

Ottawa, Friday March 21, 1997

**Inquiry No.: NQ-96-002**

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

**FRESH GARLIC ORIGINATING IN OR EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

**FINDING**

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry following the issuance by the Deputy Minister of National Revenue of a preliminary determination of dumping dated November 21, 1996, and of a final determination of dumping dated February 19, 1997, respecting the importation into Canada of fresh garlic originating in or exported from the People's Republic of China.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of fresh garlic originating in or exported from the People's Republic of China has caused material injury to the domestic industry. The finding is only to apply to fresh garlic imported into Canada from the People's Republic of China between July 1 to December 31 of each calendar year.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Charles A. Gracey

Charles A. Gracey  
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: February 20 and 21, 1997

Date of Finding: March 21, 1997

Tribunal Members: Robert C. Coates, Q.C., Presiding Member  
Raynald Guay, Member  
Charles A. Gracey, Member

Director of Research: Marcel J.W. Brazeau

Lead Researcher: Don Shires

Economist: Ihn Ho Uhm

Statistical Officer: Nynon Pelland

Counsel for the Tribunal: Joël J. Robichaud  
Heather A. Grant

Registration and Distribution Officer: Gillian E. Burnett

**Participants:**

Richard A. Wagner  
Marvin P. Zwikler  
for Garlic Growers Association of Ontario

**(Association of Growers)**

Glenn Ernst  
Sonia Keshwar  
for China Chamber of Commerce of Importers & Exporters  
of Foodstuffs, Native Produce and Animal By-Products

**(Association of Producers of Foodstuffs and  
Animal By-Products)**

**SECOND CORRIGENDUM**

**TO THE FINDING OF MARCH 21, 1997**

Ottawa, Friday, March 21, 1997

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Michel P. Granger

Michel P. Granger  
Secretary

The Statement of Reasons will be issued within 15 days.

Ottawa, Monday, April 7, 1997

Inquiry No.: NQ-96-002

**FRESH GARLIC ORIGINATING IN OR EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

*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 in Canada of fresh garlic originating in or exported from the People's Republic of China has caused material injury to the domestic industry. The finding is to apply only to imports of fresh garlic from the People's Republic of China from July 1 to December 31, inclusive,\* of each calendar year.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	February 20 and 21, 1997
Date of Finding:	March 21, 1997
Date of Reasons:	April 7, 1997
Tribunal Members:	Robert C. Coates, Q.C., Presiding Member Raynald Guay, Member Charles A. Gracey, Member
Director of Research:	Marcel J.W. Brazeau
Lead Researcher:	Don Shires
Economist:	Ihn Ho Uhm
Statistical Officer:	Nynon Pelland
Counsel for the Tribunal:	Joël J. Robichaud Heather A. Grant
Registration and Distribution Officer:	Gillian E. Burnett
<b>Participants:</b>	Richard A. Wagner Marvin P. Zwikler for Garlic Growers Association of Ontario  (Association of Growers)

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\* The word "inclusive" was added as per the corrigendum to the statement of reasons issued by the Canadian International Trade Tribunal on April 14, 1997.

Glenn Ernst  
Sonia Keshwar  
for China Chamber of Commerce of Importers & Exporters  
of Foodstuffs, Native Produce and Animal By-Products

**(Association of Producers of Foodstuffs and  
Animal By-Products)**

**Witnesses:**

Warren Ham  
Vice-President  
Garlic Growers Association of Ontario  
General Manager  
Flat Creek Farms Inc.

Darrell Slaght  
Big Creek Ginseng & Garlic Farm

Mel Gass  
Garden Isle Garlic Inc.

Anthony Temmer  
Grower

Dr. Erna H.K. van Duren  
Associate Professor  
Agricultural Economics and  
Business Department  
University of Guelph

John Wang  
President  
Canada Garlic Company Inc.

Tom Kioussis  
Category Manager  
Produce Division  
National Grocers Co. Ltd.  
Loblaws Supermarkets Limited

Address all communications to:

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Canadian International Trade Tribunal  
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K1A 0G7

Ottawa, Monday, April 7, 1997

**Inquiry No.: NQ-96-002**

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

**FRESH GARLIC ORIGINATING IN OR EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
RAYNALD GUAY, Member  
CHARLES A. GRACEY, 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> (SIMA), has conducted an inquiry following the issuance by the Deputy Minister of National Revenue (the Deputy Minister) of a preliminary determination of dumping<sup>2</sup> dated November 21, 1996, and of a final determination of dumping<sup>3</sup> dated February 19, 1997, respecting the importation into Canada of fresh garlic originating in or exported from the People's Republic of China (China).

On November 21, 1996, the Tribunal issued a notice of commencement of inquiry. As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian growers of fresh garlic and to importers and purchasers of the subject goods. Respondents provided production, financial, import and market information, as well as other information relating to fresh garlic, for the period from 1992 to September 1996. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to the questionnaires, all exhibits filed by the parties throughout the inquiry and the transcript of all proceedings. All public exhibits were made available to the parties. Protected exhibits were made available only to independent counsel who had filed a declaration and undertaking with the Tribunal.

Public and *in camera* hearings were held in Ottawa, Ontario, on February 20 and 21, 1997. The Garlic Growers Association of Ontario (GGAO) and an exporters' association, the China Chamber of Commerce of Importers & Exporters of Foodstuffs, Native Produce and Animal By-Products (the China Chamber of Commerce) were represented by counsel at the hearing. The Tribunal heard testimony from

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1. R.S.C. 1985, c. S-15.
  2. *Canada Gazette* Part I, Vol. 130, No. 49, December 7, 1996, at 3383.
  3. *Ibid.*, Vol. 131, No. 10, March 8, 1997, at 751.

witnesses for the domestic industry and for the China Chamber of Commerce and from two witnesses invited by the Tribunal from Canada Garlic Company Inc., an importer, and National Grocers Co. Ltd., a major grocery chain wholesaler.

## **PRODUCT**

The Deputy Minister's preliminary and final determinations of dumping define the subject goods as fresh garlic originating in or exported from China. The subject goods may be exported to Canada as whole garlic bulbs that have been cured, trimmed and cleaned or as individual cloves, whether peeled or not. The definition does not include dehydrated garlic, garlic flakes, garlic powder, garlic paste or similar processed garlic products.

The subject goods belong to two subspecies of garlic, commonly known as "hardneck" and "softneck".<sup>4</sup> There are basically three varieties of the hardneck subspecies, Rocambole, Continental and Asiatic, and two varieties of the softneck subspecies, Artichoke and Silverskin. The garlic grown in Canada is almost exclusively of the hardneck subspecies. The Music strain of the Continental variety was developed by a grower in southern Ontario and is the most commonly grown strain in Canada. By comparison, the majority of the subject goods are of the softneck subspecies.<sup>5</sup>

A garlic bulb is made up of numerous layers of skin wrapped around a number of individual segments called cloves. The number of cloves varies from 4 to 15 or more and depends on the strain and the conditions under which the bulb was grown. The bulbs vary in colour from white to blue-white with perhaps a reddish-purple tinge. The garlic grown in Canada produces a larger bulb than that grown in China, with fewer cloves than the Chinese product.

