



Ottawa, Thursday, September 14, 1995

Review No.: RR-94-007

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding of material injury made by the Anti-dumping Tribunal on June 4, 1984, in Inquiry No. ADT-4-84, and the finding of material injury made by the Canadian Import Tribunal on April 18, 1986, in Inquiry No. CIT-16-85, continued without amendment by the Canadian International Trade Tribunal on September 14, 1990, in Review No. RR-89-010, concerning:

WHOLE POTATOES WITH NETTED OR RUSSETED SKIN, EXCLUDING SEED POTATOES, IN NON-SIZE A, ALSO COMMONLY KNOWN AS STRIPPERS, ORIGINATING IN OR EXPORTED FROM THE STATE OF WASHINGTON, UNITED STATES OF AMERICA, FOR USE OR CONSUMPTION IN THE PROVINCE OF BRITISH COLUMBIA; AND WHOLE POTATOES, ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA, FOR USE OR CONSUMPTION IN THE PROVINCE OF BRITISH COLUMBIA, EXCLUDING SEED POTATOES, AND EXCLUDING WHOLE POTATOES WITH NETTED OR RUSSETED SKIN IN NON-SIZE A, ORIGINATING IN OR EXPORTED FROM THE STATE OF WASHINGTON

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of the finding of material injury made by the Anti-dumping Tribunal on June 4, 1984, in Inquiry No. ADT-4-84, and the finding of material injury made by the Canadian Import Tribunal on April 18, 1986, in Inquiry No. CIT-16-85, continued without amendment by the Canadian International Trade Tribunal on September 14, 1990, in Review No. RR-89-010.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the above-mentioned findings, with an amendment to exclude imports during the period from May 1 to July 31, inclusive, of each calendar year.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Michel P. Granger
Michel P. Granger
Secretary



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Special Import Measures Act - Whether to rescind or continue, with or without amendment, the finding of material injury made by the Anti-dumping Tribunal on June 4, 1984, in Inquiry No. ADT-4-84, and the finding of material injury made by the Canadian Import Tribunal on April 18, 1986, in Inquiry No. CIT-16-85, continued without amendment by the Canadian International Trade Tribunal on September 14, 1990, in Review No. RR-89-010.

Place of Hearing: Vancouver, British Columbia
Dates of Hearing: July 10 and 11, 1995
Date of Order and Reasons: September 14, 1995
Tribunal Members: Lyle M. Russell, Presiding Member
Anthony T. Eyton, Member
Robert C. Coates, Q.C., Member
Director of Research: Selik Shainfarber
Lead Researcher: Rose Ritcey
Research Officer: Young-Hak Kim
Economist: Ihn Ho Uhm
Statistical Officer: Margaret Saumweber
Counsel for the Tribunal: David M. Attwater
Registration and Distribution Officer: Pierrette Hébert
Participants: Marvin R.V. Storrow, Q.C.
Maria Morellato
Jacqueline Ott
for B.C. Vegetable Marketing Commission

(Producer)

John M. Christiansen
for B.C. Fruit Wholesalers' Association

(Importer)

Witnesses:

Charles (Chuck) Amor
General Manager
B.C. Vegetable Marketing Commission

Tim Singh
Manager
Cloverdale Produce Farms Ltd.

Peter Guichon
President
Lower Mainland Vegetable Distributors Inc.

Wendy Holm
W.R. Holm & Associates

Wes Heppell
Heppell's Potato Corp.

R.J. (Jim) Alcock
Manager, Horticulture Products
Ministry of Agriculture, Fisheries and Food
Province of British Columbia

George Wright
Wrightholm Farms Ltd.

Keith Maddocks
Maddocks Farms Ltd.

Wayne Odermatt
Provincial Fresh Vegetable Industry Specialist
Ministry of Agriculture, Fisheries and Food
Province of British Columbia

Margaret Crowley
Executive Assistant and Director
Policy Development
British Columbia Federation of Agriculture

Rick Gilmour
General Manager
Lower Mainland Vegetable Distributors Inc.

