



Ottawa, Friday, December 29, 2000

Preliminary Injury Inquiry No.: PI-2000-002

IN THE MATTER OF a preliminary injury inquiry, under subsection 34(2) 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 BY THE CANADIAN INTERNATIONAL TRADE
TRIBUNAL IN INQUIRY NO. NQ-96-002**

PRELIMINARY DETERMINATION OF INJURY

On October 31, 2000, the Acting Director General, Anti-Dumping and Countervailing Directorate, Canada Customs and Revenue Agency, notified the Canadian International Trade Tribunal that an investigation had been initiated into the alleged injurious 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 by the Canadian International Trade Tribunal in Inquiry No. NQ-96-002.

Following receipt of the notice, the Canadian International Trade Tribunal, under the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary inquiry into whether the evidence discloses a reasonable indication that the dumping of the above-mentioned garlic has caused injury or retardation or is threatening to cause injury to the domestic industry.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that the evidence discloses a reasonable indication that the dumping of the above-mentioned garlic has caused injury to the domestic industry.

The Canadian International Trade Tribunal finds that the question of whether or not there are two classes of goods merits further consideration. The Canadian International Trade Tribunal, therefore, requests the Canada Customs and Revenue Agency to collect information on dumping for fresh garlic, frozen garlic and fresh and frozen garlic combined.

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.

Date of Determination:	December 29, 2000
Date of Reasons:	January 12, 2001
Tribunal Members:	Peter F. Thalheimer, Presiding Member Patricia M. Close, Member Zdenek Kvarda, Member
Director of Research:	Sandy Greig
Lead Researcher:	Daryl Poirier
Economist:	Ihn Ho Uhm
Counsel for the Tribunal:	Philippe Cellard Dominique Laporte
Registrar Officer:	Gillian E. Burnett

Submissions

Garlic Growers Association of Ontario

China Chamber of Commerce for Import & Export of Foodstuffs, Native Produce & Animal By-Products

C.H. Robinson Company (Canada) Ltd. and Dolphin Shipping & Trading Inc.

Gyma Inc.

Victoria International Trading Inc.

Monco Produce Inc.



Ottawa, Friday, January 12, 2001

Preliminary Injury Inquiry No.: PI-2000-002

IN THE MATTER OF a preliminary injury inquiry, under subsection 34(2) 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

On October 31, 2000, pursuant to subsection 31(1) of the *Special Import Measures Act*,¹ the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) initiated an investigation respecting the alleged injurious dumping in Canada of 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 (Tribunal) Inquiry No. NQ-96-002.²

The investigation was initiated following a complaint filed on behalf of the Garlic Growers Association of Ontario (GGAO) on September 27, 2000. On October 12, 2000, the Canada Customs and Revenue Agency (CCRA) informed the GGAO that its complaint was properly documented. The CCRA also informed the governments of China and of Vietnam of the filing of the complaint.

On November 1, 2000, pursuant to subsection 34(2) of SIMA, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping had caused injury or retardation or was threatening to cause injury.

The record of this preliminary injury inquiry consists of all documents that relate to the Commissioner's decision to initiate the investigation, his statement of reasons for the initiation and the public and protected versions of the complaint. In addition, the record consists of all submissions filed in response to the Tribunal's notice. 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 proceeding or in the event of a change of counsel.

1. R.S.C. 1985, c. S-15 [hereinafter SIMA].
2. The finding made by the Tribunal on March 21, 1997, applies only to fresh garlic imported into Canada from China from July 1 to December 31, inclusive, of each calendar year.

The Tribunal issued its preliminary determination of injury on December 29, 2000.

PRODUCT

The subject goods are defined by the CCRA as “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”.

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.

The subject goods include various unnamed strains of garlic, of both the ophioscorodon (hardneck) and sativum (softneck) subspecies. The definition of the subject goods includes whole garlic bulbs, individual cloves, peeled or unpeeled, garlic sprouts and garlic stems. The garlic may also be cured, trimmed and cleaned. Garlic delivered in cold storage (chilled garlic) is considered “fresh” garlic. The garlic may also be frozen. The definition of the subject goods does not include dehydrated garlic, garlic flakes, garlic powder, garlic paste or similar processed garlic products.