Fresh garlic is used principally as a food product and for seasoning. Garlic offered for sale in Canada is graded according to size.<sup>6</sup> However, there is no standardized Canadian grading system.

Garlic is imported into Canada in subheading No. 0703.20 of Schedule I to the *Customs Tariff*.<sup>7</sup> The MFN rate of duty, applicable to imports from China, is 2.5 percent *ad valorem*.

The crop year for domestic fresh garlic is July 1 to June 30. Domestic garlic is usually grown as part of a mix of crops cultivated by a grower. It is grown in order to harvest the bulb, which develops underground similarly to an onion. Canadian garlic growers plant individual cloves<sup>8</sup> usually in October<sup>9</sup> and

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4. *Ophioscorodon* (hardneck) and *sativum* (softneck).

5. A small area of the softneck subspecies is cultivated in British Columbia and the Prairies.

6. Small, medium or large based on the diameter of the bulb, generally 1.5 in., 2.0 in. or 2.5 in.

7. R.S.C. 1985, c. 41 (3rd Supp.).

8. Since it takes one planted clove to grow a new garlic plant, the proportion of production that must be replanted to maintain a constant level of production, using only domestic seed, is determined by the average number of cloves in a single bulb. In the hardneck subspecies, there are normally five or six cloves per bulb, which dictates that one fifth to one sixth of the crop is required as seed to ensure constant production levels. A generally accepted principle used by the industry to assist in planting decisions is that the weight of seed planted should yield a harvest that is five times that weight. In addition, the industry tends to plant, on average, 1,000 lbs. of seed per acre.

9. October 15 is considered the optimum planting date for most growing areas in Ontario.

harvest the bulbs in July or August of the following year. Planting is done either by hand or using mechanical bulb planters, depending on the area to be planted.

The plants reach full size in June. In early to mid-June, hardneck garlic begins to grow a flower-like stalk, and a bulb-like object called a “scape” forms at the top of the stalk. The scapes are removed, by hand, to cause the plant to put all its energy into the growth of the underground bulb. Scapes can also be planted and will mature to harvest in two years.

In Canada, mature garlic is generally harvested in July or August. Both manual and mechanical methods are used. The simplest mechanical method consists of a tractor-mounted sweeping bar that passes under the garlic bulbs, cutting the roots and loosening the soil, which allows the plants to be pulled out by hand. Small garlic crops of less than one acre are commonly harvested by hand. Bulbs that are to be used for seed are left in the ground for an additional one to two weeks to allow them to begin splitting, making them easier to crack into individual cloves. Once the bulbs are removed from the ground, they must be cured and, in the case of those destined for the fresh market, trimmed, cleaned and graded prior to packaging.

Garlic is cured to reduce the moisture content in order to improve storage and handling characteristics. Curing involves hanging the garlic or placing it on racks in a dry building with good air circulation (natural or mechanical) for a period of two to four weeks. In facilities that use forced air ventilation, the garlic is placed in boxes or kilns or piled on a perforated floor. Under these conditions, garlic will cure in less than one week.

Trimming is a manual operation that involves cutting the stem off about a half inch above the bulb and cutting the roots off about one eighth of an inch below the base of the bulb. Cleaning consists of removing dirt and stained outer skins from the bulb using mechanical brushing equipment and some hand brushing.

Grading involves sorting the bulbs into various size (diameter) categories. Typically, there are three main sizes: 1.5 in., 2.0 in. and 2.5 in. Mechanical grading is used together with manual monitoring to ensure consistency.

Garlic that is ready for market is stored in both on- and off-farm storage facilities. There are three main types of storage: (1) conventional storage which consists of barns that use natural or fan-driven air circulation and that neither heats nor cools the air; (2) cold storage where the garlic is kept at close to 0°C; and (3) controlled atmosphere storage where temperature, humidity and the ratio of gases are controlled. A fourth type of storage is warm storage where the garlic is kept at about 15°C. Garlic may be stored for a period of a few months to one year depending on the type of storage. Generally, cold storage permits longer periods of storage, although, when the garlic returns to ambient temperature from cold storage, it will quickly begin to sprout, resulting in a relatively short shelf life.

## **MARKETING AND DISTRIBUTION**

Domestic fresh garlic is sold into the following five domestic submarkets: fresh bulk, direct fresh bulk, fresh value-added, processing and seed.

The fresh bulk submarket accounts for 90 percent of the total Canadian market for fresh garlic. It consists of bulk sales to wholesalers, brokers and retail grocers. The direct fresh bulk submarket consists of sales directly to consumers, including growers’ farm-gate sales, at farmers’ markets, such as the Ontario



Food Terminal's farmers' market, and at fairs and festivals. Fresh value-added sales refer to sales for fresh consumption of small packages or boxes of fresh garlic or cello packs and braided garlic and refer to sales to restaurants. Sales of organically grown garlic are included in the fresh value-added submarket. The processing submarket consists of sales either to firms that process the garlic into such products as crushed garlic or garlic oil or to further processors that use garlic as an input in the production of food, health and other products. The seed submarket consists of sales of garlic to growers for planting.

Domestic fresh garlic for fresh consumption is sold<sup>10</sup> by the pound. The garlic is sold in cartons weighing 22 or 30 lbs., from bushel baskets and in packages usually containing two bulbs. Most domestic sales occur within the province or immediate region of production. According to the evidence obtained through responses to the grower's questionnaire and testimony at the public hearing, virtually the entire crop is sold between the harvest in July-August and the end of December.

Growers market their crops individually. The industry has no marketing agency. Marketing largely involves growers negotiating selling prices directly with customers. Some growers sell through agents located at the Ontario Food Terminal in Toronto, Ontario. As well, some growers sell their crops to other growers who either resell them into one of the five submarkets or use them as seed. A number of growers have also exported a portion of their production to the United States.

### **DOMESTIC INDUSTRY**

Garlic is grown commercially in all provinces of Canada except Newfoundland. The major growing area is in southwestern Ontario. A substantial amount is also grown in Prince Edward Island. There are about 124 known commercial growers of garlic in Canada. The GGAO has 74 member growers. The Tribunal received responses to its grower's questionnaire from 13 Ontario growers and from Garden Isle Garlic Inc. (Garden Isle) in Prince Edward Island whose combined production accounted for over 60 percent of total Canadian production of fresh garlic.<sup>11</sup>

The domestic garlic industry has been characterized by a number of small growers, many of whom were cultivating less than one acre of garlic. However, since 1992, the domestic industry, particularly in Ontario and Prince Edward Island, has been increasing the area planted in garlic and the volume harvested. In crop year 1996-97, the estimated area planted in garlic was 624 acres, compared to 280 acres in 1995-96 and 142 acres in 1994-95.<sup>12</sup> In Ontario, the larger growers plant about 20 or more acres and harvest around 60,000 lbs. of fresh garlic. One Ontario grower has harvested 150,000 lbs. per year since 1994. In Prince Edward Island, Garden Isle is the principal grower. In the fall of 1996, Garden Isle was the largest grower in Canada in terms of acres planted and volume harvested. Garden Isle expanded its planted acreage from a quarter acre in 1992-93 to 112 acres in 1995-96<sup>13</sup> by contracting with growers who purchased the seed from Garden Isle and who were guaranteed a price for their crops.

