



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2004-006

Certain Whole Potatoes

*Order and reasons issued
Monday, September 12, 2005*

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IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on September 13, 2000, in Review No. RR-99-005, continuing, without amendment, its order made on September 14, 1995, in Review No. RR-94-007 concerning:

**WHOLE POTATOES, EXCLUDING SEED POTATOES AND EXCLUDING IMPORTS
DURING THE PERIOD FROM MAY 1 TO JULY 31, INCLUSIVE, OF EACH
CALENDAR YEAR, IMPORTED FROM THE UNITED STATES OF AMERICA, FOR
USE OR CONSUMPTION IN THE PROVINCE OF BRITISH COLUMBIA**

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 the above-mentioned order concerning whole potatoes, excluding seed potatoes and excluding imports during the period from May 1 to July 31, inclusive, of each calendar year, imported from the United States of America, for use or consumption in the province of British Columbia.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its order in respect of the above-mentioned products, with an amendment to exclude red potatoes, yellow potatoes and the exotic potato varieties, regardless of packaging, and white and russet potatoes imported in 50-lb. cartons in the following count sizes: 40, 50, 60, 70 and 80.

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Patricia M. Close
Presiding Member

Zdenek Kvarda

Zdenek Kvarda
Member

Ellen Fry

Ellen Fry
Member

Hélène Nadeau

Hélène Nadeau
Secretary

Place of Hearing: Vancouver, British Columbia
Dates of Hearing: July 11 to 14, 2005

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STATEMENT OF REASONS

BACKGROUND

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ of the order made by the Canadian International Trade Tribunal (the Tribunal) on September 13, 2000, in Review No. RR-99-005, continuing, without amendment, its order made on September 14, 1995, in Review No. RR-94-007, continuing, with amendment, its order made on September 14, 1990, in Review No. RR-89-010, continuing, without amendment, the finding of the Anti-dumping Tribunal (ADT), made on June 4, 1984, in Inquiry No. ADT-4-84, and the finding of the Canadian Import Tribunal (CIT) made on April 18, 1986, in Inquiry No. CIT-16-85, concerning whole potatoes (potatoes), excluding seed potatoes and excluding imports during the period from May 1 to July 31, inclusive, of each calendar year, imported from the United States, for use or consumption in the province of British Columbia (the subject goods).
2. On December 15, 2004, the Tribunal issued a notice of expiry review² to all interested parties. In addition, the Tribunal and the Canada Border Services Agency (CBSA) sent questionnaires to Canadian growers, importers and exporters of whole potatoes.
3. On December 16, 2004, the CBSA initiated an investigation to determine whether the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods.
4. On April 14, 2005, the CBSA concluded its investigation and determined, pursuant to subsection 76.03(7) of *SIMA*, that the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods.
5. The record of these proceedings consists of the following: the transcript of the testimony heard during the public and *in camera* portions of the hearing (collectively, the hearing) held in Vancouver, British Columbia, from July 11 to 14, 2005; all relevant documents from the CBSA, including its protected expiry review report, statement of reasons, index of background information and related documents; the protected and public replies to the expiry review questionnaires; requests for information and parties' replies in accordance with the Tribunal's directions; the order; the notice of expiry review; the public and protected pre-hearing staff reports prepared for this expiry review and for Review No. RR-99-005; and requests for product exclusions and replies thereto, witness statements and exhibits filed by the parties throughout the expiry review. All public exhibits were made available to interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of protected information.
6. The BC Vegetable Marketing Commission (BCVMC) was represented by counsel at the hearing. It submitted evidence and made arguments in support of a continuation of the order. It also provided witnesses at the hearing.
7. The Washington State Potato Commission (WSPC) was represented by counsel at the hearing, provided witnesses and made a submission in support of a rescission of the order.

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

2. C. Gaz. 2004.I.3891.

PRODUCT

Product Description

8. There are four major types of potatoes, with numerous varieties within each type. They are: russet, white, red and yellow potatoes. Russet potatoes have a netted reddish-brown skin and are the most widely used type in Canada and the United States. A russet is long and slightly rounded and has only a few shallow eyes. Many potato varieties belong to this type, including Norkotah, Burbank and Ranger. White potatoes are round or oblong tubers of varying sizes, with smooth skins ranging in colour from white to light tan and white flesh with few and shallow eyes. They have a medium starch level. White Rose, Cascade, Kennebec, Norchip and Warbas are potato varieties included in white potatoes. Red potatoes have a waxy, red skin and flesh that is generally white but can be golden depending on the strain. Their texture is firm, smooth and moist, and they are relatively low in starch. Many potato varieties are included in this type, including Chieftan, Red La Soda, Norland, Klondike Rose and Idarose. Yellow potatoes have a golden skin, a dense creamy texture and buttery flavour. Some of the potato varieties of this type include Yukon Gold,³ Yellow Finn and Provento. Finally, there are exotic potato varieties such as all purple and all blue, as well as fingerling type potatoes, including Purple Peruvian, French, Ruby Crescent and Russian Banana.

9. In British Columbia, russet and white potatoes are the predominant types grown. Over the last decade, the Russet Norkotah has replaced the Russet Burbank as the principal variety of russet potatoes grown in British Columbia, while red potatoes and white nugget potatoes have increased in popularity.

10. Potatoes can be sold to either the fresh market or the processing market. In British Columbia, all potatoes are now being sold to the fresh market, as there is no processing plant in that province. There is a foodservice market in the province, but it prefers to use those potatoes destined for the fresh market. The bulk of the potato harvest occurs from August to October, with potatoes that are not sold immediately being stored in storage sheds, where some varieties can be kept until the beginning of the next summer. There are some early potatoes sold in June and July. Some of these are exported to the Alberta market.

11. Potatoes destined for the fresh market are sold in a wide variety of packs. Potatoes can be sold in individual bags weighing 5, 10, 15, 20, 50 or 100 lbs. Potatoes can also be sold in bales. The two most common types of bales are a 5/10-lb. bale, which consists of 5 10-lb. bags, and a 10/5-lb. bale, which consists of 10 5-lb. bags. The bags can be made of plastic, paper, mesh or jute. Potatoes can also be sold in count-size cartons. Count-size potatoes are those of uniform size and shape that are sold mostly in 50-lb. cartons; these cartons contain between 40 and 110 potatoes. A 40 count size means that there are 40 potatoes in a carton. The higher the count size, the greater the number of potatoes in a carton and the smaller the size of each individual potato.

Canadian Regulations and Standards

12. The *Fresh Fruit and Vegetable Regulations*,⁴ enacted pursuant to the *Canada Agricultural Products Act*,⁵ define a Canada No. 1 grade and a Canada No. 2 grade for potatoes. Potatoes of both grades must meet certain minimum quality standards, including being properly packed and being free from various diseases

3. Yukon Gold is the main variety of yellow potatoes grown in British Columbia. Grower's Exhibit A-05, para. 2, Administrative Record, Vol. 11.

4. C.R.C., c. 285 (1978) [*Regulations*].

5. R.S.C. 1985 (4th Supp.), c. 20.

and insects. However, the Canada No. 2 grade has a greater range of permissible defects than the Canada No. 1 grade, e.g. the potatoes can be more odd-shaped or can be slightly damaged or dirty.

13. In addition, the *Regulations* establish certain minimum and maximum size requirements for potatoes, including:

- (1) Canada No. 1 grade of round varieties must have a minimum diameter of 57 mm (2 1/4 in.) and a maximum diameter of 89 mm (3 1/2 in.) or a weight of 142 g (5 oz.) to 340 g (12 oz.);
- (2) Canada No. 1 grade of long varieties (e.g. russet potatoes) must have a minimum diameter of 51 mm (2 in.) and a maximum diameter of 89 mm (3 1/2 in.) or a weight of 113 g (4 oz.) to 340 g (12 oz.), with the additional requirement that at least 60 percent by weight of the potatoes in the lot have a diameter of at least 57 mm (2 1/4 in.) or a weight of at least 142 g (5 oz.); and
- (3) Canada No. 2 grade must have a minimum diameter of 44 mm (1 3/4 in.) and a maximum diameter of 114 mm (4 1/2 in.) or a maximum weight of 510 g (18 oz.). At least 75 percent by weight of the potatoes in a lot of Canada No. 2 potatoes must have a diameter of at least 51 mm (2 in.) or a weight of at least 113 g (4 oz.).

U.S. Grades and Standards

14. In the United States, there are four grades for potatoes: U.S. Extra No. 1; U.S. No. 1; U.S. Commercial; and U.S. No. 2. The requirements of the U.S. Extra No. 1 grade are the most stringent in terms of absence of defects, cleanliness and uniformity of size. There are also five size designations that give minimum and maximum diameters or weights for potatoes and that can be applied to lots of potatoes: size A, size B, small, medium and large. "Non-size A" is a widely used industry term for a lot of potatoes that meet the minimum size requirement for size A potatoes (i.e. minimum diameter of 1 7/8 in.), but that do not meet the uniformity requirement that at least 40 percent by weight of the potatoes in the lot have a minimum diameter of 2 1/2 in.

15. The *Regulations* state that only potatoes meeting the requirements of the U.S. Extra No. 1 or U.S. No. 1 grade can be imported into Canada.⁶ Further, imported potatoes of long varieties must have a minimum diameter of 2 in. and a maximum diameter of 3 1/2 in. As a result of the *Regulations*, imported U.S. potatoes generally meet the same size and quality standards as the Canada No. 1 grade.

