



Ottawa, Friday, December 28, 2001

**Request for Interim Review No. RD-2001-001**

IN THE MATTER OF a request for an interim review of the finding made by the Canadian International Trade Tribunal on Wednesday, May 2, 2001, in Inquiry No. NQ-2000-006 concerning:

**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**

**ORDER**

On November 20, 2001, the China Chamber of Commerce of Importers & Exporters of Foodstuffs, Native Produce and Animal By-products and Cangshan County Beidouxing Co., Ltd. filed a properly documented request for interim review with the Canadian International Trade Tribunal.

The Tribunal has decided, pursuant to subsection 76.01(4) of the *Special Import Measures Act*, not to conduct an interim review.

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 reasons will follow at a later date.



Ottawa, Monday, January 14, 2002

**Request for Interim Review No. RD-2001-001**

IN THE MATTER OF a request for an interim review of the finding made by the Canadian International Trade Tribunal on May 2, 2001, in Inquiry No. NQ-2000-006 concerning:

**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**

**STATEMENT OF REASONS**

**BACKGROUND**

On May 2, 2001, the Canadian International Trade Tribunal (the Tribunal) issued a finding in Inquiry No. NQ-2000-006 concerning 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 Tribunal Inquiry No. NQ-96-002.<sup>1</sup>

On October 29, 2001, the China Chamber of Commerce of Importers & Exporters of Foodstuffs, Native Produce and Animal By-products (China Chamber of Commerce) and Cangshan County Beidouxing Co., Ltd. (CCBC) made a request for an interim review of the finding issued in Inquiry No. NQ-2000-006 pursuant to paragraph 76.01(1)(a) of the *Special Import Measures Act*.<sup>2</sup> Following the receipt of additional information from the China Chamber of Commerce and the CCBC on November 13 and November 20, 2001, the request was considered properly documented.

On November 27, 2001, the Tribunal provided each party to Inquiry No. NQ-2000-006 with a copy of the request. Submissions concerning the request were to be filed by December 12, 2001. The Garlic Growers Association of Ontario (GGAO) filed a submission objecting to an interim review. On December 14, 2001, the China Chamber of Commerce and the CCBC filed a response to the GGAO's submission.

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1. The finding issued in Inquiry No. NQ-96-002 applies to fresh garlic imported into Canada from China from July 1 to December 31 of each calendar year, while the finding issued in Inquiry No. NQ-2000-006 applies to fresh Chinese garlic imported from January 1 to June 30 of each calendar year.
  2. R.S.C. 1985, c. S-15 [hereinafter SIMA].

## POSITION OF PARTIES

### China Chamber of Commerce and CCBC

The China Chamber of Commerce and the CCBC submitted that an interim review was warranted because it would allow for a concurrent review of the finding issued on May 2, 2001, in Inquiry No. NQ-2000-006 and of the finding issued on March 21, 1997, in Inquiry No. NQ-96-002, of which the Tribunal initiated an expiry review in Expiry Review No. RR-2001-001. Both findings apply to garlic exported from China, albeit during different periods of the year. The China Chamber of Commerce and the CCBC submitted that to adopt such a course of action would result in a reduction of future costs to the parties and the Tribunal, notably by permitting a common expiry review, in the future, of the orders concerning both periods.

The China Chamber of Commerce and the CCBC queried whether a rescission of the finding in Inquiry No. NQ-96-002 following the expiry review would be effectively voided because of the wording of the finding in Inquiry No. NQ-2000-006 that excludes fresh garlic subject to the finding issued in Inquiry No. NQ-96-002. In their opinion, this possibility warrants the concurrent conduct of an interim review of the finding issued in Inquiry No. NQ-2000-006.

The China Chamber of Commerce and the CCBC referred to statistics concerning imports of garlic during the first six months of 2001. They submitted that those data might cause the Tribunal to reconsider its reasons in Inquiry No. NQ-2000-006. They also referred to public information filed by the domestic growers in the course of Expiry Review No. RR-2001-001 that shows that certain growers did not plant garlic in 2001, despite the findings in place against Chinese garlic. The CCBC also provided the Tribunal with information that it had provided to the Commissioner of the Canada Customs and Revenue Agency (CCRA) in its expiry review questionnaires, for example, the prices at which Chinese garlic was exported to different countries.

The China Chamber of Commerce and the CCBC referred to China's accession to the World Trade Organization (WTO) as a very significant change in international circumstances. The China Chamber of Commerce and the CCBC also noted the discovery, during the CCRA's recent investigation, that Mexico imposes sanitary and phyto-sanitary measures in respect of garlic from China. They argued that this import restriction may increase the domestic prices for fresh garlic in Mexico. They also referred to an agreement between China and the Republic of Korea (Korea) concerning the volume of garlic and the prices at which Chinese garlic is being sold into Korea and to a regulation of the Commission of the European Communities permitting easier access to the European Union market for a certain quantity of Chinese garlic.