Terry Young
General Manager
B.C. Coast Vegetable Co-Operative Association

John Nieboer
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Ottawa, Thursday, September 14, 1995

Review No.: RR-94-007

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding of material injury made by the Anti-dumping Tribunal on June 4, 1984, in Inquiry No. ADT-4-84, and the finding of material injury made by the Canadian Import Tribunal on April 18, 1986, in Inquiry No. CIT-16-85, continued without amendment by the Canadian International Trade Tribunal on September 14, 1990, in Review No. RR-89-010, concerning:

WHOLE POTATOES WITH NETTED OR RUSSETED SKIN, EXCLUDING SEED POTATOES, IN NON-SIZE A, ALSO COMMONLY KNOWN AS STRIPPERS, ORIGINATING IN OR EXPORTED FROM THE STATE OF WASHINGTON, UNITED STATES OF AMERICA, FOR USE OR CONSUMPTION IN THE PROVINCE OF BRITISH COLUMBIA; AND WHOLE POTATOES, ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA, FOR USE OR CONSUMPTION IN THE PROVINCE OF BRITISH COLUMBIA, EXCLUDING SEED POTATOES, AND EXCLUDING WHOLE POTATOES WITH NETTED OR RUSSETED SKIN IN NON-SIZE A, ORIGINATING IN OR EXPORTED FROM THE STATE OF WASHINGTON

TRIBUNAL: LYLE M. RUSSELL, Presiding Member
ANTHONY T. EYTON, Member
ROBERT C. COATES, Q.C., Member

STATEMENT OF REASONS

BACKGROUND

This is a review, under subsection 76(2) of the *Special Import Measures Act*¹ (SIMA), of the finding of material injury made by the Anti-dumping Tribunal (the ADT) on June 4, 1984, in Inquiry No. ADT-4-84, and the finding of material injury made by the Canadian Import Tribunal (the CIT) on April 18, 1986, in Inquiry No. CIT-16-85, continued without amendment by the Canadian International Trade Tribunal (the Tribunal) on September 14, 1990, in Review No. RR-89-010, concerning whole potatoes with netted or russeted skin, excluding seed potatoes, in non-size A, also commonly known as strippers, originating in or exported from the state of Washington, United States of America, for use or consumption in the province of British Columbia; and whole potatoes, originating in or exported from the United States of America, for use or consumption in the province of British Columbia, excluding seed potatoes, and excluding whole potatoes with netted or russeted skin in non-size A, originating in or exported from the state of Washington.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the findings and issued a notice of review² on March 23, 1995. This notice was forwarded to all known interested parties.

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1. R.S.C. 1985, c. S-15.
 2. Canada Gazette Part I, Vol. 129, No. 13, April 1, 1995, at 961.

As part of this review, the Tribunal sent questionnaires to the producers and importers of whole potatoes. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports. In addition, the record of this review consists of all relevant documents, including the findings of the previous inquiries, the public pre-hearing staff report and order of the previous review, the notice of review, the notice of time and location of public hearing, public and confidential replies to the questionnaires as well as the public and protected pre-hearing staff reports for this review. All public exhibits were made available to interested parties, while protected exhibits were provided only to independent counsel who had filed a declaration and confidentiality undertaking with the Tribunal.

A public hearing was held in Vancouver, British Columbia, on July 10 and 11, 1995.

The B.C. Vegetable Marketing Commission (the BCVMC), an organization representing B.C. potato growers, was represented by counsel at the hearing, submitted evidence and made argument in support of continuing the findings. The B.C. Fruit Wholesalers' Association (the Association), an organization representing importers, distributors and retailers of potatoes, was also represented by counsel and made argument in support of rescinding the findings.

The Tribunal invited Mr. John Nieboer, Director, Produce Merchandising, at Overwaitea Food Group, which purchases and retails domestic and imported potatoes, to answer questions put to him by the Tribunal and by counsel for each party.

PRODUCTS

As a result of the combined effect of the two findings, the products that are the subject of this review are whole potatoes excluding seed potatoes (potatoes), imported from the United States.

The potato tuber is an enlarged portion of an underground stem that stores carbohydrates not used by the potato plant for growth. Potatoes in commercial operations are generally grown from seed potatoes, which are certified to be free of certain viruses and other diseases. Potatoes can be sold either in the fresh market or for processing. In British Columbia, the bulk of the potato harvest occurs from August to October. Potatoes that are not sold immediately are stored in piles in storage sheds, and some varieties can be successfully stored until late spring of the following year.

