



Ottawa, Tuesday, January 8, 2002

**Preliminary Injury Inquiry No. PI-2001-002**

IN THE MATTER OF a preliminary injury inquiry, under subsection 34(2) of the *Special Import Measures Act*, respecting:

**THE DUMPING OF FRESH TOMATOES ORIGINATING IN OR EXPORTED  
FROM THE UNITED STATES OF AMERICA, EXCLUDING TOMATOES FOR  
PROCESSING**

**PRELIMINARY DETERMINATION OF INJURY**

The Canadian International Trade Tribunal, under the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the dumping of fresh tomatoes originating in or exported from the United States of America, excluding tomatoes for processing, has caused injury or retardation or is threatening to cause injury to the domestic industry.

This preliminary injury inquiry is pursuant to the notification, on November 9, 2001, by the Canada Customs and Revenue Agency, that an investigation had been initiated into the alleged injurious dumping of the above-mentioned goods.

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 goods has caused injury to the domestic industry.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Zdenek Kvarda  
Zdenek Kvarda  
Member

James A. Ogilvy  
James A. Ogilvy  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

The statement of reasons will be issued within 15 days.

Date of Determination: January 8, 2002  
Date of Reasons: January 23, 2002

Tribunal Members: Pierre Gosselin, Presiding Member  
Zdenek Kvarda, Member  
James A. Ogilvy, Member

Director of Research: Selik Shainfarber

Research Manager: Richard Cossette

Economist: Eric Futin

Counsel for the Tribunal: John Dodsworth

Registrar Officer: Gillian E. Burnett

**Participants:**

A. Keith Mitchell, Q.C.  
Robert J. McDonell  
Craig T. Munroe  
for Canadian Tomato Trade Alliance

Richard S. Gottlieb  
Darrel H. Pearson  
Jesse I. Goldman  
Peter Collins  
for California Tomato Commission  
Florida Tomato Exchange



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TRIBUNAL: PIERRE GOSSELIN, Presiding Member  
ZDENEK KVARDA, Member  
JAMES A. OGILVY, Member

**STATEMENT OF REASONS**

**BACKGROUND**

On January 8, 2002, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,<sup>1</sup> the Canadian International Trade Tribunal (the Tribunal) issued a preliminary determination of injury relating to the dumping of fresh tomatoes originating in or exported from the United States of America, excluding tomatoes for processing.

The Tribunal's decision completed its preliminary injury inquiry. This inquiry was commenced following the initiation, on November 9, 2001, by the Canada Customs and Revenue Agency (CCRA), of an investigation into the alleged dumping of the above-mentioned goods. The investigation was initiated by the CCRA following a complaint filed by the Canadian Tomato Trade Alliance (CTTA) on September 28, 2001.

**CCRA'S DECISION**

The CCRA conducted an analysis of the margins of dumping based on the normal values estimated by the CTTA, the export price information provided by the CTTA and the actual import data from customs documentation for the period from March 1998 to August 2000 inclusive. The estimated margins of dumping ranged from 14 to 76 percent, expressed as a percentage of the normal value.

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1. R.S.C. 1985, c. S-15 [hereinafter SIMA].

## SUBMISSIONS

### Domestic Industry

The CTTA, an *ad hoc* alliance of greenhouse growers of fresh tomatoes in Canada, filed the complaint on behalf of its members. It also filed a reply to a submission by certain U.S. growers that opposed the complaint. The complaint alleges that the dumped subject goods have caused injury to Canadian greenhouse growers by, among other things, depressing the prices of Canadian greenhouse tomatoes and the revenues received by growers. It also alleges that the dumping has retarded the growth and expansion of the domestic industry.

### U.S. Growers

The Tribunal received a joint submission opposing the complaint from the California Tomato Commission and the Florida Tomato Exchange (the U.S. growers). The California Tomato Commission represents growers of field tomatoes grown in that state. The Florida Tomato Exchange represents most field tomato growers/shippers in that state. The submission contends that U.S. field tomatoes have not injured Canadian greenhouse tomato growers because, among other things, field tomatoes and greenhouse tomatoes are not like goods. The U.S. growers also requested, in the event of a preliminary determination of injury, seasonal and end-use exclusions.

## ANALYSIS

In their submission to the Tribunal, the U.S. growers raised a number of issues relating to the “standing” of the complaint. These include whether the CTTA has authority to act on behalf of Canadian greenhouse growers and whether the conditions pertaining to standing in section 31 of SIMA have been met. The Tribunal notes that it is the CCRA’s responsibility to address the issue of standing.<sup>2</sup>

The Tribunal’s mandate at the preliminary stage of an injury inquiry is set out under subsection 34(2) and section 37.1 of SIMA, which require the Tribunal to determine whether the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or retardation or is threatening to cause injury. “Injury” is defined in SIMA as “material injury to a domestic industry”. “Domestic industry” means the domestic producers as a whole of the “like goods” or whose production constitutes a “major proportion” of the domestic production. Therefore, the Tribunal must identify the like goods and the domestic industry that produces those goods before addressing the injury issues.

