 1997 finding comes into effect. In the Tribunal's view, the seasonal shift stems from the importers'

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36. Complaint to the CCRA, Tribunal Exhibit NQ-2000-006-39 (protected), Administrative Record, Vol. 2.1 at 72-74.

37. *Supra* note 18 at 129 and 130.

38. *Supra* note 18 at 140.

39. The Tribunal had import information for only the first 10 months of 2000. Tribunal Exhibit NQ-2000-006-24.02, Administrative Record, Vol. 5.3 at 21-29.

desire to avoid the application of anti-dumping duties. Given the storability of garlic,<sup>40</sup> this shift permits garlic imported from China to enter Canada at dumped prices and still compete in the Canadian market during the period covered by the 1997 finding.

The Tribunal heard testimony that, because garlic is a commodity item, price dominates the purchasing decision.<sup>41</sup> In fact, one witness explained that, when selling to chain stores, no other factor offsets price.<sup>42</sup> Although other market factors such as quality, delivery time, storability and availability may play lesser roles in the decision to buy garlic,<sup>43</sup> these factors come into play only when prices are competitive and, even then, do not provide much of a premium in terms of pricing.<sup>44</sup>

The last couple of years proved to be difficult for the domestic garlic growers. While the volumes of the subject goods sold in the market were growing significantly in relation to those of the domestic garlic, the price of the subject goods was dropping swiftly. In 1999, the average price of the subject goods fell by 13 percent compared to the average price in 1998. Despite these falling prices, most domestic garlic growers chose to try to compete in 1999, and planted a record crop for the 2000 season. In 2000, domestic prices fell still further in competition with the prices of the subject goods, which by then were 35 percent lower than in 1998. Indeed, one of the importers acknowledged that there was an oversupply of garlic from China and Vietnam in the Canadian market in 2000, which kept prices low.<sup>45</sup> Many domestic growers virtually gave away their garlic, selling it to larger suppliers at below cost, the alternative to such low-cost sales being to plough the garlic under or to compost it. At times, the growers found that they were not even able to negotiate a price<sup>46</sup> or had to accept a low price simply to recover some of their costs<sup>47</sup> or to minimize their losses.

The Tribunal heard considerable testimony about the domestic growers' inability to compete. The common theme was that, despite all efforts to increase their efficiency<sup>48</sup> and notwithstanding the quality of their garlic,<sup>49</sup> domestic garlic could not compete profitably with the low prices of dumped garlic imported from China and Vietnam. In fact, the prices at which the domestic growers were forced to sell their garlic were so low, in 2000, that the industry incurred a loss in excess of \$1 million.

Faced with substantial financial losses in 2000, some of the domestic growers decided not to plant garlic for harvest in 2001, or reduced significantly the acreage they planted with garlic. Other domestic garlic growers stopped growing garlic entirely. As a result of these reduced plantings and outright termination of planting, overall plantings were down by 36 percent in 2000.

Based on the foregoing evidence and testimony, the Tribunal is of the opinion that the substantial volumes and very low prices of dumped garlic from China and Vietnam caused material injury to the domestic growers in the form of price erosion, reduced profitability and reduced plantings. The dumped subject goods forced the market prices down to below the cost of production of the domestic growers. Thus, domestic market prices were materially affected. In the Tribunal's view, the resultant financial loss of about

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40. *Supra* note 11 at 94.

41. *Supra* note 11 at 122.

42. *Transcript of In Camera Hearing*, Vol. 16, 2 April 2001, at 13-14.

43. *Supra* note 18 at 179.

44. *Supra* note 42 at 79.

45. Tribunal Exhibit NQ-2000-006-15.08A, Administrative Record, Vol. 5 at 61.3.

46. *Supra* note 11 at 163.

47. *Ibid.*

48. *Supra* note 11 at 36.

49. *Supra* note 11 at 198.



\$1 million, most of which is related to the price erosion, is a material loss for this industry. Finally, the reduction in plantings by 36 percent is, in the Tribunal's view, expected to lead to a material reduction in production and sales in 2001.