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10. Refers to sales at the wholesale level.

11. *Public Pre-Hearing Staff Report*, January 13, 1997, Tribunal Exhibit NQ-96-002-6, Table 3, Administrative Record, Vol. 1 at 85.

12. *Ibid.*

13. Grower's Exhibit A-4 at 1, Administrative Record, Vol. 9.

## **EXPORTERS AND IMPORTERS**

The Deputy Minister's final determination of dumping identified 36 exporters and 44 importers of the subject goods for the period from July 1, 1995, to June 30, 1996. According to Statistics Canada import data for calendar year 1995, the four largest importers of the subject goods accounted for 81 percent of all imports of the subject goods.<sup>14</sup>

## **RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION**

The Deputy Minister's investigation covered shipments of the subject goods into Canada during the period from July 1, 1995, to June 30, 1996. For purposes of the preliminary determination of dumping, the Deputy Minister declared China a non-market economy.<sup>15</sup> Consequently, the normal value was determined pursuant to subparagraph 20(c)(i) of SIMA based on domestic selling prices in Mexico published by *Servicio Nacional de Información de Mercados*. The Department of National Revenue (Revenue Canada) estimated the normal value at \$2.03/kg. Subsequent to the preliminary determination of dumping, Revenue Canada contacted several major Mexican garlic growers to request information. Three large growers with extensive sales in the Mexican market submitted complete responses and allowed on-site verification of the data submitted. Accordingly, for purposes of the Deputy Minister's final determination of dumping, the normal value was established pursuant to subparagraph 20(c)(i) of SIMA on the basis of the weighted average domestic selling prices of these growers. The normal value was determined to be \$1.91/kg.

The export price for the subject goods was estimated in accordance with paragraph 24(a) of SIMA on the basis of exporters' selling prices to importers in Canada, less any applicable costs, charges and expenses incurred for the exportation and shipment of the subject goods to Canada. Revenue Canada found that, during the period of investigation, over 6 million kg of the subject goods were imported from China into Canada at an average selling price of \$0.58/kg.

Revenue Canada found that 96 percent of the subject goods imported during the period of investigation were dumped, by a weighted average margin of 70 percent, expressed as a percentage of the normal value.

On February 12, 1997, Revenue Canada received a submission from the Ministry of Foreign Trade & Economic Cooperation of the Government of China containing explanations of certain laws governing Chinese corporations. The information could not be fully analyzed prior to the legislated deadline for the final determination of dumping, but would be reviewed and considered in any subsequent proceedings in the investigation.<sup>16</sup>

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14. *Public Pre-Hearing Staff Report*, January 13, 1997, Tribunal Exhibit NQ-96-002-6, Administrative Record, Vol. 1 at 80.

15. Neither the Chinese government nor the Chinese exporters of the subject goods would provide information requested by the Department of National Revenue concerning domestic sales, cost of production and the Chinese government's involvement in the fresh garlic market. On the basis of recent economic reports and market studies, the Department of National Revenue concluded that it must regard China as a non-market economy for purposes of the dumping investigation.

16. Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, February 19, 1997, Tribunal Exhibit NQ-96-002-4 at 3, Administrative Record, Vol. 1 at 64.10.

Subsequent to the Deputy Minister issuing the preliminary determination of dumping, an undertaking was offered by one Chinese exporter to sell to importers at not less than a specified price. Revenue Canada concluded that the price level would not eliminate the dumping or the injury caused by the dumping and would not apply to all or substantially all of the exports of dumped goods to Canada. Accordingly, Revenue Canada informed the exporter that the undertaking would not be accepted.<sup>17</sup>

## **SUMMARY OF POSITION OF PARTIES**

### **The GGAO**

Counsel for the GGAO argued that the dumping of the subject goods has caused injury or retardation and is threatening to cause injury to the production in Canada of like goods. According to counsel, domestically grown fresh garlic is identical to or, at least, closely resembles the subject goods and, therefore, is “like goods.” Furthermore, the GGAO and Garden Isle represent a major proportion of Canadian production and constitute the domestic industry under SIMA. It was submitted by counsel that the domestic industry has suffered material injury in the form of lost sales, price erosion, price suppression, an inability to expand market share and lost profits.

According to counsel for the GGAO, the evidence showed that the domestic industry lost sales to the dumped imports, particularly in the critical fresh bulk submarket and that those sales were lost due to price only. Counsel submitted that the growers not only lost existing accounts but were unable to make new sales because of the low-priced imports from China. Counsel noted that the domestic industry’s evidence was not rebutted in any way and that it clearly established that sales were lost due to the dumping. With respect to price erosion, counsel argued that the evidence showed that the growers had to lower their prices in order to make sales. As a result, prices in the market declined. It was submitted that the fierce and unfair price competition from the dumped imports from China caused the erosion of prices in the fresh bulk submarket, which eventually led to the erosion of prices in the seed submarket. With respect to price suppression, counsel argued that, once prices dropped, they never came back up. Accordingly, once prices were eroded, they stayed suppressed.

Next, counsel for the GGAO argued that, although the domestic industry has been able to expand its market share, that expansion has not been at all commensurate with the expansion in the market. Counsel argued that growers have been replanting a large portion of their increased production instead of selling it into a growing consumer market with depressed prices, hoping for better prices the following year. Furthermore, counsel argued that, as a result of price erosion, price suppression and an inability to sell, along with increasing costs and lower returns in the market, the domestic industry’s profits declined over the period of inquiry and that there has been financial injury.

Counsel for the GGAO acknowledged that the domestic industry cannot presently supply the entire Canadian market and that it may never be able to do so. They argued, however, that the domestic industry should be given a chance to supply a fair portion of the market and to compete with undumped imports. According to counsel, the evidence showed that, within three to five years, the domestic industry should be able to supply 40 to 50 percent of the market. Counsel argued that the fact that garlic can be stored for up to 11 months would allow the domestic industry to supply the market year-round.

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17. Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, February 19, 1997, Tribunal Exhibit NQ-96-002-4 at 5, Administrative Record, Vol. 1 at 64.12.

Counsel for the GGAO submitted that, were it not for the depressed prices in the market currently caused by the dumped imports, the domestic industry would be enjoying a rapid expansion throughout Canada. Accordingly, counsel argued that not only has the dumping caused injury but this can also be looked at as a case of retardation. Referring to the Tribunal's decision in Inquiry No. NQ-93-002,<sup>18</sup> counsel argued that, to make a case for retardation, the two following conditions must be met: (1) there must be retardation in relation to the establishment of an industry; and (2) there must exist a substantial commitment to establish an industry. Counsel argued that, in the event that the Tribunal accepts the evidence of the witness for the China Chamber of Commerce that the domestic industry has not yet been established, the Tribunal should at least find that the two conditions have been met and that the dumped goods are materially retarding the ability of the domestic industry to become established.