INDUSTRY

There were an estimated 1,262 acres of garlic in commercial production in Canada in 2000. The crop was expected to yield over 2 million kilograms. The major production area is in southwestern Ontario.

The GGAO has 96 members that are, in large part, full-time farmers in the province of Ontario that grow garlic as part of their selection of crops. Based on a survey of production conducted by the GGAO, its members constitute 68 percent of total Canadian production of garlic (by acreage). The dumping complaint is also supported by an additional 14 producers that are not members of the GGAO. As such, the complaint is supported by producers that represent 84 percent of total Canadian production (by acreage).

COMMISSIONER’S DECISION

The margins of dumping were estimated by comparing the complainant’s estimate of the normal value with the export prices determined from import documentation available to the CCRA. The CCRA’s review of imports from China during the period from January 1 to June 30, 2000, revealed that approximately 99.5 percent of the subject goods appeared to have been dumped. The margins of dumping range from 0.8 percent to 95.2 percent expressed as a percentage of normal value. The weighted average margin of dumping is estimated at 65.6 percent.

The CCRA’s review of imports from Vietnam during the period from July 1, 1999, to July 31, 2000, revealed that 100 percent of the subject goods appeared to have been dumped. The margins of dumping range from 48.9 percent to 72.8 percent expressed as a percentage of normal value. The weighted average margin of dumping is estimated at 58.7 percent.

SUMMARY OF SUBMISSIONS

In response to the Tribunal’s notice of commencement of a preliminary injury inquiry, seven parties filed notices of appearance. Six of these parties filed submissions opposing the complaint, in whole or in part. They were: China Chamber of Commerce for Import & Export of Foodstuffs, Native Produce & Animal By-Products (China Chamber of Commerce); C.H. Robinson Company (Canada) Ltd. and Dolphin

Shipping & Trading Inc. (Robinson and Dolphin), which filed a joint submission; Gyma Inc. (Gyma); Victoria International Trading Inc. (Victoria International) and Monco Produce Inc. (Monco). The GGAO filed a brief in response to the submissions.

The China Chamber of Commerce submitted that fresh garlic and frozen garlic are not “like goods”, in that they have different end uses. It appeared to it from the letters and documents filed by the GGAO in support of its complaint that fresh garlic grown by Canadian growers is destined for the retail market. In comparison, frozen garlic is destined for processing facilities and the food service industry and is only “gradually penetrating” the retail garlic market. The China Chamber of Commerce also submitted that the GGAO had not provided any evidence of the dumping of frozen garlic from China, nor any evidence of injury therefrom. Accordingly, it argued that the Tribunal must conclude that the evidence does not disclose a reasonable indication that the dumping of frozen garlic has caused injury or retardation or is threatening to cause injury.

Robinson and Dolphin argued that documents provided by the GGAO indicated that many of the Canadian producers sold important quantities of fresh garlic to the United States in order to benefit from the advantageous exchange rates and higher prices in that market. In their view, the GGAO did not take into consideration that, without such exports, the domestic producers’ share of the Canadian market would have increased significantly. They submitted that, unless provided with statistics on the domestic industry’s exports to the United States, the Tribunal was not in a position to determine if material injury was caused. Robinson and Dolphin also contended that the alleged dumping from China did not cause material injury to the domestic industry because, had this been the case, the U.S. and Mexican exports to Canada would have been affected, which was not the case. Finally, they argued that, if the Canadian producers did encounter any difficulties, which they denied, these could only have been caused by the producers’ ineffective marketing strategy.

Gyma claimed that frozen garlic is not a “like good” to fresh garlic on the basis of its organoleptic qualities,³ its microbiological profiles⁴ and its extended shelf life.⁵ It contended that these characteristics of frozen garlic make it a “technical food ingredient” that is designed for food manufacturers and not an ingredient that is used for institutional or home kitchens. Gyma submitted that there are no food service distributors that purchase frozen garlic, nor is it aware of any retailers that sell frozen garlic to the public. It contended that frozen garlic is purchased by large food processors in bids or annual contracts and that there is no substitution possible of fresh garlic for frozen garlic or vice versa. Manufacturers with strict requirements are the only consumers willing to pay the higher cost of frozen garlic. If such substitution were possible, Gyma argued, the market share of frozen garlic in the Canadian market would be much higher than the estimated maximum of 5 percent. Gyma claimed that there is no frozen garlic processor in existence in Canada today. It noted that only a few processors in the world possess the technology to manufacture frozen free-flowing garlic (or individually quick-frozen garlic) and that there are no Canadian processors that use this technology. Frozen Chinese garlic, it argued, does not hurt the Canadian garlic industry, since there is no processor of frozen garlic in Canada.