B.C. Industry

16. The *B.C. Vegetable Scheme*, enacted by a provincial Order in Council on March 21, 1980, under the *Natural Products Marketing (B.C.) Act*,⁷ established the BCVMC, which is empowered to promote, control and regulate the growing, transportation, packing, storage and marketing of 13 vegetables, including potatoes, grown in the province. The BCVMC is under the direction of eight commissioners who are elected by the growers of the regulated vegetables. In 2004, there were 54 licensed potato growers in British Columbia, cultivating 6,225 acres of potatoes.⁸

6. Exceptionally, when there is insufficient supply of domestic product, an exemption can be granted by the Minister of Agriculture and Agri-Food to import into Canada bulk potatoes for processing that do not meet the U.S. Extra No. 1 or U.S. No. 1 grade requirements.

7. R.S.B.C. 1979, c. 296.

8. Grower's Exhibit A-03, para. 77, Administrative Record, Vol. 11.

17. The BCVMC delegates certain of its powers to various sales agencies, which provide growers in a particular region with a sales outlet for their products. There are currently four sales agencies for potatoes: Lower Mainland Vegetable Distributors Inc. (Lower Mainland), Vancouver Island Produce, the Interior Vegetable Marketing Agency Cooperative and the Island Vegetable Co-operative Association. Lower Mainland is the largest agency, accounting for approximately 80 percent of all sales of B.C.-grown potatoes.⁹

Marketing and Distribution

18. The BCVMC administers a delivery allocation system for the growing of domestic potatoes to ensure an orderly flow of product into the market. For table potatoes that enter the retail or wholesale market, the crop year¹⁰ is divided into four periods : Period A is from July 1 to July 31; Period B is from August 1 to September 30; Period C is from October 1 to January 31; and Period D is from February 1 to June 30.

19. There is a separate delivery allocation system in place for the foodservice market, where the crop year is divided into three periods for the marketing of table potatoes: Period 1 is from August 1 to September 30; Period 2 is from October 1 to April 30; and Period 3 is from May 1 to July 31.

20. Each grower's delivery allocation is based on a five-year average of the grower's shipments of potatoes during a particular period. While a grower can harvest more than its delivery allocation, the excess will only be sold by the grower's sales agency after all other growers that sell through that agency have fulfilled their delivery allocation.

IMPORTERS AND EXPORTERS

21. The largest importers of potatoes include: MacKay & Hughes (1973) Ltd., Westfair Food Co. Ltd., Joseph S. Chow Ltd., David Oppenheimer & Associates and Costco Wholesale Canada Ltd. Collectively, these importers accounted for approximately 37 percent of the total potato imports from the United States in 2004. Generally, they sell to wholesalers, retail chains and the foodservice market. B.C. growers import a very small quantity of potatoes from the United States.

22. Two exporters replied to the exporters' expiry review questionnaire. The State of Washington is the most important exporter of potatoes to British Columbia. During the period of review, its exports represented about 80 percent of the exports to this province and 33 percent of the total apparent B.C. market. In this text, U.S. data on area planted, area harvested, yield and production come from the United States Department of Agriculture (USDA).

SUMMARY OF PAST PROCEEDINGS

Summary of Order in Review No. RR-99-005

23. This was the third review of a finding originally put in place in 1984. In the previous cases, the Tribunal was of the view that the conditions for the existence of a regional market were met and that there would likely be a concentration of dumped imports in the B.C. market if it were to rescind the order.

24. With respect to the issue of resumed dumping, the Tribunal was of the view that U.S. potato growers, and Washington State potato growers in particular, would continue to target the B.C. market as

9. Grower's Exhibit A-03, para. 6, Administrative Record, Vol. 11.

10. The crop year for potatoes in British Columbia is from July 1 to June 30.

aggressively in the future as they had done in the past. The Tribunal was therefore of the view that U.S. growers were likely to continue dumping in the B.C. market at margins of dumping that were significant.

25. With respect to the issue of injury, the Tribunal was of the view that all B.C. growers were price takers and concluded that, if the order were rescinded, prices would fall substantially in order to meet the landed prices in British Columbia of U.S. potatoes. Accordingly, a rescission of the order would likely have caused injury even to larger growers that would have had no alternative but to lower their prices to meet U.S. import prices in order to maintain their market share.

26. The Tribunal was therefore of the opinion that, if the order were rescinded, dumping would likely continue and would be in high volumes. The margins of dumping would likely be very significant and cause material injury to the growers of all or almost all the production of the like goods in the B.C. regional market.

Other Findings and Orders

27. On September 14, 1995, in Review No. RR-94-007, the Tribunal continued its order, with an amendment to exclude imports during the period from May 1 to July 31, inclusive, of each calendar year.

28. On September 14, 1990, in Review No. RR-89-010, the Tribunal continued, without amendment, the findings made in Inquiry Nos. ADT-4-84 and CIT-16-85.

29. On April 18, 1986, in Inquiry No. CIT-16-85, the CIT found that the dumping in Canada of whole potatoes from the United States, for use or consumption in British Columbia, excluding seed potatoes and excluding those potatoes already covered by Inquiry No. ADT-4-84, had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

30. On June 4, 1984, in Inquiry No. ADT-4-84, the ADT found that the dumping in British Columbia of whole potatoes with netted or russeted skin, in non-size A, excluding seed potatoes, originating in or exported from Washington State, had caused, was causing and was likely to cause material injury to the production of like goods in the province.

POSITIONS OF PARTIES¹¹

BCVMC

31. The BCVMC submitted that overproduction continues to exist in the United States, that the potato growing capacity of the United States is not fully utilized and that there are concerns that even a slight diversion of potatoes from the processing market to the fresh market could significantly impact the B.C. market. Furthermore, it submitted that, if the order were rescinded, the B.C. growers would suffer price erosion, suppression and depression, given that they are price takers. They would also suffer losses to their investments, employment and general financial position. In sum, the BCVMC argued that a rescission of the order would result in material injury to the domestic industry and submitted that the order should be continued, with the only exclusions being for red, yellow and exotic potatoes.

11. This portion of the text is intended to outline a number of key submissions made by the parties. It is not intended to be exhaustive.

32. The BCVMC argued that nothing has really changed since the last review, that the playing field is the same as it was 10 or 15 years ago and that, unless the Tribunal is convinced that there is a substantial difference between then and now, it should use its previous review decisions as precedents for this expiry review.

33. The BCVMC argued that the following factors, which existed at the time of the Tribunal's last review, still exist: record low prices for U.S. potatoes due to overproduction, coupled with a decline in demand; the continued diversion of excess production from the processing market to the fresh market; the targeting of the B.C. market by the U.S. growers and importers; the evidence of material injury; and the degree of material injury sustained by all or almost all B.C. growers. It submitted that potato growing is the most important field crop industry in British Columbia and that the growers rely on it for most of their income. It argued that there is no replacement crop, since it is the backbone of their farming operations.

34. With respect to the dumping propensity of U.S. potato growers, the BCVMC submitted that numerous Tribunal decisions make it very clear that a high production capacity in an export market, coupled with a significant proportion of the subject goods being exported to the domestic market and declining demand, militates strongly in favour of a finding of material injury. Furthermore, it indicated that, in determining whether material injury will be caused to the B.C. potato industry, the Tribunal needs only to look at the production and price levels in the U.S. potato-producing states, particularly those in the Pacific Northwest. It asked the Tribunal to consider the size of the U.S. potato crop to the relatively small size of the B.C. potato crop (i.e. hundreds of thousands of acres versus 6,000 acres), as well as the geographic proximity of Washington State and the associated low costs of shipping to British Columbia.

35. With respect to the evidence put forth by the witness for the WSPC regarding diversion from the processing market to the fresh market, the BCVMC argued that the Tribunal should conclude that the data are unreliable, as they relate to the disposition of potatoes for the fresh market. It notes that the Tribunal's review decisions of 1995 and 2000 acknowledged the impact of this diversion, which necessitates delivery of the excess potatoes to the export market. In this context, it specifically argued that nothing has changed since those decisions.

36. With respect to the testimony of the Washington State growers, the BCVMC submitted that it was suspect that these growers were not able to provide any indication of the volumes of potatoes that they ship to British Columbia other than stating that it was a small percentage. In this regard, it noted that the B.C. market is extremely important to the Washington State growers, otherwise they would not be participating in these expiry review proceedings.

37. The BCVMC argued that various Tribunal decisions also affirm that the low prices of the subject goods throughout the period of review are a significant factor militating in favour of a finding of material injury. In this regard, it estimated that, absent protection from dumping, the low-priced potatoes from the United States would have resulted in price depression losses that would have amounted to \$8 million¹² over the last four years of the period of review, an amount that is significant to the 54 B.C. growers.

38. The BCVMC also submitted that there is a land freeze on agricultural lands in British Columbia, which means that, if the B.C. growers get out of the farming business, they cannot sell their land to real estate developers.

12. In this text, prices are in Canadian dollars unless otherwise specified.

39. With respect to the U.S. inventories, the BCVMC submitted that they have increased in recent years. It also argued that the trend of low U.S. selling prices shows no sign of abating for the 2005-2006 season, as inventories of the 2004-2005 crop will not be depleted sufficiently to correct the current depressed market.

40. With respect to the creation of the United Potato Growers of America (United), the BCVMC noted that it has only been established for 15 weeks and that history has shown that these types of arrangements have not worked to significantly impact the overproduction problem and that there is no reason to believe that this arrangement will be any different. Furthermore, it argued that the following inherent flaws exist in the system: United's focus on the fresh market; the very significant number of growers that are not members of United; and the voluntary versus mandatory nature of the growers' participation.