The Tribunal next reviewed the effects of other factors to ensure that it did not attribute to the dumped imports any injury caused by these other factors.

### Other Factors

The Tribunal identified a number of factors that could have had an impact on the industry including the weather, other low-priced imports, the competitiveness of the domestic growers and domestic overproduction in 2000.

With regard to the possible negative effects of weather on the performance of the garlic growers, the Tribunal heard testimony that, although weather is an important factor in growing garlic, many major weather-related events can be overcome. A lack of rain, for example, can be alleviated through irrigation, thereby providing the grower with the maximum amount of productivity.<sup>50</sup> Further, the GGAO argued that, if bad weather results in garlic that does not have a good appearance, then this garlic can be sold to the food service market or the industrial market. In Ontario, the year 2000 was unfavourable due to the extremely wet weather during harvest. The weather in 2000 was estimated to have increased costs by approximately \$0.15/kg.<sup>51</sup> In the Tribunal's opinion, while these weather-related effects could have resulted in some lessening of the domestic garlic prices, or increased costs, this would be minimal when compared to the price reductions that the growers had to make in order for the domestic garlic to compete with the dumped subject goods.

Regarding the impact of non-subject goods in the domestic market, the Tribunal data showed that non-subject goods from the United States, Argentina and Mexico were sold at prices generally above the domestic price. As for imports from the "other" non-subject countries, the Tribunal notes that, although the prices were lower than the domestic prices in 1999 and 2000, they were above the prices of the subject goods. In 2000, over 20 times as much subject garlic was imported into Canada from the subject countries as was imported from these "other" non-subject countries.<sup>52</sup> The Tribunal is therefore not persuaded that, given the large differential in the volume of the subject goods and the volume of imported garlic from the "other" non-subject countries, the prices of the garlic imported from these "other" non-subject countries caused the prices to go down.

Moreover, the Tribunal is convinced that the Canadian growers are competitive with imports of garlic from countries other than China and Vietnam.<sup>53</sup> The Tribunal heard the witness from the Ontario Ministry of Agriculture testify that the Canadian garlic farmers were beginning to use state-of-the-art machinery to plant their garlic more densely, thereby increasing garlic yields.<sup>54</sup>

With respect to the question of possible overproduction in 2000, a year that saw the market shrink somewhat, the evidence shows that more than six times as much garlic was sold in Canada from the subject imports as from domestic production.<sup>55</sup> Given this large differential in volume and given the very low prices

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50. *Supra* note 11 at 59.

51. Tribunal Exhibit NQ-2000-006-33-A, Administrative Record, Vol. 1 at 159.8-159.9.

52. *Supra* note 23 at 149.

53. *Supra* note 42 at 7; Domestic Growers' Exhibits A-2 at 6, A-4 at 10, A-6 at 7, A-10 at 14 and A-12 at 18.

54. *Supra* note 11 at 25 and 46.

55. *Supra* note 23 at 159.

of the subject goods, the Tribunal is not persuaded that the higher volume of Canadian garlic production in 2000 could have had any impact on market prices overall.

In the Tribunal's view, none of these other factors contributed, in any significant way, to the rapid decline in market prices between 1998 and 2000, the industry's significant decline in financial performance and the reduced plantings in 2000.

Having reviewed the effects of the dumped subject goods and of other factors on the domestic growers, the Tribunal concludes that the dumping in Canada of the subject goods has caused material injury to the domestic industry. The Tribunal is of the view that the dumped subject goods from China and Vietnam flooded the domestic market with very low-priced garlic and materially injured the domestic industry through price erosion, reduced profits and reduced plantings.

Given that the Tribunal has found material injury, it need not determine whether there has been retardation or whether there is a threat of material injury.

## CONCLUSION

Pursuant to subsection 43(1) of SIMA, the Tribunal hereby finds that the dumping in Canada of the subject goods originating in or exported from China and Vietnam has caused material injury to the domestic industry.

Peter F. Thalheimer

Peter F. Thalheimer  
Presiding Member

Patricia M. Close

Patricia M. Close  
Member

Zdenek Kvarda

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Member