In its reply submission, the China Chamber of Commerce and the CCBC argued that, if the Tribunal were to rescind its finding or grant a producer exclusion in Expiry Review No. RR-2001-001, this may warrant an immediate interim review of the finding issued in Inquiry No. NQ-2000-006. In order to avoid the additional costs and the duplication of work resulting from an interim review after the completion of Expiry Review No. RR-2001-001, it was the position of the China Chamber of Commerce and the CCBC that it would be fairer, less expensive and more expeditious to conduct an interim review of the finding issued in Inquiry No. NQ-2000-006 at the same time as Expiry Review No. RR-2001-001.

## GGAO

The GGAO opposed the request for an interim review presented by the China Chamber of Commerce and the CCBC. The GGAO submitted that the Tribunal's jurisprudence and its guideline on interim reviews have established that a sufficient change in circumstances or sufficient facts that were not put into evidence and were not discoverable during the previous review or inquiry are required in order for the Tribunal to find that an interim review is warranted.

It is the GGAO's position that none of the grounds in support of the request is sufficient to warrant an interim review. The GGAO argued that, individually or collectively, the grounds set out in the request do not point to any change that would put the continued validity of the finding into question, nor do they relate to one of the essential elements underpinning the finding.

With respect to the joinder of findings, the GGAO submitted that it does not establish a change in circumstances and that the fact that there would be two findings is something that was well known at the time of the finding in Inquiry No. NQ-2000-006. Furthermore, the GGAO submitted that, even if an interim review were to be conducted, the two findings would not expire at the same time and that, therefore, there would be no joinder.

In reply to the argument that a rescission of the finding issued in Inquiry No. NQ-96-002 would be voided by the continuation of the finding in Inquiry No. NQ-2000-006, the GGAO argued that it would not have this effect, as the findings pertain to different time periods of the year. In addition, it stated that this does not constitute a change in circumstances.

Regarding the information provided to the CCRA by the China Chamber of Commerce and the CCBC, the GGAO submitted that it does not raise any facts that were not known or reasonably foreseeable when the finding was made. Given that the China Chamber of Commerce chose not to participate in Inquiry No. NQ-2000-006, it is the GGAO's position that the information is not new and would be more properly dealt with in a review by the CCRA of the normal values. In respect of the new import data, the GGAO stated that these import statistics would not, in any case, cause the Tribunal to reconsider its finding, as they only provide evidence that Canada's anti-dumping legislation functions as it should.

Finally, with respect to the accession of China to the WTO and trade restraints by Mexico and other countries, the GGAO submitted that none of those grounds constitute a change in circumstances justifying an interim review.

## REASONS FOR DECISION

Subsection 76.01(1) of SIMA provides that the Tribunal may conduct an interim review of an order or finding. Such an interim review may concern the whole order or finding or any aspect of it. Pursuant to subsection 76.01(3), the Tribunal shall not conduct an interim review unless the requester satisfies the Tribunal that the review is warranted. Paragraph 72(a) of the *Canadian International Trade Tribunal Rules*<sup>3</sup> provides, in part, that, in order to decide whether an interim review is warranted, the Tribunal may request the parties to provide information concerning whether changed circumstances or new facts have arisen since the making of the order or finding. Similarly, the Tribunal's guideline on interim reviews indicates that an interim review may be warranted where there is a reasonable indication that sufficient new facts have arisen or that there has been a sufficient change in the circumstances that led to the order or finding. The guideline

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3. S.O.R./91-499.

also indicates that an interim review may also be warranted where there are sufficient facts that, although in existence, were not put into evidence during the previous review or inquiry and were not discoverable by the exercise of reasonable diligence at that time.

In light of subsection 76.01(3) of SIMA, interim reviews should only be undertaken when there are sufficiently compelling reasons to persuade the Tribunal to do so. New facts or a change of circumstances are not, in and of themselves, enough to warrant an interim review. It is reasonably expected that new facts will arise and circumstances will change during the course of a finding.

The Tribunal's guideline on interim reviews gives examples of sufficient new facts or changes of circumstances that could warrant an interim review. It refers to the cases where the domestic industry has ceased production or where subsidies have been terminated. These examples illustrate the likely impact on a finding that new facts or changes of circumstances must have in order to warrant an interim review. To initiate interim reviews on a markedly lesser threshold would create an unacceptable level of uncertainty in the duration and durability of a finding or order and would be costly for the parties involved. Proceedings under SIMA are often complex and burdensome, and it would not be reasonable to permit the reopening of a case, or part of one, on a lesser standard.

It is the Tribunal's view, after having considered the parties' submissions and the evidence on file, that the likely impact of the new facts or changes of circumstances that have been referred to by the China Chamber of Commerce and the CCBC is not sufficient to warrant an interim review of the finding in Inquiry No. NQ-2000-006. The statistics indicating an increase of imports from non-subject countries since the finding in Inquiry No. NQ-2000-006 and the fact that certain Canadian garlic growers decided not to plant in 2001 do not bring into question the continued validity of that finding. These factors do not indicate that the finding in Inquiry No. NQ-2000-006 is no longer needed to protect the domestic industry from dumped imports of garlic from China.