The Tribunal notes that, in initiating the present investigation, the CCRA defined the subject goods as “fresh tomatoes”. This definition includes tomatoes for fresh consumption that are field grown and those that are grown in greenhouses. The issue that arises in this case is whether these two types of fresh market tomatoes comprise distinct classes of goods. In evaluating classes of goods, the Tribunal typically looks at a number of criteria, such as the physical characteristics of the goods, their production and distribution, their market characteristics (such as substitutability and pricing), and whether the goods fulfil the same customer needs. The Tribunal weighs all of these criteria; no single factor is determinative of the issue.

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2. See *Certain Grain Corn* (7 March 2001), Inquiry No. NQ-2000-005 (CITT).

In their respective briefs, both sides submitted considerable evidence on the above criteria. The CTTA argued that field and greenhouse tomatoes are comparable, while the U.S. growers argued that they are not. In the Tribunal's opinion, the evidence submitted demonstrates that, while there are some differences between field and greenhouse tomatoes, there are more significant similarities. The principal differences relate primarily to their very distinct production processes, whereas the principal similarities relate to their similar physical properties, their shared biology and their common end use as a vegetable for human consumption. Moreover, there is a reasonable indication that field and greenhouse tomatoes are substitutable and compete with one another in the marketplace. On balance, for the purpose of this preliminary determination of injury, the Tribunal finds that the subject goods comprise one class of goods, namely, fresh tomatoes.

Turning to the question of "like goods", the Tribunal notes that, pursuant to subsection 2(1) of SIMA, if there are Canadian goods that are "identical to" the subject goods, then those goods are the "like goods". If there are no "identical" goods, then the domestic "like goods" may be goods that "closely resemble" the subject goods. In this case, the Tribunal concludes that Canadian fresh tomatoes, while not identical to imported fresh tomatoes, "closely resemble" the imported fresh tomatoes for the same reasons provided above on the issue of class of goods. Therefore, the Tribunal finds that domestically grown tomatoes for fresh consumption are the "like goods".

On the question of the domestic industry, the record shows that both field tomato growers and greenhouse tomato growers produce tomatoes for the fresh market in Canada, with the greenhouse tomato growers growing over 85 percent of total fresh market production in 2000. Moreover, the greenhouse tomato growers that have sent letters in support of the action taken on their behalf by the CTTA and that are also, therefore, claiming injury from dumped imports by themselves comprised over 50 percent of total fresh market production in Canada in 2000, according to the available data. Accordingly, the Tribunal concludes that these growers represent at least "a major proportion" of domestic fresh market production pursuant to subsection 2(1) of SIMA.

The Tribunal notes that the U.S. growers have argued that certain Canadian greenhouse tomato growers should be excluded from the domestic industry, pursuant to subsection 2(1) of SIMA, because they are either "related" to an exporter or importer of fresh tomatoes or because they, themselves, import fresh tomatoes. After a careful examination of the information on the record, the Tribunal notes deficiencies with these arguments. First, the nature of the relationships that have been alleged is not clear or well documented. Second, the statistical information on imports by particular companies is incomplete and preliminary. From the evidence available to the Tribunal, the volumes allegedly imported by those domestic growers that have been named appear quite small in comparison with their total production for the fresh market. In conclusion, the Tribunal is not prepared to make any grower exclusions at this stage on the grounds advanced.

Looking at the evidence on the record relating to injury, the Tribunal notes that the CTTA has submitted that the dumping of U.S. fresh tomatoes has been persistent for many years and that this dumping has depressed the prices of Canadian greenhouse tomatoes and the revenues received by growers. There is evidence that these depressed prices and reduced revenues have prevented Canadian growers from investing in new technology and expanding their production as much as they could have, and would have, but for the dumping. The Tribunal took note of a number of letters from Canadian greenhouse tomato growers that describe their particular operations and provide estimates of the specific injury that they have suffered. It also examined the study done by a consultant that provides estimates of the amount of injury suffered by greenhouse tomato growers. Having regard to the foregoing, the Tribunal finds that there is a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

The Tribunal notes that the U.S growers have requested certain seasonal and end-use exclusions. The Tribunal will consider these requests in the subsequent injury inquiry that will take place in the event of a preliminary determination of dumping by the CCRA.

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