Next, counsel for the GGAO submitted that the dumping of imports from China is also threatening to cause injury to the domestic industry. Counsel pointed to the increase in production of garlic in China and the significant rate of increase in dumped Chinese garlic imported into Canada throughout the period of inquiry. Counsel also referred to the fact that imports have been entering the domestic market at extremely low prices and argued that, if there are no anti-dumping duties imposed, these prices will continue to have a significant depressing effect on the prices of domestically grown garlic. Counsel also referred to the existence of trade restrictions in major third-country markets, such as the United States, the European Union and Mexico, as evidence of threat of injury to the domestic industry.

Finally, counsel for the GGAO argued that the Tribunal should make an injury finding that applies during the entire year. According to counsel, if anti-dumping duties were in place for only part of the year, low-priced Chinese garlic could be imported and stored when anti-dumping duties were not in force and sold afterwards. As a result, the Tribunal's injury finding would be circumvented. Counsel pointed to the evidence which showed that garlic is imported from China in every month of the year. According to counsel, previous Tribunal decisions where seasonal exclusions have been made are distinguishable from the present case based on the fact that, in those cases, the Tribunal was dealing with perishable products, such as lettuce and potatoes.

### **China Chamber of Commerce**

Counsel for the China Chamber of Commerce argued that the dumping of fresh garlic from China has not caused material injury to the domestic industry. They argued that the domestic industry as a whole has increased its market share. Furthermore, although imports from China have increased in recent years, a large part of the increase has been as a result of the sizeable expansion of the Canadian market. The remainder of the increase has come at the expense of imports from other sources and has had no impact on Canadian production.

Counsel for the China Chamber of Commerce argued that the growers that appeared at the hearing did not represent the domestic industry. In counsel's view, the Tribunal only had before it the evidence of 4 growers out of a potential group of 74 in the GGAO. The Tribunal, therefore, could not find that it had before it the entire industry. Counsel argued that there were conflicts between the evidence presented at the hearing by the 4 growers and the data compiled by the Tribunal through responses to its questionnaires. For example, counsel argued that, because the evidence showed that the domestic industry's share of the total market increased from 0 to 3.0 percent and that its share of the direct fresh bulk submarket increased from

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18. *Preformed Fibreglass Pipe Insulation with a Vapour Barrier, Originating in or Exported from the United States of America, Finding*, November 19, 1993, *Statement of Reasons*, December 6, 1993.

0.3 to 0.5 percent, this must mean that growers other than those that appeared at the hearing were making sales and gaining market share. Counsel argued that this evidence conflicted with the evidence of the 4 grower witnesses who testified at the hearing that they were losing sales to the subject goods.

According to counsel for the China Chamber of Commerce, there is no evidence of price erosion or price suppression. In their view, the domestic industry as a whole has been successful in maintaining a relatively high and consistent price for its product despite lower-priced imports from all sources, not just from China. Furthermore, in counsel's view, any price decline or fluctuation that may have occurred during the period of inquiry was a result of normal market forces or other factors unrelated to the dumping of the subject goods.

In addition, counsel for the China Chamber of Commerce submitted that the domestic industry is an infant industry not capable of supplying more than a fraction of the Canadian market. Furthermore, because of constraints on the ability of domestic growers to expand production in the future, the growth rate of the domestic industry is also limited. As a result, the market depends on imports to meet the volume required. Counsel argued that the domestic industry cannot be injured during a period of time when it is incapable of supplying the Canadian market, which, they submitted, would be at least from January 1 to July 31 of each year. Accordingly, in the event that the Tribunal decides that there is injury, counsel argued that the finding should only apply for part of the year. Counsel argued that this would allow the domestic growers to sell out their crops from August to December without competition from dumped imports. In counsel's view, there would be no need for storage. Counsel referred to previous Tribunal decisions dealing with agricultural products in support of their argument.

Counsel for the China Chamber of Commerce also argued that there can be no retardation of the domestic industry within the meaning of that term in SIMA, because it is clear that the domestic industry, although small, has already been established in Canada. Finally, counsel submitted that the dumping of the subject goods is not threatening to cause material injury to the domestic industry. According to counsel, the domestic industry will continue to compete in the market as it has done in the past without the imposition of anti-dumping duties.

## **REASONS FOR DECISION**

Pursuant to section 42 of SIMA, as amended by the *World Trade Organization Agreement Implementation Act*,<sup>19</sup> the Tribunal is required to "make inquiry ... as to whether the dumping or subsidizing of the goods [to which the preliminary determination applies] has caused injury or retardation or is threatening to cause injury."<sup>20</sup> "Injury" is defined in subsection 2(1) of SIMA as "material injury to a domestic industry." "Domestic industry" is defined, subject to certain exceptions, as "the domestic producers as a whole of the like goods or those ... whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods."

In arriving at its decision, the Tribunal must, therefore, determine which domestically produced goods are "like goods" to the subject goods. Subsequently, the Tribunal must identify the domestic producers of the like goods that make up the "domestic industry." The Tribunal must then determine whether the domestic industry has suffered material injury or retardation and whether there is a causal link

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19. S.C. 1994, c. 47.

20. For a more detailed discussion of the Tribunal's views on the impact of the amendments to SIMA, see *Caps, Lids and Jars Suitable for Home Canning, Whether Imported Separately or Packaged Together, Originating in or Exported from the United States of America*, Inquiry No. NQ-95-001, Finding, October 20, 1995, *Statement of Reasons*, November 6, 1995, at 8-10.

between the material injury or the retardation and the dumping of the subject goods. In the event that the Tribunal makes a finding of no injury or retardation, it must go on to consider the evidence relating to threat of injury and make a finding in respect of that question.

### Like 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.

As described previously, there are two subspecies of fresh garlic, commonly known as “hardneck” and “softneck.” The garlic grown in Canada is almost exclusively of the hardneck subspecies, while the majority of the garlic imported from China is of the softneck subspecies. The evidence shows that there are some differences between these two subspecies.<sup>21</sup> As a result, the Tribunal is of the opinion that domestically grown garlic and imported garlic from China are not identical in all respects. However, the Tribunal is satisfied that the uses and other characteristics of domestically grown garlic closely resemble those of the subject goods, as defined by the Deputy Minister in the final determination of dumping, and that domestically grown garlic constitutes “like goods” to the subject goods for the purposes of the Tribunal’s inquiry. Domestic and imported garlic have similar physical characteristics in that they are made up of numerous layers of skin wrapped around a number of individual segments called cloves. Furthermore, fresh garlic, whether of the hardneck or softneck subspecies, is used principally as a food product and for seasoning. The two subspecies of fresh garlic compete in the market and are viewed by consumers to be interchangeable.

### Domestic Industry

As indicated earlier, subparagraph 42(1)(a)(i) of SIMA provides that the Tribunal shall inquire into whether the dumping of the goods to which the preliminary determination applies has caused injury or retardation or is threatening to cause injury. The term “injury” is defined in subsection 2(1) of SIMA as “material injury to a domestic industry.” The term “domestic industry” is defined in subsection 2(1) of SIMA<sup>22</sup> as follows:

“domestic industry” means, other than for the purposes of section 31 and subject to subsection (1.1), 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 except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

The Tribunal must, therefore, assess whether there is injury suffered by the domestic producers as a whole or by those domestic producers whose production represents a major proportion of the total production of like goods. As indicated earlier, the Tribunal received production, import, sales and pricing data from 13 Ontario growers, all members of the GGAO, and from Garden Isle. These growers represent over 60 percent of domestic production. For purposes of its inquiry, the Tribunal considered that these

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21. *Public Pre-Hearing Staff Report*, January 13, 1997, Tribunal Exhibit NQ-96-002-6, Administrative Record, Vol. 1 at 74.