Victoria International contended that low-priced garlic from China may have affected U.S.-grown garlic sold in Canada more than it affected Canadian-grown garlic. It further submitted that some importers had to import large quantities of garlic from China during May and June 2000 in order to compete with low-priced garlic from Vietnam. Importers of Chinese garlic could not compete during the last half of the

3. Lighter in colour than fresh garlic, milder in taste, zero skin content and all crowns removed.

4. Unmatched quality assurance as compared to fresh garlic and cleaner microbiological profiles than fresh garlic.

5. Storable for two years, available year round at stable prices, no degradation of microbiological profile, and safe and easy handling in food manufacturing plants.

year because of the anti-dumping duties in place on Chinese garlic. Victoria International believes that the finding made in Inquiry NQ-96-002 is sufficient to protect the market for Canadian-grown garlic, should garlic from Vietnam and other Asian countries be included in the finding. Because of the low volume of Canadian garlic production, it does not believe that extension of the finding to the full year would provide any benefit to Canadian growers.

Monco opposed the complaint in respect of garlic originating in China and imported into Canada during the period from January 1 to June 30. In regard to the allegations of declining market share and lost sales, Monco argued that the market share of Chinese garlic has declined in Canada since 1996, with the exception of 1998. It also questioned why, if Canadian garlic lost sales to low-priced Chinese garlic, higher-priced U.S. garlic is still competitive in Canada, with U.S. import volumes increasing between 1997 and 1999. In regard to price suppression and price erosion, Monco noted that Chinese garlic is much higher priced during the second six months of each year and suggested that the lower price from January to June reflected the poor quality of garlic on the market at that time. In regard to suppression of growth, Monco noted that Canadian garlic production increased by 34 percent from 1997 to 1999. Monco also argued that, since Canadian garlic is normally sold out by the end of December in each harvest year, the domestic industry is not active during the complaint period and, hence, cannot be injured during that time. However, Monco did agree that there is a need for garlic imported from Vietnam to be made subject to anti-dumping duties during the period from July 1 to December 31.

ANALYSIS

This preliminary injury inquiry has been conducted by the Tribunal following the changes made to SIMA, which came into force on April 15, 2000. Pursuant to these changes, the responsibility for making the preliminary determination as to whether there is a reasonable indication of injury has been transferred from the CCRA to the Tribunal. The Tribunal's new authority is contained in subsection 34(2) of SIMA, which reads as follows:

The Tribunal shall, without delay after receipt by the Secretary under subparagraph (1)(a)(i) of a notice of initiation of an investigation, make a preliminary inquiry (which need not include an oral hearing) into whether the evidence discloses a reasonable indication that the dumping or subsidizing of the goods has caused injury or retardation or is threatening to cause injury.

The evidentiary test of "reasonable indication" of injury that the Tribunal is required to apply under the new legislation is the same test that the CCRA was required to apply under the former legislation. It is also the same test that the Tribunal applied whenever, under the former legislation, it was called upon by the CCRA, or one of the parties, to provide "advice"⁶ on the question of injury at the preliminary stage of an

6. Paragraph 34(1)(b) of SIMA prior to April 15, 2000, read as follows:

(1) Where the Deputy Minister causes an investigation to be initiated respecting the dumping or subsidizing of goods,

...