41. With respect to the cost of production issue, the BCVMC submitted that the Tribunal should accept the model provided by Dr. Stephen Thomson, as this model has been accepted in numerous other hearings by the Tribunal.

42. The BCVMC suggested that the extent of the injury that the B.C. growers will suffer if the current anti-dumping order is rescinded is best attested to by looking at the B.C. onion industry. In this regard, it indicated that, right before the anti-dumping protection for onions was removed in 1997-98, there were 29 registered onion growers in British Columbia; in 2004-2005, there were 7; and now, there are only 4 left. It also indicated that 2004-2005 was a particularly poor year for onion production in British Columbia, due to the low prices and overproduction from Washington State.

43. The BCVMC submitted that, since the last review, the B.C. growers have been able to increase their market share to 58 percent by being "preferred suppliers" in the B.C. market, which means that they were able to provide a full program offering all potato types to their retailers. It argued that, if a product exclusion were granted on the count-size potatoes, the B.C. growers would suffer tremendous losses to their market share because they would no longer be able to be preferred suppliers. It therefore argued against the removal of anti-dumping protection for the count-size potatoes. It argued that the removal of protection would encourage the dumping of the higher-valued product and would lead to circumvention of the protection, which would render the order completely ineffective.

44. With respect to the exclusion request for white potatoes, the BCVMC submitted that there is very little difference between white and russet potatoes and that they compete in the same retail market. In this regard, it argued that, if a product exclusion were granted for white potatoes, circumvention would result.

45. At the beginning of the hearing, the BCVMC agreed to an exclusion for red potatoes, yellow potatoes and exotic potato varieties.

WSPC

46. The WSPC submitted that the Tribunal should rescind its anti-dumping order against potatoes from the United States and, in the alternative, requested product exclusions for white, red, Yukon Gold and exotic potatoes.

47. According to the WSPC, the Tribunal should focus its analysis on the details provided by the WSPC rather than on the general and broad arguments put forward by the BCVMC. The WSPC emphasized that both *SIMA* and Article VI of the World Trade Organization *General Agreement on Tariffs and Trade 1994* provide that the Tribunal's order shall be a temporary remedy that will only be in place as

long as necessary to counteract injurious dumping and to the extent necessary to do so. It noted that, in its view, the testimony of the witnesses for the BCVMC indicated that they wanted an additional 10 years of protection.

48. With respect to the materiality analysis, the WSPC indicated that, in agricultural cases, the Tribunal ought to take into account the nature of the subject goods and their market environment, namely, the effects of the agricultural cycle in normal commercial circumstances (i.e. “absent floor pricing preserved by normal values”). Furthermore, it submitted that the Tribunal ought to consider the price volatility of the commodity, the wide variation of the prices from year to year and within a given crop year, and the effects of supply changes caused by mother nature and grower behaviour. In sum, it submitted that these normal commercial circumstances should create the backdrop for the Tribunal’s assessment of material injury and that agricultural production should not be considered injured merely because it experienced normal losses in many years within an agricultural cycle.

49. With respect to the conduct of the injury analysis, the WSPC submitted that the Tribunal is required to first examine the likely effects of the dumping of all the subject goods and, subsequently, grant product exclusions. It indicated that there are numerous difficulties in focusing the injury analysis on just russet and white potatoes, including the overlap in costs (e.g. packing, bagging, marketing, field preparation) and the fundamental intertwining of the excluded and non-excluded products.

50. With respect to the material injury analysis provided by the BCVMC as part of Mr. Murray Driediger’s submission, the WSPC submitted that certain adjustments were required and that, although they were small changes, they resulted in a consequential impact when added up. These changes included: adjusting the injury attributable to sales from inventories during the period when the window was open for U.S. potatoes to enter duty-free, adjusting the interest rate from 8 to 6 percent, and adjusting the land rental cost and the depreciation costs based on the testimony of the representative growers.

51. Additionally, the WSPC submitted that an adjustment was needed for “return on investment” on the basis of its argument that an accounting cost model ought to be favoured over an economic cost model. It found support for this argument in Dr. Joseph F. Guenther’s testimony, which indicated that “return on investment” is clearly a result of an accounting cost analysis of profits and is not a cost per se, that economic costs are used to inflate costs for price support purposes or in price negotiations, that economic costs are dismissed by lenders and sound business people, and that one should rely on the “coordinated financial statement for agriculture”, which is based on accounting costs.

52. Furthermore, the WSPC indicated that Mr. Driediger’s analysis was limited to russet and white potatoes and, therefore, should be adjusted to include the net profits to growers from red and yellow potatoes, which, it submitted, were calculable using the evidence on the record. In its submission, profits from red and yellow potatoes were substantial and, therefore, should be included in the analysis. It also submitted that no adjustments should be made for roadside sales, since no reliable data were submitted to the Tribunal for these sales. In this regard, it pointed to a letter on the record from the BCVMC, which indicated that data were not collected for these sales.

53. The WSPC referred to the Tribunal’s decision in *Onions*¹³ to remind the Tribunal that it had recognized the following characteristics for agricultural markets: price volatility; a wide variation of price over time and the nature of human factors that cause this variation; growers continue to grow even though they do not earn profits every year; and the importance of assessing material injury in the context of the

13. *Fresh, Whole, Yellow Onions* (21 May 1997), RR-96-005 (CITT).

agricultural cycle. Furthermore, it indicated that the following non-dumping factors were likely responsible for the injury in that case: inadequate comparative yield rates in onions; rigidities flowing from the regulated marketing system; the lack of competitiveness; the lack of sufficient production to meet growing demand of a particular type of product; the climate conditions; and the lack of economies of scale. Furthermore, it also submitted that the decline in the volume of production, as well as the decrease in the number of growers, did not occur until seven years after the Tribunal decided to rescind its anti-dumping order protecting the B.C. onion industry.

54. With respect to the vulnerability of the domestic industry, the WSPC submitted that the B.C. industry has gained strength since the last review. In this regard, it noted that some of the improvements included the following: the 25 percent increase of its volume produced and sold; the 50 to 58 percent increase of its market share; the increase of its average price; the improved percentage of specialty potatoes that are grown; and the improvements to its yields, acreage and employment. With respect to the land freeze issue, the WSPC submitted that this factor was not attributable to the dumping.

55. With respect to differences since the last expiry review, the WSPC submitted that this expiry review differs because of the product exclusions for red, yellow and exotic potatoes, to which the domestic industry consented. Furthermore, it submitted that, for this expiry review, there is less likelihood of diversion from the processing market to the fresh market due to changes in the type of potatoes grown in the United States. It argued that the most important change this time around is the establishment of United. In this regard, it contested the BCVMC's arguments regarding the non-participation of all growers, the focus on the fresh market, the voluntary nature of the arrangement and the impact of "freeriders".

56. The WSPC argued that, if the Tribunal again does not rescind this order based on factors that are perennial in the industry and that have been present for the last 21 years, then rescission of this order will never occur.

ANALYSIS

57. On April 14, 2005, the CBSA determined that, pursuant to subsection 76.03(7) of *SIMA*, the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods. Consequently, the Tribunal is required, pursuant to subsection 76.03(10), to determine whether the expiry of the order is likely to result in injury or retardation, as the case may be, to the domestic industry. Given that there is currently an established domestic industry, the issue of whether the expiry of the order is likely to result in retardation does not arise in this expiry review.¹⁴

58. Therefore, the Tribunal is required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the finding, if it determines that the expiry of the finding is unlikely to result in injury, or continuing the finding, with or without amendment, if it determines that the expiry of the finding is likely to result in injury.

Like Goods

59. Section 2 of *SIMA* provides the following definition for "like goods":

"like goods", in relation to any other goods, means

(a) goods that are identical in all respects to the other goods, or

14. Subsection 2(1) of *SIMA* defines retardation as the "material retardation of the establishment of a domestic industry".

(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;

60. The Tribunal notes that the issue of “like goods” was not a contentious issue during these expiry review proceedings. It also notes that U.S. potatoes and B.C. potatoes are substitutable to a very high degree, having the same physical characteristics and uses, and are similarly farmed. Therefore, in light of the foregoing, the Tribunal finds B.C. potatoes to be like goods to the subject goods for the purposes of its injury analysis.

Domestic Industry/Regional Market

61. The Tribunal must consider whether the province of British Columbia continues to constitute a “regional market” for potatoes.

62. With respect to the establishment of a “regional market”, subsection 2(1.1) of *SIMA* provides:

(1.1) In exceptional circumstances, the territory of Canada may, for the production of any goods, be divided into two or more regional markets and the domestic producers of like goods in any of those markets may be considered to be a separate domestic industry where

(a) the producers in the market sell all or almost all of their production of like goods in the market; and

(b) the demand in the market is not to any substantial degree supplied by producers of like goods located elsewhere in Canada.

63. With respect to the first condition, the Tribunal notes that, in previous decisions, it has interpreted the phrase “all or almost all” to represent at least 80 percent.¹⁵ In this regard, the Tribunal also notes that, over the period of review, although sales of B.C. potatoes to other provinces were on an upward trend, sales of B.C. potatoes in the B.C. market represented well over 80 percent,¹⁶ thus satisfying the first condition. The Tribunal also notes that, based on the data collected from its questionnaires and Statistics Canada, total shipments of potatoes from other provinces as a percentage of the B.C. market ranged between 2.0 and 2.9 percent over the period of review, thus satisfying the second condition.¹⁷

64. Since the conditions in paragraphs 2(1.1)(a) and (b) of *SIMA* are met, the Tribunal finds that a regional market exists and that the growers in that market constitute a separate domestic industry.