22. This definition incorporates Article 4.1 of the World Trade Organization *Agreement on Implementation of Article VI of GATT 1994* and Article 16.1 of the World Trade Organization *Agreement on Subsidies and Countervailing Measures*, signed at Marrakesh on April 15, 1994.

domestic growers, and not just the 4 growers who appeared at the hearing, constitute the domestic industry. In sum, the Tribunal finds that the requirement that it assess injury against at least a major proportion of total domestic production of like goods has been met.

### Canadian Market

For purposes of this inquiry, the Tribunal looked at events that occurred in the Canadian market for fresh garlic on a crop year basis (July 1 to June 30) during the period from 1992-93 to 1995-96 and during the partial crop years of July to September 1995 and 1996. In determining whether any injury resulted from the dumping of the subject goods, the Tribunal reviewed the key economic indicators over the period of inquiry, some of which are summarized in the following table.

<b>ECONOMIC INDICATORS</b>						
	1992-93	1993-94	1994-95	1995-96	<u>July -September</u>	
					1995	1996
Acres Harvested (planted previous fall)	26	52	142	280	280	624
Harvested Production (000 lbs.)	64	143	307	640	640	942
Net Production (000 lbs.)	40	92	178	361	361	485
Imports (000 lbs.)	12,178	15,356	15,752	19,474	11,151	11,497
Apparent Market (000 lbs.)	12,218	15,448	15,930	19,835	11,308	11,797
Growers' % Share	0	1	1	2	1	3
Imports' % Share	99	99	99	98	99	97
China	29	50	59	68	89	87
United States	46	31	16	14	7	7
Others	24	19	24	17	3	3
Fresh Bulk and Direct Fresh Bulk Submarkets (000 lbs.)	10,633	14,268	15,214	18,717	10,988	11,147
Growers' % Share	0.3	0.5	0.7	0.5	0.5	0.6
Imports' % Share	99.7	99.5	99.3	99.5	99.5	99.4
China	31.6	52.8	61.6	71.8	91.4	91.9
United States	40.5	26.0	12.9	9.9	5.0	4.1
Others	27.6	20.8	24.8	17.9	3.1	3.5
Average FOB Import Values (\$/lb.)						
China	0.31	0.19	0.23	0.27	0.24	0.27
All Other Sources	0.93	0.97	1.11	1.11	1.13	1.07
Average Selling Prices (\$/lb.)						
Fresh Bulk Submarket						
Domestic	1.61	1.57	1.53	1.67	1.70	1.45
Imports from China	N/A	N/A	0.65-1.00	0.65-1.00	0.65-1.00	0.65-1.00

N/A = Not available.

Note: Figures may not add up due to rounding.

During the period from 1992-93 to 1995-96, total market demand for fresh garlic increased by over 7.6 million lbs. or 62 percent, rising from 12.2 million lbs. to 19.8 million lbs. by crop year 1995-96. A further 4 percent increase in total market demand occurred in the partial crop year of July to September 1996 over the same period in 1995.

Between 1992-93 and 1995-96, the combined sales of the subject and non-subject goods increased by 7.3 million lbs. or 60 percent. The market share held by imports accounted for almost 100 percent of the domestic market over the period, falling to 98 percent in 1995-96. Imports from China between 1992-93 and 1995-96 increased by over 9.8 million lbs., rising from 3.6 million lbs. to 13.4 million lbs. The market share held by imports from China increased from 29 percent in crop year 1992-93 to 68 percent in crop year 1995-96, a gain of 39 percentage points. As the share held by imports from China increased, the market share held by imports from the United States declined from 46 percent in crop year 1992-93 to 14 percent in crop year 1995-96. Over the same period, the combined market share held by imports from all other non-subject sources declined from 24 percent to 17 percent. In crop year 1995-96, as noted above, China supplied 13.4 million lbs. compared to 2.7 million lbs. from the United States, 1.3 million lbs. from Argentina, 1.9 million lbs. from Mexico and less than 200,00 lbs. from all other import sources.<sup>23</sup>

Compared to this substantial growth in imports from China, domestic growers' sales volume increased by some 320,000 lbs. between crop years 1992-93 and 1995-96. The domestic industry's market share increased from less than 1 percent to 2 percent over the period.

In the partial crop year of July to September 1996, the market increased by 4 percent over the same period in 1995. Sales by domestic growers increased by 91 percent, and their market share increased from 1 percent to 3 percent, as total import sales declined by over 340,000 lbs. Imports from China accounted for 87 percent of the total market during the period from July to September 1996, down from 89 percent during the same period in 1995.

The average value for duty of imports from China after reaching a low of \$0.19/lb. in 1993-94 increased to \$0.27/lb. by crop year 1995-96, compared to the average value for duty of imports from all other sources which increased from \$0.93/lb. in 1992-93 to \$1.11/lb. over the same period. During the period from July to September 1996, the average value for duty of imports from China was \$0.27/lb. compared to \$1.07/lb. for imports from all other sources.<sup>24</sup> Average selling prices for imports from China over the period of inquiry were regularly below \$1.00/lb. and as low as \$0.63/lb.<sup>25</sup> Domestic growers' average selling prices for the fresh bulk submarket declined from \$1.61/lb. to \$1.45/lb. over the period of inquiry.

Coincident with the decline in fresh bulk prices from July to September 1996, seed prices fell from an average price of \$2.41/lb. in the period from July to September 1995 to \$1.63/lb. in the same period of 1996.

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23. *Public Pre-Hearing Staff Report*, January 13, 1997, Tribunal Exhibit NQ-96-002-6, Table 7, Administrative Record, Vol. 1 at 91.

24. *Public Pre-Hearing Staff Report*, January 13, 1997, Tribunal Exhibit NQ-96-002-6, Table 19, Administrative Record, Vol. 1 at 103; and Grower's Exhibit A-11, Administrative Record, Vol. 9.

25. Replies to importer's questionnaire, Tribunal Exhibits NQ-96-002-16.1A to 16.9.1 and NQ-96-002-16.11 (protected), Administrative Record, Vol. 6; and *Protected Pre-Hearing Staff Report*, January 13, 1997, Tribunal Exhibit NQ-96-002-7 (protected), Appendix VII, Administrative Record, Vol. 2 at 69.



## Injury

Subsection 37.1(1) of the *Special Import Measures Regulations*<sup>26</sup> prescribes certain factors that the Tribunal may consider in determining whether a domestic industry has been injured by dumped or subsidized imports. These factors include the volume of dumped imports and their effect on prices in the domestic market for like goods and the consequent impact of these imports on a number of economic factors, such as actual or potential declines in output, sales, market share and profits.