(b) in the case of an investigation initiated pursuant to subsection 31(1), the Deputy Minister may, on the date of the notice given to the complainant pursuant to paragraph (a), or any person or government that was given notice pursuant to paragraph (a) may, within thirty days from the date of the notice, refer to the Tribunal the question whether the evidence discloses a reasonable indication that the dumping or subsidizing of any goods in respect of which the Deputy Minister has caused the investigation to be initiated has caused injury or retardation or is threatening to cause injury.

investigation. Thus, although there has been a jurisdictional change, as well as certain procedural changes,⁷ the substantive evidentiary test to be applied in the preliminary injury inquiry remains that of a “reasonable indication”. Moreover, the threshold has always been interpreted by the Tribunal as implying a lower threshold than that required in arriving at a final determination of injury.⁸

The Tribunal first considered the argument that there is more than one class of goods to be considered in the investigation. As summarized earlier, the China Chamber of Commerce and Gyma submitted that fresh garlic and frozen garlic are separate classes of goods. In reply, the GGAO submitted that fresh garlic and frozen garlic are close substitutes and are in direct competition in certain segments of the market. The GGAO further submitted that there is evidence on the record that fresh garlic and frozen garlic compete in the grocery, food service and processing segments of the garlic market.

The Tribunal notes that, in initiating its investigation, the CCRA indicated, in its statement of reasons, that it had considered the question of whether the goods under investigation should be divided into more than one class and had concluded that there is only one class of goods. As the Tribunal has stated in past cases, it is not bound by the CCRA’s determination on the issue of class of goods. In considering this issue, 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.⁹

The Tribunal finds that the arguments made in support of two separate classes of goods are relevant and merit further consideration. The Tribunal has reviewed the complaint and the submissions of the parties for documentary information that would allow it to consider the question of classes of goods through a review of each of the above-mentioned factors. The Tribunal, however, is unable to come to the conclusion that there are two classes of goods on the basis of the existing record. It will require further documentary and, perhaps, testimonial evidence before it will be able to come to a definitive conclusion. For the purposes of determining whether there is a reasonable indication of injury, the Tribunal will consider the subject goods as being comprised of one single class of goods, as determined by the CCRA.

The Tribunal is aware that its decision to keep open the question on classes of goods will have significant implications for the conduct of this case. The Tribunal is requesting the CCRA to collect information on dumping for fresh garlic, frozen garlic and fresh and frozen garlic combined. Similarly, the Tribunal will collect information on the injury factors for fresh garlic, frozen garlic and fresh and frozen garlic combined.

The Tribunal next considered the question of injury. The GGAO submitted that the alleged dumping of the subject goods from China and Vietnam has caused material injury or retardation or is threatening to cause material injury to the Canadian garlic industry. The injury indicators cited are: price erosion, price suppression and reduced profitability, declining market share and lost sales, and adverse effects on growth, investment and employment.

7. Under the new procedures, parties and counsel have access to the record, including the complaint and other relevant information filed with the CCRA. Parties are also invited to make submissions to the Tribunal not only on whether there is injury but also on other issues, as specified in the notice. Such issues include: whether there are goods produced in Canada that are like goods to the allegedly dumped or subsidized goods; whether there is more than one class of goods; and which domestic producers of like goods comprise the domestic industry.

8. See, for example, *Malt Beverages, Commonly Known as Beer, Advice* (2 May 1991), RE-91-001 (CITT).

9. See, for example, *Certain Iodinated Contrast Media, Finding* (1 May 2000), *Statement of Reasons* (16 May 2000), NQ-99-003 (CITT).

The GGAO compiled evidence of injury to Canadian production of garlic by surveying Canadian garlic growers (the 2000 Survey) and tabulating the results in the complaint. The evidence includes letters from individual growers. The evidence also includes trade and commodity data from Statistics Canada.

The GGAO provided data from Statistics Canada that showed that the farm-gate price of fresh garlic produced in Canada had declined from \$4.91 per kilogram (\$2.23 per pound) in 1997 to \$3.28 per kilogram (\$1.49 per pound) in 1999. In addition, the GGAO provided copies of retail sales advertisements that documented retail selling prices in Ontario stores for garlic from China in July and August 2000. These advertisements show prices ranging from \$1.96 per kilogram (\$0.89 per pound) to \$1.43 per kilogram (\$0.65 per pound). Letters from garlic growers documented cases where the growers were required to reduce their prices in order to make sales.