The CCBC also provided the Tribunal with information that it had provided to the Commissioner of the CCRA in the proceedings in Expiry Review No. RR-2001-001. Part of that information concerned the prices at which Chinese garlic was exported to different countries. According to the Tribunal, that information as well does not contain new facts or a change of circumstances the likely impact of which would warrant an interim review. The other information filed with the Commissioner does not disclose such a likely impact either. In that context, the Tribunal notes that, in Expiry Review No. RR-2001-001, the Commissioner determined, on November 6, 2001, that the expiry of the finding in Inquiry No. NQ-96-002, which concerns Chinese garlic imported from July 1 to December 31 of each calendar year, is likely to result in the continuation or resumption of dumping of such garlic.

The China Chamber of Commerce and the CCBC referred to China's accession to the WTO as a very significant change in international circumstances. Although it is beyond doubt that this constitutes a major event in international economic affairs generally, the requesters did not demonstrate to the Tribunal how this will impact on the exportation of Chinese garlic to Canada. At this stage, when trying to assess that impact, one could only make conjectures. As for the trade measures that are in place in Korea and the European Union, while they may impact on the volume of Chinese garlic available for export in other countries, there has been no suggestion that China, the largest garlic exporter in the world, would no longer have product available for export to Canada. Regarding the sanitary and phyto-sanitary measures in place in Mexico in respect of garlic, the China Chamber of Commerce and the CCBC argued that this import restriction may increase the domestic prices for fresh garlic in Mexico. While this may be true, it certainly does not justify an interim review of the finding issued in Inquiry No. NQ-2000-006.

The China Chamber of Commerce and the CCBC submitted that there is a possibility that a rescission of the finding made in Inquiry No. NQ-96-002 following the current expiry review would be effectively voided because of the wording of the finding in Inquiry No. NQ-2000-006 that excludes the fresh garlic subject to the finding issued in Inquiry No. NQ-96-002. The Tribunal does not find that this concern warrants an interim review of the finding in Inquiry No. NQ-2000-006. The possibility of the finding in Inquiry No. NQ-96-002 being rescinded was known at the time that the Tribunal issued its finding in Inquiry No. NQ-2000-006. It does not constitute a new fact or a change of circumstances. In addition, the Tribunal notes that it has already held that a seasonal finding, such as the one issued in Inquiry No. NQ-2000-006, cannot be extended.<sup>4</sup>

The China Chamber of Commerce and the CCBC submitted that, if the Tribunal were to issue, simultaneously, its order in Expiry Review No. RR-2001-001 and its order in an interim review of the finding issued in Inquiry No. NQ-2000-006, the two orders would be joined for the purpose of future proceedings, thereby reducing costs to the parties and the Tribunal. In the Tribunal's view, pursuant to paragraph 76.01(7)(a) of SIMA, if an interim review of the finding issued in Inquiry No. NQ-2000-006 were conducted, an order continuing the finding would not extend the finding for five years, but would retain the original five-year time frame. Therefore, even if the Tribunal were to conduct an interim review of the finding made in Inquiry No. NQ-2000-006, an order continuing the finding would not expire simultaneously with a possible order made in Expiry Review No. RR-2001-001 continuing the finding made in Inquiry No. NQ-96-002.

With respect to concerns relating to costs, the Tribunal notes that its draft guideline on expiry reviews indicates that it will conduct a single expiry review where it decides to review orders or findings with dates of expiry that are up to one year apart concerning identical goods, or goods which the Tribunal considers to closely resemble each other and where it deems it fair and efficient to do so. If the finding issued in Inquiry No. NQ-96-002 is continued in Expiry Review No. RR-2001-001, this course of action could be adopted by the Tribunal when it conducts an expiry review of the finding issued in Inquiry No. NQ-2000-006. The Tribunal could, indeed, conduct a single expiry review of the finding issued in Inquiry No. NQ-2000-006 and of the order issued in Expiry Review No. RR-2001-001. In fact, this seems like the ideal case for such a single review.

In their reply submission, the China Chamber of Commerce and the CCBC argued that, if the Tribunal were to rescind its finding or grant a producer exclusion in Expiry Review No. RR-2001-001, this may warrant an immediate interim review of the finding issued in Inquiry No. NQ-2000-006. It was the position of the China Chamber of Commerce and the CCBC that it would be fairer, less expensive and more expeditious to conduct an interim review of the finding issued in Inquiry No. NQ-2000-006 at the same time as Expiry Review No. RR-2001-001. In the Tribunal's view, this argument does not warrant an interim review either. The Tribunal does not think that it would be appropriate to conduct a review of a finding that is less than nine months old, which would also entail additional expenses on the basis that there is a possibility that an interim review may be warranted in the future.

For the foregoing reasons, the Tribunal determines that an interim review of the finding issued in Inquiry No. NQ-2000-006 is not warranted. Consequently, the Tribunal has decided not to conduct an interim review.

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4. *Fresh Garlic* (12 June 2000), Request for Interim Review No. RD-99-002 (CITT).

Peter F. Thalheimer

Peter F. Thalheimer  
Presiding Member

Patricia M. Close

Patricia M. Close  
Member

Zdenek Kvarda

Zdenek Kvarda  
Member