The evidence shows that total market demand for fresh garlic increased dramatically from 12 million lbs. to almost 20 million lbs. over the period of inquiry. Between 1992-93 and 1995-96, the volume of low-priced imports from China increased at a greater rate than the growth rate of the total market for fresh garlic and captured more than all of the increase in total market demand. Between 1992-93 and 1995-96, imports from China increased their market share of the fresh bulk submarket from 29 percent to 68 percent, thereby displacing imports from the United States and preventing domestic growers from making inroads into this important submarket.

In 1992, domestic growers began to increase their acreage planted in garlic. Between crop years 1992-93 and 1996-97, the area planted<sup>27</sup> increased annually, increasing 24 fold over the period from 26 acres to over 624 acres. The area planted at least doubled in each crop year from 1992-93 to 1995-96.

During the period of inquiry, the volume harvested increased annually, from about 64,000 lbs. to about 942,000 lbs. The volume harvested more than doubled in each crop year from 1992-93 to 1995-96 and increased by 47 percent in 1996-97.

The Tribunal heard testimony that the fresh bulk submarket accounts for 90 percent of the total domestic market for fresh garlic.<sup>28</sup> Despite annual increases in harvested production, the percentage share of net production that growers sold to the fresh bulk submarket declined in each crop year of the period of inquiry and in the partial crop year of July to September 1996, while over the same period the portion diverted to the seed submarket increased in each crop year.

The Tribunal notes that the domestic growers' total market share increased over the period of inquiry. However, it is clear from the evidence that, as growers were unable to gain market share in the fresh bulk submarket, they sold their crops into the seed submarket and, to a lesser extent, into niche markets. The Tribunal is satisfied that the large volume of seed sales was the result of diverting garlic that could not be sold in the fresh bulk submarket. Furthermore, the Tribunal heard testimony that sales to niche markets

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26. SOR/95-26, December 20, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 80.

27. The area planted refers to the area planted in the previous October which was harvested in July or August of each crop year presented in the table. For example, the figure for acres harvested for crop year 1993-94 is the area planted in October 1992 which was harvested in July or August 1993, the start of the 1993-94 crop year. A partial crop year (July to September 1996) is presented for crop year 1996-97, as that crop year is incomplete, ending on June 30, 1997. However, as the harvest was completed by the end of August 1996, the area planted, the volume of garlic harvested and held for replanting and the net production are known for the current crop year.

28. *Transcript of Public Hearing*, Vol. 1, February 20, 1997, at 31.

would not sustain the industry. There is evidence that growers also increased their exports of fresh garlic to the US fresh bulk submarket in an attempt to make sales.<sup>29</sup>

The Tribunal concludes that domestic growers suffered injury in the form of an inability to gain market share in the fresh bulk submarket.

The Tribunal considered an argument of counsel for the China Chamber of Commerce that the domestic industry cannot be injured because it does not have sufficient production to supply the domestic market, nor the ability to increase its production to meet the market's needs in the foreseeable future. The witness for the China Chamber of Commerce submitted that 20 percent of annual harvested production must be retained as seed for the new crop in order to maintain the current volume of net production available for sale to the market. Consequently, the witness contended that any attempt to increase the growth rate of production would require a greater percentage of the crop to be replanted, thereby slowing the growth in production that would be available for sale to the market, with the effect that domestic supply would fall short of market requirements. The Tribunal examined the witness's estimates of the annual production volumes that would be available for sale to the market, over a 10-year period, as the share of production that is held back for replanting is increased from 20 to 50 percent. The Tribunal notes that the estimates are based on the industry's 1995 planting level of 280 acres, whereas the industry planted around 625 acres in the fall of 1996. In addition, they are based solely on replanting domestically grown garlic. During the course of the public hearing, evidence was adduced that imported seed garlic, previously thought to be prohibited by the Department of Agriculture and Agri-Food, may be imported and planted in Canada.<sup>30</sup>

The model used by the witness for the China Chamber of Commerce indicates that, if 40 percent of production were held back for replanting, production would double annually. The Tribunal also reviewed the industry's historical trend in production. These data show that, between crop years 1992-93 and 1996-97, the area planted<sup>31</sup> increased annually, increasing 24 fold over the period, and at least doubled in each crop year from 1992-93 to 1995-96. The data also indicate that, during the period of inquiry, the volume harvested increased annually, from about 64,000 lbs. to about 942,000 lbs., and more than doubled in each crop year from 1992-93 to 1995-96, as did the net production available for sale.

On balance, the evidence suggests that domestic production can be increased rather quickly. In the Tribunal's view, the evidence indicates that it is feasible for the industry to double its production annually, which suggests that domestic production could approach market requirements in about five years. The Tribunal notes that the industry's production does not have to match total market demand in order to receive a benefit from protection against dumped imports. The purpose of anti-dumping duties is to remove the injury caused by dumped imports, not to ensure that domestic growers satisfy the entire domestic market. The Tribunal concludes that the domestic industry does have the ability to expand production in the short-to-medium term to yield significantly higher volumes for sale to the fresh bulk submarket. Furthermore, the Tribunal believes that, in the absence of the dumping of the subject goods, production would have expanded beyond the growth achieved over the period of inquiry.

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29. *Protected Pre-Hearing Staff Report*, revised January 20, 1997, Tribunal Exhibit NQ-96-002-7B (protected), Administrative Record, Vol. 2 at 71.7.

30. The Department of Agriculture and Agri-Food requires that importers obtain an import permit and a phytosanitary certificate. There is no general prohibition on seed garlic imports.

31. *Supra* note 27.

The Tribunal next considered the evidence pertaining to the industry's allegation of injury in the form of price erosion. At the outset, the Tribunal accepts the evidence that fresh garlic is a commodity and, accordingly, that price is the critical factor affecting the ability of growers to sell and compete in the fresh garlic market. The pricing information in the table of economic indicators shows that growers' fresh bulk average prices declined from \$1.61/lb. to \$1.53lb. between 1992-93 and 1994-95. It would appear from the evidence that domestic growers received somewhat better prices during crop year 1995-96. However, in the period from July to September 1996, growers' prices fell to \$1.45/lb., the lowest price during the period of inquiry.

The Tribunal also reviewed the pricing information provided in support of the industry's allegations of price erosion pertaining to specific accounts provided in response to the grower's questionnaire and in the witness statements and the testimony of the growers who appeared at the public hearing. This evidence set out domestic growers' quoted prices to specific accounts for fresh bulk garlic, the competing price available to these accounts for Chinese imports and the reduced prices that growers offered in an attempt to retain all or a portion of their sales to the accounts. The Tribunal notes the evidence of one grower who, over the period of one year, reduced prices three times to a specific account in an attempt to retain that business.<sup>32</sup>

The Tribunal further notes the evidence of the witness for Canada Garlic Company Inc., a major importer of the subject goods, who is in the process of expanding his own production of fresh garlic and who indicated that, upon reaching his target volume, he intends to market the garlic in the United States rather than in Canada. His reason for this strategy is the higher prices available in the US market compared to Canadian prices, stemming from the imposition of anti-dumping duties on imports from China into the United States.<sup>33</sup>

The Tribunal concludes that domestic growers suffered injury in the form of price erosion. In addition, the Tribunal concludes that the evidence pertaining to specific accounts submitted by the industry demonstrates that domestic growers were also injured through lost sales volume resulting from buyers reducing or terminating their domestic purchases.

