



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND
REASONS

Expiry Review No. RR-2005-001

Garlic

*Order and reasons issued
Monday, May 1, 2006*

Canada

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IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the finding of the Canadian International Trade Tribunal made on May 2, 2001, in Inquiry No. NQ-2000-006, and of its order made on March 20, 2002, in Expiry Review No. RR-2001-001, continuing without amendment, its finding made on March 21, 1997, in Inquiry No. NQ-96-002, concerning:

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

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its finding made on May 2, 2001, in Inquiry No. NQ-2000-006, and of its order made on March 20, 2002, in Expiry Review No. RR-2001-001, continuing without amendment, its finding made on March 21, 1997, in Inquiry No. NQ-96-002, concerning garlic originating in or exported from the People's Republic of China and Vietnam.

Pursuant to subparagraph 76.03(12)(a)(ii) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds its finding made on May 2, 2001, in Inquiry No. NQ-2000-006 in respect of garlic, fresh or frozen, originating in or exported from the People's Republic of China and Vietnam.

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Meriel V. M. Bradford
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Zdenek Kvarda
Zdenek Kvarda
Member

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STATEMENT OF REASONS

BACKGROUND

1. This is an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*,¹ of the finding² of the Canadian International Trade Tribunal (the Tribunal) made 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 (China) and Vietnam (the finding), and of the Tribunal's order made on March 20, 2002, in Expiry Review No. RR-2001-001,³ concerning fresh garlic originating in or exported from China⁴ (the order).
2. On June 28, 2005, the Tribunal issued a notice of expiry, pursuant to subsection 76.03(2) of *SIMA*, informing interested parties that the finding and the order were scheduled to expire on May 1, 2006, and March 19, 2007, respectively.
3. On August 26, 2005, the Tribunal decided to join the expiry reviews of the finding and the order and issued a single notice of expiry review to all interested parties. The Tribunal joined the expiry proceedings with respect to the finding and the order pursuant to its authority under rule 6.1 of the *Canadian International Trade Tribunal Rules*⁵ and pursuant to the Tribunal's *Draft Guideline on Expiry Reviews*. In making its decision, the Tribunal had regard to the proximity in time of the expiries, the overlap in the subject goods and sources, the desire to avoid unnecessary administrative duplication and the desire to avoid potential confusion for participants. On this basis, the Tribunal decided that a single expiry review would provide for a more expeditious process without causing any unfairness.
4. As part of this expiry review, the Tribunal and the Canada Border Services Agency (CBSA) sent questionnaires to Canadian growers, importers and exporters/foreign growers of fresh or frozen garlic.
5. On August 29, 2005, the CBSA initiated an expiry review to determine whether the expiry of the finding and the order was likely to result in the continuation or resumption of dumping of the subject goods.
6. On December 22, 2005, the CBSA determined that, pursuant to subsection 76.03(7) of *SIMA*, the expiry of the finding and the order was likely to result in the continuation or resumption of dumping of the subject goods.
7. On December 23, 2005, following the CBSA's determination, the Tribunal continued its review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the finding and the order was likely to result in injury.
8. In its notice of expiry review, the Tribunal gave interested parties until January 3, 2006, to file notices of participation. It also gave domestic growers until January 6, 2006, to reply to Part E of the domestic growers' expiry review questionnaire. As of January 25, 2006, the Tribunal had received no responses to the questionnaire and no notices of participation. In addition, the CBSA received no questionnaire responses from domestic garlic growers, importers or exporters/foreign growers. The CBSA received one submission from a domestic processor of garlic.

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

2. The finding excluded fresh garlic subject to the finding made in Inquiry No. NQ-96-002.

3. The order continued, without amendment, the Tribunal's finding made on March 21, 1997, in Inquiry No. NQ-96-002.

4. Imported into Canada from July 1 to December 31, inclusive, of each calendar year.

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

9. On January 25, 2006, pursuant to subsection 76.03(10) of *SIMA*, the Tribunal issued a notice of determination that the expiry of the finding and the order was unlikely to result in injury. The public hearing scheduled for March 13, 2006, was cancelled.

10. The Tribunal will not continue a finding or an order unless it finds that a continuation or resumption of dumping is likely to result in injury to the domestic industry. Subsection 37.2(2) of the *Special Import Measures Regulations*⁶ lists a number of factors that the Tribunal may consider in addressing the question of likelihood of injury. In this case, as domestic garlic growers did not respond to the questionnaire, the Tribunal had no information on sales, pricing or financial results on which to base its analysis of the likely impact of the dumped goods on the domestic industry.

11. In the absence of positive evidence, the Tribunal finds that the expiry of the finding and the order is unlikely to result in injury to the domestic industry.

12. In the notice of expiry review, the Tribunal indicated that it would seek submissions from parties on the issue of the appropriate effective date of an order or orders rescinding or continuing the finding and the order. As noted above, no parties participated in the process and, therefore, the Tribunal did not receive submissions on this issue.

13. In expiry reviews, the Tribunal's standard practice, when rescinding findings and orders, is to do so at the end of their full term. Accordingly, the Tribunal will issue two separate orders in this case: one rescinding the finding on the date of its expiry and a second rescinding the order on the date of its expiry.

14. In view of the above, the Tribunal, pursuant to subparagraph 76.03(12)(a)(ii) of *SIMA*, hereby rescinds its finding made on May 2, 2001, in Inquiry No. NQ-2000-006.

15. On March 19, 2007, the Tribunal will issue an order, with a statement of reasons, rescinding its order made on March 20, 2002, in Expiry Review No. RR-2001-001.

Meriel V. M. Bradford
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Presiding Member

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Member

6. S.O.R./84-927.