65. Subsection 42(5) of *SIMA* provides in part:

the Tribunal shall not find that the dumping or subsidizing of those goods has caused injury or retardation or is threatening to cause injury unless

(a) there is a concentration of those goods into the regional market; and

(b) the dumping or subsidizing of those goods has caused injury or retardation or is threatening to cause injury to the producers of all or almost all of the production of like goods in the regional market.

15. *Grain Corn* (7 March 2001), NQ-2000-005 (CITT) at 22.

16. The actual percentage cannot be released to protect confidential information. See Tribunal Exhibit RR-2004-006-06B (protected), Administrative Record, Vol. 2A at 126.

17. Tribunal Exhibit RR-2004-006-05B, Administrative Record, Vol. 1A at 126.

66. With respect to the criteria relating to a concentration of dumped imports, the evidence shows that, during the period of review, between 24 and 33 percent of the total imports into Canada from the United States were destined for the B.C. market,¹⁸ approximately 80 percent of which came from Washington State.¹⁹ During that period, imports from the United States accounted for between 39 and 43 percent of the B.C. potato market.²⁰ Furthermore, should the order be rescinded, that concentration would likely increase, if not in the near term, then in the medium term, as discussed below. The Tribunal also notes that this issue was not raised nor contested by either party.

67. The question of whether the dumping of those goods is likely to cause injury to the growers of all or almost all of the production of like goods in the regional market is dealt with below in the discussion on the likelihood of injury.

Likelihood of Injury

68. Subsection 37.2(2) of the *Special Import Measures Regulations*²¹ enumerates a number of factors that the Tribunal may consider in addressing the question of likelihood of injury. The Tribunal has considered all these factors and is of the opinion that the relevant factors in this case can be analyzed under the following general headings: changes in the U.S. and domestic markets since the last review; likely volumes of dumped goods; likely prices of dumped imports; likely impact of dumped imports on the domestic industry; and other factors not relating to dumping.

69. In making its assessment of the likelihood of injury, the Tribunal has consistently taken the view that its focus must be on circumstances that can reasonably be expected to exist in the near to medium term, generally 18 to 24 months.²² It is of the view that this time frame is appropriate for the circumstances of this case and, as such, has focused its analysis on the 2005-2006 and 2006-2007 crop years.

Changes in the U.S and Domestic Markets Since the Last Review

70. There have been three major changes since the last review: the formation of growers' co-operatives in the United States; the switch to potato varieties with specific end uses; and the improved viability of the B.C. industry.

71. The Tribunal notes that the evidence indicates that, since the fall of 2004, a number of co-operatives of U.S. potato growers have been created in the principal potato-growing states, as well as an umbrella organization at the national level. Specifically, in Idaho, the largest potato-growing state in the United States, the United Fresh Potato Growers of Idaho began its operations in November 2004.²³ Subsequently, United was created in March 2005,²⁴ grouping members from Idaho, Washington State and

18. *Ibid.*

19. *Ibid.* at 115.

20. *Ibid.* at 126.

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

22. *Preformed Fibreglass Pipe Insulation* (17 November 2003), RR-2002-005 (CITT) at 11; *Prepared Baby Foods* (28 April 2003), RR-2002-002 (CITT) at 8; *Solder Joint Pressure Pipe Fittings* (16 October 1998), RR-97-008 (CITT) at 10; and *Hot-rolled Carbon Steel Plate* (27 June 2005), RR-2004-004 (CITT) at 9.

23. Exporter's Exhibit B-06, para. 6, Administrative Record, Vol. 13.

24. Exporter's Exhibit B-06, para. 9, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 3, 13 July 2005, at 752.

Oregon, Klamath Basin, Colorado and Wisconsin.²⁵ The Tribunal also heard testimony that growers from Prince Edward Island and New Brunswick have expressed interest in becoming members.²⁶

72. The Tribunal heard testimony that the purpose of these co-operatives is to stabilize and improve prices by keeping production levels in line with forecasted demand. The witness for United indicated that this is done through acreage buyouts, post-harvest potato stock buybacks, the coordination of production quotas and the sharing of price advisories.²⁷ He also indicated that, although the membership is on a voluntary basis, these co-operatives enjoy high participation rates, especially in Washington State, Idaho and Wisconsin.²⁸ From the perspective of the WSPC, this initiative is much different from previous ones, which ultimately failed at bringing potato supply in line with demand.²⁹ In this regard, the WSPC noted that, for the whole United States, between 70 and 75 percent of the potato acreage for the fresh market is in the co-operatives; if Prince Edward Island and New Brunswick join in, between 60 and 70 percent of the whole North American potato acreage for the fresh market will then be part of United.³⁰

73. The Tribunal notes that, since its inception, United has bought 7 million hundredweights of potatoes on the Idaho market. It also ran its first acreage buyout nationwide during the spring of 2005,³¹ which aimed at reducing 2005 acreage³² by 10 percent.³³ The Tribunal notes that the evidence shows that, between 2004 and 2005, total acreage harvested decreased by 78,500 acres, or 6.7 percent, in the United States, by 30,000 acres, or 5.9 percent, in Washington State and Idaho combined, and by 5,000 acres, or 3.1 percent, in Washington State alone.³⁴ The testimony of the witness for United indicated that reductions in potatoes coming onto the market are again planned for 2006.³⁵

74. Another significant change noted since the last review is that, based on the evidence, it appears to the Tribunal that the potato industries in the United States and in British Columbia have become, to a much greater extent, variety-specific depending on the end use sought.³⁶ With respect to the fresh market, the

25. Exporter's Exhibit B-06, paras. 4, 11, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 3, 13 July 2005, at 752-53.

26. Exporter's Exhibit B-06, paras. 13, 46, Administrative Record, Vol. 13. Prince Edward Island produces about 25 percent of the Canadian production. Exporter's Exhibit B-02, Tab 4, Administrative Record, Vol. 13.

27. Exporter's Exhibit B-01, paras. 50-53, Administrative Record, Vol. 13; Exporter's Exhibit B-03, paras. 23, 30, 35, Administrative Record, Vol. 13; Exporter's Exhibit B-06, paras. 2, 28-30, 34, 35, 47, 51, Administrative Record, Vol. 13.

28. According to the witness, Idaho has between 80 and 85 percent of its acres used to grow potatoes for the fresh market in the cooperatives; Washington State has some 85 percent of its acres used to grow potatoes for the fresh market in the cooperatives; Colorado has between 70 and 75 percent of its acres used to grow potatoes for the fresh market and for seed in the co-operatives; and Wisconsin has 60 to 65 percent of its total acres and close to 90 percent of its acres used to grow potatoes for the fresh market in the cooperatives. *Transcript of Public Hearing*, Vol. 3, 13 July 2005, at 753.

29. *Transcript of Public Hearing*, Vol. 3, 13 July 2005, at 763-65, 806-807.

30. *Ibid.* at 753-54.

31. *Ibid.* at 754.

32. In this text, production and acreage data for the United States are provided on a calendar year basis.

33. Exporter's Exhibit B-06, para. 38, Administrative Record, Vol. 13.

34. Exporter's Exhibit B-24 at 13, Administrative Record, Vol. 13.

35. *Transcript of Public Argument*, 14 July 2005, at 142; *Transcript of In Camera Hearing*, Vol. 1, 13 July 2005, at 4, 15, 16.

36. *Transcript of Public Hearing*, Vol. 2, 12 July 2005, at 530-31; Exporter's Exhibit B-01, paras. 23, 24, Administrative Record, Vol. 13; Exporter's Exhibit B-02, paras. 16, 17, 24, Administrative Record, Vol. 13; Exporter's Exhibit B-03, para. 7, Administrative Record, Vol. 13; Exporter's Exhibit B-04, paras. 3-5, Administrative Record, Vol. 13.

Tribunal notes that the russet Norkotah is increasing in popularity, while the russet Burbank is almost always used in the processing market.³⁷ In Washington State, for example, in the late 1980s, almost 80 percent of the potatoes grown were of the russet Burbank variety.³⁸ By 1995, that percentage had declined to just over 60 percent and, by 2004, the russet Burbank represented only 35 percent of all potatoes grown in the state, while 13 percent were of the Norkotah variety. In Idaho, for that same year, 63 percent of potatoes grown were russet Burbank, and 14 percent were Norkotah; in 1995, these percentages were 83 percent and 2 percent respectively.³⁹ In British Columbia, sales of the Norkotah have also increased.⁴⁰

75. While recognizing that the potato industry has become more variety-specific according to end use, the BCVMC was of the view that a significant volume of potatoes destined for processing could still find its way into the fresh market.⁴¹ It argued that this situation may happen particularly in Washington State and Idaho, where the volume of potatoes for the processing market is very large compared to that of potatoes for the fresh market.⁴² For its part, the WSPC stated that there is very little diversion possible.⁴³ It argued that, since the development of the smoother-looking Norkotah, the Burbank has virtually vanished from the fresh market and that the Norkotah is really not acceptable to the processing market.⁴⁴ One witness indicated that, at the time of planting, he needs to know the end use, as potatoes for the fresh market and those for the processing market require different cultivation practices.⁴⁵ The WSPC claimed that potatoes for processing usually stay in the processing channel, although, sometimes, when prices in the fresh market are very high, some of these potatoes can end up in the fresh market.⁴⁶ However, it argued that, in Idaho, with a large percentage of the acres used to grow potatoes for processing being harvested by members of United, a better control of this potential diversion will now be possible, thus avoiding putting a stress on the fresh market.⁴⁷

76. The Tribunal notes that, with the loss of a major potato chip manufacturer in Delta, British Columbia, in 1998, B.C. growers stopped growing potatoes for the processing market, instead focusing exclusively on the production of potatoes for the fresh market,⁴⁸ a portion of which are destined for the foodservice market. Over this shift to a fresh market, which had begun by the end of the last period of review, fresh market sales showed an increasing trend throughout the period of review. Between 2000 and 2005, sales of potatoes by

37. *Transcript of Public Hearing*, Vol. 2, 12 July 2005, at 531; Exporter's Exhibit B-02, paras. 16, 24 and Tab 13, Administrative Record, Vol. 13; Exporter's Exhibit B-03, para. 7, Administrative Record, Vol. 13; Exporter's Exhibit B-04, paras. 3-5, Administrative Record, Vol. 13.