The Tribunal reviewed the financial evidence in connection with the industry's claim of injury in the form of reduced profitability. Individual growers submitted evidence and testimony that average margins declined from well over 30 percent to below that level between crop years 1994-95 and 1995-96. The Tribunal reviewed the industry's data on gross farm returns which indicate that gross returns declined significantly between 1992-93 and 1995-96, falling to a loss position in the period from July to September 1996. The Tribunal concludes that domestic growers suffered injury in the form of reduced financial performance.

In sum, the Tribunal is satisfied that the evidence demonstrates that domestic growers of fresh garlic suffered injury in the form of an inability to gain market share in the fresh bulk submarket, and in the form of price erosion, lost sales, lost accounts and reduced financial performance. The magnitude of the lost market opportunities, price erosion and reduced financial performance convinced the Tribunal that the injury suffered was material.

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32. Grower's Exhibit A-3 (protected), Administrative Record, Vol. 10.

33. *Transcript of Public Hearing*, Vol. 2, February 21, 1997, at 228.

## Causation

The Tribunal next addressed the issue of whether there is a causal link between the injury to domestic growers and the dumping of the subject goods.

The Tribunal first considered the domestic growers' inability to gain market share in the fresh bulk submarket. The domestic industry's inability to expand its market share in the fresh bulk submarket and the diversion of increasing proportions of domestic production to the seed submarket were clearly effected by the dramatic increase in imports from China.

In 1995-96, 94 percent of the subject goods were sold to the fresh bulk submarket, for a 70 percent market share.<sup>34</sup> In the periods from July to September 1995 and 1996, 100 percent of the subject goods were sold to the fresh bulk submarket, yielding market shares of 91 percent and 92 percent respectively. The Tribunal notes the testimony of the witness for the GGAO to the effect that profitable sales to the fresh bulk submarket are critical to a grower's success in the fresh garlic market. During the period from 1992-93 to 1995-96, the proportion of growers' total sales to the fresh bulk submarket declined from 73 to 22 percent. During the same period, growers' sales to the seed submarket increased from 20 percent of total sales to 74 percent.<sup>35</sup>

In crop year 1995-96, the year in which the dumping was found by the Deputy Minister, the domestic industry marketed 361,000 lbs., of which only 80,000 lbs., or 22 percent, were sold to the fresh bulk submarket, against China's sales of over 12 million lbs. In that crop year, domestic growers' sales volume to the fresh bulk submarket declined by about 14,000 lbs., while sales of dumped imports from China increased by almost 4 million lbs.<sup>36</sup>

From July to September 1996, growers' fresh bulk sales declined to 19 percent of their total sales from 29 percent in the same period of 1995. In the partial crop year of 1996, growers' sales to the fresh bulk submarket were only 58,000 lbs. compared to 10.2 million lbs. of the subject goods, which accounted for 92 percent of the fresh bulk submarket. Growers' sales to the seed submarket from July to September 1996 were 77 percent of their total sales, up from 64 percent in the same period of 1995.

The Tribunal reviewed the testimony of the witnesses for the growers. The testimony of the witness for Garden Isle was particularly telling. The witness explained that, after conducting market research into prevailing prices and based on the favourable response from potential buyers to samples of the product and the large volume that Garden Isle would be able to supply, Garden Isle expanded its area planted from a few acres to over 100 acres in the fall of 1995. However, in the fall of 1996 when the company attempted to market the crop, buyers refused to purchase from Garden Isle unless it met the low dumped prices of Chinese imports. One buyer that was purchasing imports from Argentina informed Garden Isle that, because the buyer's main competitors were still selling low-priced Chinese garlic, Garden Isle would have to meet the Chinese price. Because it was not economically feasible for Garden Isle to match the dumped prices of

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34. *Public Pre-Hearing Staff Report*, January 13, 1997, Tribunal Exhibit NQ-96-002-6, Table 10, Administrative Record, Vol. 1 at 95. Imports from Argentina, Mexico and all other sources, except the United States, were to the fresh bulk submarket. Imports from the United States were primarily to the fresh bulk submarket (69 percent) with the balance going to the fresh value-added submarket.

35. *Ibid.*

36. *Ibid.*

Chinese imports, it was largely precluded from selling to the domestic fresh bulk submarket and was forced to seek export markets to dispose of a large portion of its production.

Counsel for the China Chamber of Commerce submitted that growers were not injured by the dumping, as they were able to sell their fresh garlic to niche markets. The evidence indicates that growers' attempts to expand their sales into the high-volume fresh bulk submarket were largely unsuccessful because they were rendered uncompetitive by low-priced dumped imports from China. In the Tribunal's view, domestic growers were forced to turn to niche markets due to the availability of low-priced dumped imports from China in the fresh bulk submarket. The Tribunal notes the growers' evidence that sales to niche markets would not sustain the industry. The Tribunal is satisfied that the evidence before it demonstrates a causal link between the dumping of the subject goods and the injury to domestic growers resulting from their inability to gain market share.

The Tribunal then considered whether the price erosion experienced by domestic growers was caused by the dumping. Fresh garlic is a commodity and, thus, the market is highly price sensitive. The Tribunal notes that the weighted average margin of dumping (70 percent ) is substantial. In a highly price-sensitive market, the Tribunal has no doubt that the gains in market share made by the subject goods resulted from lower price offerings which were assisted by dumping. The evidence shows that, over the period of inquiry, the average import values of imports from China have consistently been the lowest of all sources of imports of fresh garlic by a wide margin. The evidence of price erosion at specific accounts showed that, during crop years 1994-95 and 1995-96 and the period from July to December 1996, the average prices for imports from China were as low as \$0.63/lb. and regularly below \$1.00/lb.<sup>37</sup> and that domestic growers were forced to reduce their prices in response to the low-priced Chinese imports.

The Tribunal is satisfied that the price erosion suffered by domestic growers was caused by the dumped subject goods.

The evidence indicates that, although substantial price reductions were given to specific accounts in an attempt to meet the competition from dumped imports from China, in many instances, they were insufficient and sales volume and accounts were lost. The specific account evidence submitted by the domestic industry demonstrates that customers reduced their purchases in favour of Chinese imports in crop years 1994-95 and 1995-96. Growers identified specific accounts that reduced their domestic purchases in 1995-96 and, subsequently, terminated their purchases of domestic garlic in the fall of 1996. In some cases, accounts terminated their domestic purchases despite receiving multiple price reductions that were granted by growers over the previous crop year, but which failed to match the dumped price of Chinese imports.<sup>38</sup>

The Tribunal is satisfied that the injury to domestic growers in the form of lost sales and accounts was caused by the dumped subject goods.

Price reductions, lost sales and lost accounts led to reduced grower returns and, in some instances, caused growers to suffer financial losses which, in the Tribunal's view, were caused by the dumping.