The 2000 Survey obtained information relating to production costs. The 2000 Survey revealed that the break-even cost of producing and delivering garlic to market in Ontario is between \$2.33 and \$2.48 per kilogram (between \$1.06 and \$1.12 per pound). These costs are higher than the documented retail selling prices of garlic from China in July and August 2000.

The GGAO also provided information on the volume of imports. The volume of imports from China increased from 3.3 million kilograms in 1997 to 5.7 million kilograms in 1999. During the first six months of 2000, 7.1 million kilograms of garlic were imported from China. This amount is a 25 percent increase over the total amount imported from China in all of 1999 and represents 81.5 percent of all imports during this six-month period. The volume of imports from Vietnam increased from 0.3 million kilograms in 1997 to 0.8 million kilograms in 1999.

The monthly distribution of imports from China has changed since the Tribunal's finding in 1997. In the last full year before the Tribunal's finding, approximately 92 percent of garlic imports from China entered Canada between July 1 and December 31. After the finding, the pattern of imports reversed. In 1999, approximately 93 percent of garlic imports from China entered Canada between January 1 and June 30, the six-month period that falls outside of the Tribunal finding. During the first six months of 2000, the seasonal shift seems to have continued. The Tribunal took particular note of the sizeable volume of imports from China in June of both 1999 and 2000.

In comparison, imports from Vietnam enter Canada primarily during July to December, when the Tribunal's injury finding is in place on garlic from China. There were apparently no imports from Vietnam during the first six months of 2000.

While the Canadian market and domestic production of garlic have been increasing,¹⁰ the share of the market held by domestic production has been decreasing.¹¹ The domestic producers' share of the Canadian market for fresh garlic was 17.5 percent in 1997. The share of the Canadian market held by domestic producers declined by approximately 2 percentage points between 1997 and 1999, coincidental with an increase in imports from China and Vietnam. The share of the market held by imported garlic from China and Vietnam increased from 42 percent in 1997 to 50 percent in 1999.

The GGAO submitted that the expansion of the Canadian industry was impeded by the year-round dumping of garlic. The 2000 Survey revealed that 26 growers accounting for 21 percent of the present acreage devoted to garlic production in Canada have already exited the business. Furthermore, other

10. The Canadian market grew from 8.6 million kilograms in 1997 to 13 million kilograms in 1999. Domestic production grew from 1.5 million kilograms in 1997 to an estimated 2 million kilograms in 1999.

11. Although there is a longer series of information on the record, the Tribunal, as is usual practice, considered such information for the last three complete years and the most recent interim period.

growers indicated that additional acreage representing 40 percent of current Canadian production may potentially be removed from Canadian production,¹² at the same time that the apparent Canadian market for garlic is expanding.

The GGAO further claimed that the ongoing imports of dumped garlic threaten investment and employment in the Canadian garlic industry. If the situation were redressed, however, the Canadian industry submitted that it could rapidly expand, making significant investment and creating considerable employment.

The Tribunal notes that the scope and extent of the injury claimed by the GGAO and its causal relation to imports of garlic from China and Vietnam are contested by a number of the parties opposed to the complaint. The Tribunal, however, is of the view that there is sufficient information to support the GGAO's claims, at this stage, to meet the test of "reasonable indication" of injury caused by the subject imports from China and Vietnam. The Tribunal finds that, based on the evidence, there is a correlation between the growth of dumped imports of garlic from China and Vietnam and particularly the declining prices in the Canadian market. In light of the above conclusion, the Tribunal did not consider it necessary to address the issues of threat of injury and retardation.

CONCLUSION

Pursuant to subsection 37.1(1) of SIMA, the Tribunal hereby determines that the evidence discloses a reasonable indication that the dumping of the subject garlic has caused injury to the domestic industry.

The Tribunal finds that the question of whether or not there are two classes of goods merits further consideration. The Tribunal, therefore, requests the CCRA to collect information on dumping for fresh garlic, frozen garlic and fresh and frozen garlic combined.

Peter F. Thalheimer

Peter F. Thalheimer
Presiding Member

Patricia M. Close

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Member

Zdenek Kvarda

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Member

12. Some growers have decided not to grow garlic in the 2000-2001 season, are considering not growing garlic again, have reduced the amount of acreage devoted to garlic production, or are considering reducing the amount of acreage devoted to garlic production.