38. Exporter's Exhibit B-02, para. 24, Administrative Record, Vol. 13.

39. Exporter's Exhibit B-02, Tab 13, Administrative Record, Vol. 13.

40. *Transcript of Public Hearing*, Vol. 1, 11 July 2005, at 220-21, 247, 332-33.

41. Grower's Exhibit A-20, para. 16, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 2, 12 July 2005, at 499-500.

42. *Transcript of Public Hearing*, Vol. 2, 12 July 2005, at 362-63.

43. *Ibid.* at 542-43.

44. *Transcript of Public Hearing*, Vol. 3, 13 July 2005, at 773-74; *Transcript of Public Hearing*, Vol. 2, 12 July 2005, at 530-31, 662-64.

45. *Transcript of Public Hearing*, Vol. 2, 12 July 2005, at 661-62.

46. *Transcript of Public Hearing*, Vol. 3, 13 July 2005, at 774; *Transcript of In Camera Hearing*, Vol. 1, 13 July 2005, at 6-7.

47. *Transcript of In Camera Hearing*, Vol. 1, 13 July 2005, at 6-7; *Transcript of Public Hearing*, Vol. 3, 13 July 2005, at 775.

48. The B.C. Ministry of Agriculture reported sales of potatoes for the processing market during the period of review. These were recorded in Table 19 of the *Pre-hearing Staff Report*. However, there is clear evidence on the record that shows that only potatoes for the fresh market are sold in the B.C. market. Some of these potatoes are sold to the foodservice market and may have been improperly identified as potatoes for the processing market. Tribunal Exhibit RR-2004-006-05B, Administrative Record, Vol. 1A at 124.

Lower Mainland, which represents over 80 percent of the potato production in the province,⁴⁹ increased by 15,733 tons, or 50 percent.⁵⁰ While russet potatoes continued to be the dominant type of potatoes sold during that period, sales of red, yellow and white potatoes also showed significant increases in percentage terms.⁵¹

77. As the Tribunal heard in testimony from Lower Mainland, this increase was due, to a large extent, to the fact that B.C. growers are producing a consistent supply of quality potatoes for the marketplace more efficiently and competitively than during the previous period of review.⁵² The evidence also shows that Lower Mainland has a good relationship with its customers. For example, Neptune Food Service Inc., Overwaitea Food Group and Thrifty Foods, major food chains, have stated their support of Lower Mainland and its local growers.⁵³

78. Over the period of review, Lower Mainland funded research to grow better potato varieties suitable for longer-term storage and more suitable to customers' needs.⁵⁴ Growers have modernized and streamlined on-farm grading, packaging and storage facilities.⁵⁵ The Tribunal also notes that a witness submitted that the B.C. potato industry has lowered its input costs by switching to larger, cheaper land tracts.⁵⁶

Likely Volumes of Dumped Goods

79. In assessing the likely volumes of dumped goods that could enter British Columbia in the future, the Tribunal reviewed the total volume of production, for both the fresh and processing markets, for the United States as a whole and for Washington State in particular, which shipped between 77 and 85 percent of all U.S. potatoes to British Columbia during the period of review.⁵⁷

80. The Tribunal notes that the evidence indicates that the volumes of potato production in the United States and in Washington State reached their historical peaks in 2000, decreased significantly in 2001 and have been fairly constant between 2002 and 2004.⁵⁸ With respect to demand, it notes that the demand for potatoes in the United States has been flat, or declining, for several years.⁵⁹ The Tribunal heard evidence that this declining trend was due to a change in consumer food preferences and an emphasis on low carbohydrate diets.⁶⁰ A combination of constant production and declining demand has exacerbated an

49. Grower's Exhibit A-14, para. 9, Administrative Record, Vol. 11.

50. Grower's Exhibit A-14, para. 5, Administrative Record, Vol. 11.

51. Grower's Exhibit A-14, para. 14, Administrative Record, Vol. 11.

52. Grower's Exhibit A-14, paras. 4, 18, Administrative Record, Vol. 11.

53. Grower's Exhibit A-14, Tab 1, Administrative Record, Vol. 11; Grower's Exhibit A-21, Tab 1, Administrative Record, Vol. 11.

54. Grower's Exhibit A-14, para. 15, Administrative Record, Vol. 11.

55. *Transcript of Public Hearing*, Vol. 1, 11 July 2005, at 199-200; Grower's Exhibit A-14, para. 4, Administrative Record, Vol. 11.

56. Exporter's Exhibit B-07, para. 25, Administrative Record, Vol. 13.

57. Tribunal Exhibit RR-2004-006-05B, Administrative Record, Vol. 1A at 115.

58. Exporter's Exhibit B-02, Tabs 5, 11, Administrative Record, Vol. 13.

59. Grower's Exhibit A-05, para. 40, Administrative Record, Vol. 11; Grower's Exhibit A-20, para. 13, Administrative Record, Vol. 11; Grower's Exhibit A-24 at 5, Administrative Record, Vol. 11.

60. Grower's Exhibit A-01, para. 12, Administrative Record, Vol. 11.

underlying oversupply situation in the U.S. marketplace,⁶¹ resulting in particularly low Washington State prices in the last several years.⁶² It is this systemic surplus that United is trying to correct.

81. The Tribunal observes that this surplus had more impact on U.S. prices than on the volumes of potatoes exported to British Columbia. Indeed, the Tribunal notes that the volume of U.S. exports to British Columbia did not vary significantly over the period of review, ranging from 552,000 to 638,000 hundredweights each year, a variation of less than 90,000 hundredweights in a market of 1.5 million hundredweights.⁶³ These volumes stayed relatively flat, regardless of the prices obtained for these exports in the B.C. market.

82. The Tribunal notes that one reason for this stability in volumes is that, since the margins of dumping are based on the U.S. “mostly”⁶⁴ prices instead of the actual export prices, there has been no incentive for the Washington State growers to increase their volumes of export sales by pricing below the “mostly” price. Nor has there been any incentive for the Canadian importers to buy more potatoes for the B.C. market, even if they were priced below the weekly “mostly” prices. While this disincentive would be removed if the order expired, the Tribunal heard evidence that U.S. potato growers continue to be subject to two other disincentives when exporting to British Columbia. First, a witness for the WSPC testified that Washington State potatoes must meet certain size requirements to be accepted into the B.C. market. The evidence indicates that 60 percent of potatoes imported into the province must have a minimum size of 2 1/4 inches whereas, anywhere in the United States, a minimum size of 2 in. or 4 oz. is required.⁶⁵ The evidence also indicates that the potatoes entering the B.C. market have to be packed in bags that have bilingual inscriptions.⁶⁶ However, the Tribunal sees these two disincentives as relatively minor factors that are principally applicable to new exporters entering the market and not especially trade-restraining over the medium term.

83. As noted, during most of the period of review, U.S. exporters were constrained in the prices that they could offer to Canadian importers. However, the Tribunal notes that 2001 was an exception when the United States experienced a severe production decline;⁶⁷ consequently, prices firmed up considerably and “mostly” prices were above normal values throughout the 2001-2002 crop year.⁶⁸ The Tribunal also notes that, during that year, the volume of U.S. exports to British Columbia was lower than in the following year and also lower than in 1998-99, the last full crop year for which the Tribunal has data prior to the period of review, when its exports amounted to 757,000 hundredweights.⁶⁹ In other words, it appears that there has been no attempt by U.S. growers to gain market share in the B.C. market by lowering prices when U.S. prices were well above normal value.⁷⁰ The Tribunal is of the opinion that, in the event of high

61. The evidence indicates that, in order to balance supply and demand, there have been some initiatives recently on a national or on a state basis with the objective to purchase surplus potatoes from growers. Exporter’s Exhibit B-02, Tab 5, Administrative Record, Vol. 13; Growers’ Exhibit A-05, paras. 25, 37-39, Administrative Record, Vol. 11.

62. Exporter’s Exhibit B-19, para. 42 and at 41, Administrative Record, Vol. 13.

63. Tribunal Exhibit RR-2004-006-05B, Administrative Record, Vol. 1A at 115.

64. “Mostly” prices are determined on a weekly basis and are based on the preponderant selling price, as reported in the *National Potato and Onion Report (Market News)*, published by the Federal-State Market News Service, USDA. They are used by the CBSA as a “proxy” for the export prices.

65. *Transcript of Public Hearing*, Vol. 2, 12 July 2005, at 654-56.