Rather than incur additional financial losses in the fresh bulk submarket, growers increased their sales to the seed submarket where, in the absence of direct competition from Chinese imports, prices were

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37. Grower's Exhibits A-3, A-3A, A-5, A-7 and A-9 (protected), Administrative Record, Vol. 10.

38. *Ibid.*

more favourable. The evidence indicates that growers were replanting in the hope that prices in the fresh bulk submarket would improve. However, the persistent erosion of prices in the fresh bulk submarket eventually had a negative effect on growers' confidence in the fresh bulk submarket, which led to an abrupt decline in seed prices in the period from July to September 1996. The Tribunal concludes that the price erosion suffered by domestic growers in the seed submarket was caused by the dumping of the subject goods.

The Tribunal is satisfied that price was the key factor in the ability of the imports from China to achieve the market shares gained and in the inability of domestic growers to expand their market share. Furthermore, the Tribunal concludes that growers reduced their fresh bulk and seed prices in response to low-priced Chinese imports.

In sum, the Tribunal concludes that the dumping of the subject goods caused material injury to the domestic industry.

### **Period During Which the Finding is to Apply**

Pursuant to subsection 43(1) of SIMA, the Tribunal is required to make such order or finding with respect to the goods to which the final determination applies, as the nature of the matter may require, and to declare to what goods the order or finding applies. The Tribunal and its predecessors have, in past inquiries involving agricultural products, interpreted this provision as giving them the discretion to make a finding that applies only to goods imported during certain periods of the year.

Counsel for the China Chamber of Commerce requested that, in the event of a finding of injury, anti-dumping duties not be imposed on the subject goods during the period from January 1 to June 30 of each year, based on the evidence that no domestic production is available during that period. Counsel argued that the historical sales pattern of the domestic industry showed that virtually the entire domestic crop is marketed from July 1 to December 31 of each year.

Counsel for the GGAO argued that protection from dumping should be given for the whole year. They argued that the evidence showed that domestic production will be available to the market during the whole year, as domestic growers increase their output and make investments to increase their capacity for long-term storage. It was submitted that the evidence showed that, in previous years, the subject goods have been stored at least from July to March and that it is feasible to store them for up to one year. Thus, according to counsel, in the absence of year-round protection, the domestic industry will continue to be injured by dumped imports.

As indicated earlier, the Tribunal is of the opinion that the domestic industry has the ability to increase its production to meet a much greater proportion of the demand for fresh garlic in the foreseeable future. In the Tribunal's view, however, it is clear that, for some time in the future, the domestic growers will only be able to supply part of the domestic market requirements for a few months of each year. In the Tribunal's opinion, the evidence shows that, historically, domestic sales have been concentrated in the period from July 1 to December 31 of each year and that the domestic crop has essentially been sold out by the end of December. The evidence also shows that, after harvesting their crops, domestic growers seek to sell their garlic as quickly as possible.

The Tribunal notes that counsel for the GGAO argued that a finding that does not apply during a certain period in the crop year could lead to circumvention of the finding. They postulated that importers might bring large quantities of Chinese garlic into Canada and store it during the period in which

anti-dumping duties are not in effect and, having avoided the anti-dumping duty, they would then offer it for sale when anti-dumping duties are again in force. The Tribunal considered a similar argument in Review No. RR-94-007.<sup>39</sup> In that case, the Tribunal stated the following:

In the opinion of the Tribunal, the scenario described by counsel cannot be considered, at this time, more than a remote theoretical possibility. The Tribunal notes that there are substantial costs involved in building long-term storage facilities, which would represent a major hurdle for anyone considering such a plan. Moreover, any imported potatoes stored in the summer for fall sale would have the major disadvantage of having to compete with B.C. fresh supply and consumers' general preference for freshly dug potatoes.<sup>40</sup>

The Tribunal adopts a similar view in the present case in regard to the argument advanced by counsel for the GGAO. More particularly, as in *Whole Potatoes*, the Tribunal is of the view that the scenario described by counsel for the GGAO cannot be considered, at this time, more than a remote possibility. In addition, the Tribunal has examined the pattern of monthly imports over the period of inquiry and notes that, in the first six months of the calendar year, imports from China have been minimal in comparison to the period from July to the end of October when over 80 percent of the annual imports from China enter Canada.

In light of the foregoing, the Tribunal cannot find that dumped imports of fresh garlic from China have caused material injury to the domestic industry during a period of the year when domestic growers cannot supply the market. Accordingly, the Tribunal finds that it is appropriate in this inquiry to make a finding that applies only to imports of fresh garlic from China from July 1 to December 31, inclusive,\* in each calendar year.

## Retardation

Subsection 2(1) of SIMA defines retardation as “material retardation of the establishment of a domestic industry.” In *Preformed Fibreglass Pipe Insulation*, the Tribunal stated that to succeed in a claim of retardation, the following two conditions must be met: (1) there must be retardation in relation to the establishment of an industry; and (2) there must exist a substantial commitment to establish an industry. In that case, the Tribunal found that, because the goods in issue were being produced in Canada, there could be no retardation of a domestic industry. The Tribunal was of the view that there was, in Canada, a domestic industry which produced like goods. Similarly, in the present inquiry, the evidence shows that fresh garlic is produced in Canada. On the basis of that fact, there is, in Canada, a domestic industry which produces like goods. Accordingly, in the Tribunal's opinion, there can be no “material retardation of the establishment of a domestic industry.”

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39. *Whole Potatoes with Netted or Russeted Skin, Excluding Seed Potatoes, in Non-Size A, Also Commonly Known as Strippers, Originating in or Exported from the State of Washington, United States of America, for Use or Consumption in the Province of British Columbia; and Whole Potatoes, Originating in or Exported from the United States of America, for Use or Consumption in the Province of British Columbia, Excluding Seed Potatoes, and Excluding Whole Potatoes with Netted or Russeted Skin in Non-Size A, Originating in or Exported from the State of Washington, Order and Statement of Reasons*, September 14, 1995.

40. *Ibid.* at 19.

\* The word “inclusive” was added as per the corrigendum to the statement of reasons issued by the Canadian International Trade Tribunal on April 14, 1997.

## CONCLUSION

In light of the foregoing, the Tribunal concludes that the dumping in Canada of fresh garlic originating in or exported from China has caused material injury to the domestic industry. The finding is to apply only to imports of fresh garlic from China from July 1 to December 31, inclusive,\* of each calendar year.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Charles A. Gracey

Charles A. Gracey  
Member

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\* The word "inclusive" was added as per the corrigendum to the statement of reasons issued by the Canadian International Trade Tribunal on April 14, 1997.



Ottawa, Monday, April 14, 1997

**Inquiry No.: NQ-96-002**

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

**FRESH GARLIC ORIGINATING IN OR EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

**CORRIGENDUM TO THE STATEMENT OF REASONS OF APRIL 7, 1997**

The references to the period from July 1 to December 31 found on the cover page and on pages 18 and 19 should read as follows:

“from July 1 to December 31, inclusive, of each calendar year.”

This corrigendum pertains only to the English version of the statement of reasons, as the French version will incorporate these changes when published.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Charles A. Gracey

Charles A. Gracey  
Member

Michel P. Granger

Michel P. Granger  
Secretary