66. *Ibid.* at 683.

67. Tribunal Exhibit RR-2004-006-05B, Administrative Record, Vol. 1A at 141.

68. *Ibid.* at 112, 129.

69. Tribunal Exhibit RR-2004-006-09 (protected), Administrative Record, Vol. 2.1 at 28.

70. Tribunal Exhibit RR-2004-006-05B, Administrative Record, Vol. 1A at 112, 119.

U.S. prices, the B.C. industry likely would not have to compete with an increase of imports into its market; however, periods of high U.S. prices have been rare, occurring in only 3 years out of the last 18.⁷¹

84. The Tribunal is of the view that, for 2005-2006, potato imports from the United States will not likely increase, even if the anti-dumping protection were removed and prices fell. The reason is that B.C. growers would still find it to their advantage to sell their entire crop by pricing at the level required to make sales, since potatoes are a commodity that can only be stored for a limited period of time. B.C. growers would incur losses if prices were too low to cover their cost of production, but as long as harvesting, freight and selling costs were covered, they would still likely consider that they were better off to sell at “clearing” prices rather than keep potatoes in the ground. However, the Tribunal is of the opinion that this response to imports from the United States could not be expected to last much more than a year and that, soon thereafter, B.C. growers would cut back on the level of plantings, resulting in a loss of market share in following years.

85. Predicting what will happen in 2006-2007, should the order be rescinded, is more complex. Here, the answer depends to a large extent on how successful United will be in achieving its objectives. In this regard, the Tribunal acknowledges that serious efforts are being made to bring the U.S. supply of potatoes in line with demand, which should result, all things considered, in lower production levels. However, the Tribunal is of the view that it is premature to confirm United’s success, given that it has yet to complete its first year of operation. Even if United held together and increased its membership, because of the methodology used to determine the targets for future acreage reductions,⁷² it is not clear to the Tribunal that the area planted in 2006 will actually be less than in 2005. In Washington State and Idaho, for 2005, 15 and 11 percent, respectively, of acreage for potatoes for the fresh market were taken out of production.⁷³ Given next year’s targets, the acreage of those potatoes to be taken out could well result in an increase of potatoes for the fresh market over this current crop year for these two critical states. Furthermore, the Tribunal notes that climatic conditions could increase yields to offset, in whole or in part, any acreage reductions generated by United.

86. Another factor that could undermine United’s success is that its membership is voluntary, and a substantial number of acres could be returned to production by any grower or group of growers. This could stem from many factors, including a decision to add acreage, given the increased opportunities in the B.C. market, if the order is not continued. As discussed below, price pressures from U.S. potatoes in 2005-2006 could likely cause B.C. growers to cut back on production in crop year 2006-2007, thus creating a natural opening for increased imports from the United States. The evidence is clear that U.S. growers are interested in the B.C. market. Given the size of the Washington State market, where only 10 percent of its production of potatoes for the fresh market is equal to the entire annual volume grown in British Columbia,⁷⁴ in a situation of continued oversupply, Washington State growers would have no trouble shipping significant volumes of extra potatoes to the B.C. market.

87. On balance, taking the foregoing factors into account, the Tribunal finds that the volumes exported to British Columbia will likely increase in the medium term, should the order be rescinded. In coming to this conclusion, the Tribunal took into account the fact that B.C. growers benefit from some brand loyalty

71. Exporter’s Exhibit B-19 at 41, Administrative Record, Vol. 13.

72. This methodology was confidential at the time of the hearing. *Transcript of In Camera Hearing*, Vol. 1, 13 July 2005, at 4, 15, 16.

73. *Transcript of Public Hearing*, Vol. 3, 13 July 2005, at 779.

74. Tribunal Exhibit RR-2004-006-05B, Administrative Record, Vol. 1A at 113; Exporter’s Exhibit B-02, Tab 11, Administrative Record, Vol. 13.

exhibited by large B.C. retail customers. However, it is of the view that, because potatoes are a commodity, this brand loyalty is unlikely to be the deciding factor in purchasing decisions, if lower prices were available from the United States.⁷⁵ Furthermore, U.S. growers have established distribution networks in British Columbia that could readily be used as a foundation to increase sales in that market.

88. Finally, the Tribunal notes that the BCVMC argued that the fact that Washington State produces a very large volume of potatoes that can flood the B.C. market is *per se* a factor that contributes to the possible future injury to the B.C. growers. This is not necessarily a factor, in and of itself, that the Tribunal needs to consider in its injury analysis. What is relevant to *SIMA*, as discussed above, is the volume that will be dumped in the B.C. market in the event of a rescission of the order, not the size of the Washington State market.

89. Therefore, on the basis of the above-mentioned evidence and testimony, the Tribunal finds that, for the 2005-2006 period, the volume of U.S. exports to British Columbia is unlikely to increase. However, it also finds that, for the 2006-2007 period, such exports are likely to increase beyond the volumes seen during the period of review.

Likely Prices of Dumped Imports

90. The Tribunal now turns its attention to examining the likely prices of U.S. exports to British Columbia in crop years 2005-2006 and 2006-2007.

– Crop Year 2005-2006

91. As indicated above, the evidence showed that the total number of acres to be harvested in 2005, as compared to 2004, should decrease by 6.7 percent for the United States in total, by 5.9 percent for Washington State and Idaho combined, and by 3.1 percent for Washington State alone.⁷⁶ The Tribunal is convinced that these decreases should have an impact on the level of production in the United States and, as a result, on U.S. pricing.

92. The Tribunal heard differing testimony regarding the impact that the potato acreage reduction will likely have on U.S. prices in 2005-2006. Some witnesses indicated that it is a generally held hypothesis in the industry that potatoes are subject to a supply-price relationship expressed as the 1:6/7 ratio, i.e. “for every one percent change in supply, there will be a six to seven percent price change in the opposite direction”.⁷⁷ One of these witnesses forecasted that U.S. prices, as a result of the acreage reduction, will increase between US\$2 and US\$4 per hundredweight this crop year.⁷⁸

93. In order to assess the validity of the supply-price relationship for potatoes, the Tribunal analyzed the evidence concerning the impact that production variations in the United States, as a whole, and in Washington State, alone, had on the price levels that prevailed in the United States and Washington State during the period of review. These prices, particularly those of Washington State, which have been tracked by the BCVMC for the purpose of determining B.C. prices, are likely to find their way into the B.C. market if the order is rescinded. When comparing U.S. production variations with U.S. average price variations for 2001, when production decreased by 14.8 percent over 2000, the Tribunal found that average prices

75. *Transcript of Public Hearing*, Vol. 1, 11 July 2005, at 157.

76. Exporter’s Exhibit B-24 at 13, Administrative Record, Vol. 13.

77. Exporter’s Exhibit B-02, para. 22, Administrative Record, Vol. 13; Exporter’s Exhibit B-06, para. 29, Administrative Record, Vol. 13.

78. Exporter’s Exhibit B-06, para. 44, Administrative Record, Vol. 13.

increased by 38 percent. It notes that this resulted in a 1:2.6 ratio.⁷⁹ The Tribunal notes further that Washington State production decreased by 10.1 percent in 2001 over 2000, while average prices increased by 26 percent, which also provided for a 1:2.6 ratio.⁸⁰ After this significant decrease of production in 2001, a further decrease of production of 2.2 percent in 2002 was achieved by Washington State; however, prices did not increase, but rather declined by 20 percent.⁸¹ This may have been due to a production increase of 4.7 percent for the United States as a whole. Further supply-price relationship comparisons covering other years of the period of review failed to uncover any relationships close to the 1:6/7 ratio.

94. The Tribunal also reviewed a recent trade publication⁸² that compared Idaho prices in 2005 with those that might have been expected if the 1:6/7 ratio had fully applied. Although this ratio is not clearly identified in the article, it can be derived mathematically.⁸³ According to the *North American Potato Market News*, based on the North American potato production of last year, the pricing model projected a weighted average price of US\$11.89 per hundredweight for the September 2004-July 2005 period. However, the article indicated that actual average prices are thought to be closer to US\$9.50 per hundredweight. The Tribunal notes that these average prices were lower than average prices for the preceding year, although the model predicted that they would be approximately 5 percent higher.

95. While the foregoing analyses do not validate the 1:6/7 ratio, which undermines the confidence of the Tribunal in its power to predict prices, it remains that potatoes are subject to the law of supply and demand. While non-supply considerations such as quality and reliability can affect prices, a basic element driving price remains supply. The Tribunal is of the view that a ratio of approximately 1:3 between supply and price appears to reflect more accurately past market behaviour. Using this ratio and, as a proxy for supply, the announced 6.7 percent decrease in acreage, the Tribunal's computations indicate that a rescission of the order would likely result in import prices in the B.C. market ranging from \$10 to \$13 for the majority of potatoes packed in bags, and over \$20, on average, for count-size potatoes packed in cartons.⁸⁴ These prices would likely remain below normal values for all white and russet potatoes exported to British Columbia, except for most count-size potatoes packed in cartons. These count-size potatoes, which were priced above normal values for most of the period from August 2001 to April 2005, would mostly continue to be at a price level well over normal values.

– Crop Year 2006-2007

96. As for crop year 2006-2007, the Tribunal is not convinced that U.S prices will increase further. First, as discussed above, while indications are that United wishes to reduce acreage planted again next year, it is not clear what the reduction level will be. Moreover, the Tribunal is of the view that, even if acreage

79. Tribunal Exhibit RR-2004-006-05, Administrative Record, Vol. 1A at 37; Tribunal Exhibit RR-2004-006-05B, Administrative Record, Vol. 1A at 141.

80. Exporter's Exhibit B-02, Tab 3, Administrative Record, Vol. 13; Grower's Exhibit A-03, Tab 4, Administrative Record, Vol. 11.

81. *Ibid.*

82. Exporter's Exhibit B-23 at 3, Administrative Record, Vol. 13.

83. The article mentions that the model suggests that a 5.6 percent decline in production would lift prices by 36.8 percent, which gives a 1:6.57 ratio.

84. These estimates of Canadian prices were based on a decrease of supply of 6.7 percent (total U.S.) and a 1:3 ratio for price increase, using average Washington State "mostly" prices from August 2004 to April 2005, an amount for freight between Washington State and British Columbia (US\$1.59 per hundredweight), and a US\$1.00=\$1.24 exchange rate conversion factor for crop year 2004-2005. Tribunal Exhibit RR-2004-006-RI-01A (protected), Administrative Record, Vol. 10 at 21.

planted decreased, it may not necessarily result in a supply decline sufficient to significantly raise prices further.

97. In fact, prices could decrease from their 2005-2006 levels, as happened following the record high-price year of 2001.⁸⁵ Even if Washington State growers were to take out additional acreage next crop year,⁸⁶ this removal, in and of itself, would not necessarily determine Washington State prices, given the experience in 2002 referred to previously.

98. In conclusion, it is the Tribunal's view that prices of U.S. exports to the B.C. market will increase in crop year 2005-2006, but not to the levels seen in 2001. The Tribunal is also of the view that prices in 2006-2007 will likely remain at levels similar to those of 2005-2006 and may be somewhat lower, given the supply considerations discussed above and the fact that B.C. growers may lower their own prices to try to combat import competition. With the exception of most count-size potatoes, these prices should be below normal values for the majority of potatoes shipped to British Columbia from the United States.

Likely Impact of Dumped Imports on the Domestic Industry

99. The WSPC submitted that the Tribunal, in its conduct of the injury analysis, is required to first examine the likely effects of the dumping of all the subject goods and, subsequently, grant product exclusions if warranted. The Tribunal agrees with this interpretation and has conducted its injury analysis using this approach.

100. The Tribunal agrees with the BCVMC that, for the most part, this case centers on prices that will find their way into the B.C. market, should the order be rescinded. However, it is of the view that, given the uncertainties in controlling supply, as discussed above, volume is also likely to be an issue, especially in the medium term.

101. In estimating the likely magnitude of injury to B.C. potato growers in the event of a rescission of the order, the Tribunal first estimated the likely revenues that the industry could expect in the current crop year, using forecast prices based on the acreage that has already been taken out of the market by United. However, for the reasons discussed above, rather than using the 1:6/7 ratio, the Tribunal used a 1:3 ratio of acreage reductions to price increases. Based on this assumption, B.C. revenues should be about \$14 million in crop year 2005-2006.⁸⁷

102. In estimating the B.C. industry's cost of production, the Tribunal rejected the economic cost model submitted by the BCVMC. It much prefers accounting cost models and, in fact, requested that the largest B.C. growers provide, prior to the hearing, income statements based on actual accounting cost, as opposed to economic cost.⁸⁸ The Tribunal agrees with the expert who appeared on behalf of the WSPC that economic cost models are useful in deciding what crops to plant, but not in assessing the cost of production.

85. Tribunal Exhibit RR-2004-006-05B, Administrative Record, Vol. 1A at 129, 141.

86. A witness testified that Washington State did not have the buyout that it should have had in 2005 because it was too late for some of the growers of potatoes for the fresh market, given that fumigation has to be done in the fall.

87. B.C. revenues for white and russet potatoes were estimated using B.C. sales volumes by pack and count sizes in 2004-2005. B.C. revenues for red and yellow potatoes were estimated using total sales volumes for B.C. growers less sales volumes for white and russet potatoes in 2004-2005. The methodology for estimating B.C. prices is found at note 84. Tribunal Exhibit RR-2004-006-05B, Administrative Record, Vol. 1A at 119; Grower's Exhibit A-18, Tab 4 at 4, Administrative Record, Vol. 11.

88. Tribunal Exhibit RR-2004-006-RFI-01, Administrative Record, Vol. 9 at 6.

It also agrees with the WSPC that, after a grower has decided which crop to plant, it would not deduct the net return on investment as a cost, as this would mislead it as to the true performance of the crop.⁸⁹

103. The Tribunal adjusted the B.C. cost model⁹⁰ in two stages. First, in light of the evidence obtained in the cross-examination of the domestic industry witnesses, it reduced the cost of interest on operating capital⁹¹ and the cost of land rental,⁹² and removed any return on investment as a cost. Second, the Tribunal made reductions to the following costs: land rental, which it further decreased by 33.4 percent to account for the fact that only 66.4 percent of the acreage used by growers is rented;⁹³ cultural operations materials, which it decreased by \$0.20 per hundredweight by recalculating seeding costs using a weighted average of these costs across all potato types, rather than the straight average of the model; and depreciation, which it reduced by one third, or \$0.65 per hundredweight. In the Tribunal's view, estimating depreciation in this manner is more reasonable than using the BCVMC's methodology because the latter was based on a grower using all new equipment, but the B.C. growers testified that much of their equipment was in fact not new. In taking into account all of these changes, the Tribunal found that the cost of production for all potato types could reasonably be estimated to be around \$2.50 per hundredweight below that calculated by the BCVMC for B.C. potatoes.

104. By all accounts, the industry was profitable during the period of review. However, should the order be rescinded, its profitability will be significantly affected in this crop year, despite the fact that export prices are likely to rise and the volumes of U.S. exports are likely to remain flat. Injury will occur because U.S. prices, even with decreased production, will not rise enough to be at or above normal values for all imported potatoes. As a price taker, the B.C. industry will continue to set its prices at levels competitive with the imports from the United States, notably Washington State. As a result, the Tribunal estimates that there would be approximately a \$1.2 million negative effect on the B.C. growers' bottom line, before taxes, in crop year 2005-2006. This would be equivalent to approximately one half of the industry profits, as estimated by the Tribunal based on the cost and revenue estimates discussed above. This, in the Tribunal's view, would be injurious to "all or almost all" of the B.C. growers' production.

105. While this injury would be caused entirely by the low prices of white and russet potatoes that would come into British Columbia at less than normal value, its magnitude is such that it would affect the financial health of the whole industry, even though the industry makes very good profits on its sales of red and yellow potatoes, which account for a sizeable proportion of total industry sales. Furthermore, in order to spread fixed costs over the largest production possible, and to provide the full range of products demanded by their customers, B.C. growers need to produce the entire range of potatoes. They would not likely be viable in the near to medium term, if they sold only red and yellow potatoes.

106. As noted above, both volumes and prices are more uncertain in 2006-2007 than in 2005-2006. However, the Tribunal is of the view that the magnitude of injury in 2006-2007 would likely be greater than in 2005-2006, given that U.S. export prices will likely be at the same level, or lower, than in 2005-2006, and that the volume of U.S. imports is likely to increase.

89. *Transcript of Public Argument*, 14 July 2005, at 99.

90. Grower's Exhibit A-16, Administrative Record, Vol. 11 at 7.

91. Interest on operating capital was reduced from 8 to 6 percent, or \$58.29 to \$43.71.

92. Land rental was reduced from \$500.00 to \$379.55 per acre; this latter figure is the weighted average cost per acre for the land rented by Messrs. Guichon, Schouten and Kelly. *Transcript of Public Hearing*, Vol. 1, 11 July 2005, at 296-98.

93. Based on testimony by Messrs. Guichon, Schouten and Kelly. *Transcript of Public Hearing*, Vol. 1, 11 July 2005, at 296-97.

Other Factors not Relating to Dumping

107. The WSPC argued that, in its injury analysis, the Tribunal ought to take into account the effects of the agricultural cycle and consider the wide variations in supply and prices to which commodity products, such as potatoes, are subject. It asked the Tribunal to conclude that the B.C. industry should not be considered injured merely because financial losses could be experienced in many years due to the cycle. The Tribunal acknowledges that agricultural products may suffer cyclical reversals in profitability, due to factors such as the weather. However, the evidence was not clear as to whether a six-year cycle existed in British Columbia or whether the periods between the high and low points of such a cycle would continue to be of the same duration, given the intervention of United into the market. Notwithstanding any likely injury that might be attributed to this non-dumping factor, the Tribunal is of the view that the injury that will be caused by the likely dumping of the subject goods should the order be rescinded will be, in and of itself, material in the near to medium term.

Exclusions

108. The WSPC requested product exclusions for the following four types of potatoes because, in its view, they did not and are not likely to cause injury to the B.C. potato industry:

- white potatoes (whites);⁹⁴
- round red potatoes (reds);⁹⁵
- Yukon Gold potatoes;⁹⁶ and
- exotic potato varieties (exotics).⁹⁷

94. The WSPC provided the following general description for whites: “Round or oblong tubers of varying sizes, with smooth skins ranging in color from white to light tan, and white flesh with few and shallow eyes. Medium starch level; hold their shape well after cooking. Many potato varieties belong to the category of white potatoes, including but not limited to White Rose and Cascade.” [Footnotes omitted] Tribunal Exhibit RR-2004-006-28.01, Administrative Record, Vol. 1 at 164.

95. The WSPC provided the following general description for reds: “Round tubers ranging in size from 1 inch in diameter to 2 ½ inches or larger. Round red potatoes are sold in sizes A, B and C and are typically harvested before reaching maturity. Skin is waxy and red, and flesh is generally white but can be golden depending on the strain. Texture is firm, smooth and moist. Round [red] potatoes are relatively low in starch. Many potato varieties are included in the category of round red potato, including but not limited to Chieftan, Red La Soda, Norland, Klondike Rose, and Idarose.” [Footnotes omitted] Tribunal Exhibit RR-2004-006-28.01, Administrative Record, Vol. 1 at 167.

96. The WSPC provided the following general description for Yukon Gold potatoes: “A potato type selected from a cross between W5279-4 and Norgleam, tested under the pedigree G6666-4Y. Yukon Golds have light yellow flesh with yellowish white, smooth skin and a small number of unevenly distributed shallow, pinkish eyes. The Yukon Gold tuber is slightly oval and flattened, with a width-to-length ratio of 88/100. Specific gravity is in the 1.808s and glycoalkaloids average 4.6mg/100g fresh weight.” [Footnotes omitted] During the hearing, the parties and the Tribunal referred to Yukon Gold potatoes as yellow potatoes. However, yellow potatoes encompass more than the Yukon Gold variety, as referenced in paragraph 10. The Tribunal notes that, while an exclusion request was filed by the WSPC specifically for Yukon Gold the B.C. industry consented to an exclusion for all yellow potatoes (yellows). Tribunal Exhibit RR-2004-006-28.01, Administrative Record, Vol. 1 at 171.

97. With respect to the exclusion request for exotics, the WSPC indicated that it covers “All purples”, “All blues”, “All reds” and “Fingerling Type Potatoes”, including Purple Peruvian, French, Ruby Crescent and Russian Banana. Tribunal Exhibit RR-2004-006-28.01, Administrative Record, Vol. 1 at 174.

109. In *Stainless Steel Wire*,⁹⁸ the Tribunal summarized its views on the matter of product exclusions as follows:

It is well established that the Tribunal has the discretion to grant product exclusions under subsection 43(1) of *SIMA*. The fundamental principle is that the Tribunal will grant product exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry. The Tribunal has granted product exclusions for particular products in circumstances when, for instance, the domestic industry does not produce those particular products. The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods, whether the domestic industry is an “active supplier” of the product or whether it normally produces the product or whether the domestic industry has the capability of producing the product.

[Footnotes omitted]

Reds, Yellows and Exotics

110. The Tribunal notes that, at the outset of its hearing, the BCVMC consented to an exclusion for reds, yellows and exotics, thus extending the exclusion request for Yukon Gold potatoes to all varieties of yellow potatoes and only disputing the request for whites.⁹⁹ The Tribunal notes that the evidence on the record indicates that reds, yellows and exotics are more highly valued than whites and russet potatoes and are costlier products.¹⁰⁰ While the CBSA’s enforcement data lack specificity as to potato type for most U.S. states,¹⁰¹ the Tribunal believes, based on the data available, that the export price with respect to the reds, yellows and exotics was generally higher than the normal values during the period of review. In light of the foregoing, the Tribunal finds that reds, yellows and exotics will not likely cause injury to the B.C. industry and grants a product exclusion for these potato types.

Whites

111. With respect to the exclusion for whites, the BCVMC argued that whites and russet potatoes are substitutable and that both types must continue to be protected by the anti-dumping duties. In support of this position, the BCVMC noted that B.C. growers must price their whites competitively with the same grade and pack sizes as russet potatoes and that their retail prices track each other.¹⁰² Furthermore, it submitted that B.C. growers harvest many different varieties of white potatoes and argued that an exclusion for whites would inevitably exert downward pressure on the prices for B.C. russet potatoes. For its part, the WSPC argued that Washington State’s whites are not equivalent to russet potatoes and that, rather, they are premium high-quality specialty products that command substantially higher prices than russet potatoes.

112. The Tribunal accepts the BCVMC’s arguments with respect to whites being substitutable for russet potatoes. Therefore, the Tribunal finds that a product exclusion is not warranted for whites on the basis that there is production of whites in British Columbia and whites and russets are substitutable for each other in

98. (30 July 2004), NQ-2004-001 (CITT) at 22.

99. *Transcript of Public Hearing*, Vol. 1, 11 July 2005, at 9-11; Tribunal Exhibit RR-2004-006-30.01, Administrative Record, Vol. 1 at 183.

100. Tribunal Exhibit RR-2004-006-06B (protected), Administrative Record, Vol. 2A at 128.

101. Tribunal Exhibit RR-2004-006-10.42, Administrative Record, Vol. 1.2B at 53-133; Tribunal Exhibit RR-2004-006-10.43, Administrative Record, Vol. 1.2B at 134-216; Tribunal Exhibit RR-2004-006-10.44, Administrative Record, Vol. 1.2B at 217-95; Tribunal Exhibit RR-2004-006-10.45, Administrative Record, Vol. 1.2B at 296-340.

102. *Transcript of Public Argument*, 14 July 2005, at 50; *Transcript of Public Hearing*, Vol. 1, 11 July 2005, at 31-32, 142.

the B.C. market. Therefore, a product exclusion for whites would likely cause injury to the domestic industry.

Count-size Potatoes

113. The Tribunal also considered whether a product exclusion was warranted for count-size potatoes,¹⁰³ specifically, the following count sizes: 40, 50, 60, 70 and 80 sold in 50-lb. cartons. In this regard, during the hearing, the Tribunal noted that the CBSA data indicated that the export values for this range of count-size potatoes in 2004-2005 were generally higher than the applicable normal values.¹⁰⁴ The evidence did not indicate that the 2004-2005 prices were unrepresentative of the period of review.¹⁰⁵ Taking this evidence into account, the Tribunal asked counsel to make submissions regarding whether an exclusion was warranted for this range of count-size potatoes.

114. The BCVMC argued that an exclusion for this range of count-size potatoes would inevitably result in circumvention of the order, which, it submitted, would be similar to the events that transpired after the 1984 dumping inquiry when the Tribunal decided to provide anti-dumping protection to non-size A potatoes alone. It also argued that this exclusion would result in the U.S. growers dumping this range of count-size potatoes in the B.C. market. In the same vein, it submitted that this would lead to a price inversion, wherein the higher-valued product, such as these count-size potatoes, would come into the market at prices lower than the lower-valued protected product during the periods of surplus production or depressed prices. It submitted that this would cause and encourage the dumping of the higher-valued product and would cause material injury to the most profitable products in the category. For its part, the WSPC argued that the likelihood of circumvention is mitigated by the fact that U.S. growers cannot sell to their customers anything other than what they want to buy.

115. The Tribunal notes that, for the period of review, the CBSA data indicate that, with respect to the 40 to 80 count size potatoes, export prices were, with the sole exception of one week, always higher than normal values for imports from Washington State, Oregon and California.¹⁰⁶ With respect to the 40 and 50 count size potatoes from Idaho, it notes that export prices were lower for only 5 of the 41 weeks in 2002-2003 and for only 2 of the 39 weeks in 2003-2004.¹⁰⁷ With respect to the 60 to 80 count size potatoes from Idaho, export prices were always higher than normal values. Furthermore, the Tribunal notes the large difference in market price between the count-size potatoes sold in cartons by B.C. growers, on average over \$20 in 2004-2005,¹⁰⁸ and the imported potatoes sold in bags estimated to be available in British Columbia at prices between \$10 and \$13 in 2005-2006.¹⁰⁹ Given these high prices and minimal instances of export prices below normal values during the period of review, the Tribunal does not expect that the future export behaviour of U.S. growers will be influenced in any significant way by the presence or absence of an anti-dumping order. On the basis of these data, the Tribunal finds that the imports of the 40 to 80 count-size potatoes, sold in cartons, will not likely cause injury to the B.C. industry if they are excluded from the order. It therefore finds that a product exclusion for the 40 to 80 count-size potatoes is warranted.

103. The Tribunal notes that count-size potatoes are a subset of the imports of whites and russet potatoes.

104. Tribunal Exhibit RR-2004-006-10.45, Administrative Record, Vol. 1.2B at 296-340.

105. Tribunal Exhibit RR-2004-006-10.42, Administrative Record, Vol. 1.2B at 53-133; Tribunal Exhibit RR-2004-006-10.43, Administrative Record, Vol. 1.2B at 134-216; Tribunal Exhibit RR-2004-006-10.44, Administrative Record, Vol. 1.2B at 217-95.

106. *Ibid.*; Tribunal Exhibit RR-2004-006-10.45, Administrative Record, Vol. 1.2B at 296-340.

107. *Ibid.*

108. Tribunal Exhibit RR-2004-006-RI-01A (protected), Administrative Record, Vol. 10 at 21.

109. *Supra* note 84.

CONCLUSION

116. Based on the foregoing, the Tribunal finds that the rescission of its order will likely result in injury to the growers of all or almost all of the potato production in British Columbia in the near to medium term.

117. Also based on the foregoing, the Tribunal grants product exclusions for reds, yellows and exotics, regardless of packaging, as well as a product exclusion for whites and russet potatoes imported in 50-lb. cartons in the following count sizes: 40, 50, 60, 70 and 80.

118. Therefore, pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal continues its order in respect of the subject goods, with an amendment to exclude the aforementioned potatoes.

Patricia M. Close
Patricia M. Close
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

Ellen Fry
Ellen Fry
Member