Potatoes come in various shapes, sizes and colours of skin or flesh and are generally classified as one of five types: round white, russet (a long potato), round red, yellow flesh or long white. In British Columbia, russet potatoes are the predominant potatoes grown for the fresh market.

The *Fresh Fruit and Vegetable Regulations*³ (the Regulations), which were enacted pursuant to the *Canada Agricultural Products Act*,⁴ 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 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.

3. C.R.C. 1978, c. 285.

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

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 2 1/4 in. and a maximum diameter of 3 1/2 in. or a weight of 5 to 12 oz.;
- (2) Canada No. 1 grade of long varieties (i.e. russet potatoes) must have a minimum diameter of 2 in. and a maximum diameter of 3 1/2 in. or a weight of 4 to 12 oz., with the additional requirement that at least 60 percent of the lot have a diameter of at least 2 1/4 in. or a weight of more than 5 oz.; and
- (3) Canada No. 2 grade must have a minimum diameter of 1 3/4 in. and a maximum diameter of 4 1/2 in. or a weight of less than 18 oz.

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 which 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 meets the minimum size requirement for size A potatoes (i.e. minimum diameter of 1 7/8 in.), but that does not meet the uniformity requirement that at least 40 percent of the potatoes in the lot have a minimum diameter of 2 1/2 in.

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.⁵ Further, imported potatoes of long varieties must have a minimum diameter of 2 in. and a maximum diameter of 3 1/2 in., and at least 60 percent of the lot must have a diameter of more than 2 1/4 in. Similarly, imported potatoes of round varieties must have a minimum diameter of 2 1/4 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.

Potatoes destined for the fresh market are sold in a wide variety of packs. Potatoes can be sold in individual bags ("loose") weighing 10, 15, 20, 50 or 100 lbs. Potatoes can also be sold in bales, with a number of bags of potatoes wrapped together in clear plastic wrap. The two most common types of bales are a 5/10-lb. bale, which consists of five 10-lb. bags, and a 10/5-lb. bale, which consists of ten 5-lb. bags. The bags can be made out of paper, mesh or jute.

Potatoes can also be sold in 20-lb. or 50-lb. cartons. Count-size potatoes are those of uniform size and shape that are sold in 50-lb. cartons. For example, an 80 count size means that there are 80 potatoes in a carton, while a 100 count size means that there are 100 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.

In British Columbia, the most common packs sold to retailers include 5/10-lb. bales, 10/5-lb. bales and 15-lb. and 20-lb. bags, as well as 100, 90 and 80 count sizes. In the case of the foodservice industry, count-size potatoes are more common.

5. When there is insufficient supply of domestic product, a ministerial exemption can be granted to import bulk potatoes for processing that do not meet the U.S. Extra No. 1 or U.S. No. 1 grade.

Prices of potatoes destined for the fresh market vary considerably according to variety, grade and type of packaging.

B.C. INDUSTRY

The B.C. Vegetable Scheme, enacted by provincial Order in Council on March 20, 1980, under the *Natural Products Marketing (B.C.) Act*,⁶ established the BCVMC, which is empowered to promote, control and regulate the production, transportation, packing, storage and marketing of 13 vegetables, including potatoes, grown in the province. The BCVMC is under the direction of 8 commissioners who are elected by the growers of the regulated vegetables. As of April 1995, there were 127 potato growers registered with the BCVMC.

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 six sales agencies for potatoes: the B.C. Coast Vegetable Co-Operative Association (B.C. Coast), Lower Mainland Vegetable Distributors Inc., the Interior Vegetable Marketing Agency Cooperative, the Island Vegetable Co-Operative Association, Vancouver Island Produce and Port Potato Co.

The BCVMC administers a quota scheme for domestic potato production to ensure an orderly flow of product into the market. The crop year⁷ is divided into four quota periods: period A is from July 1 to July 20; period B is from July 21 to September 20; period C is from September 21 to January 31; and period D is from February 1 to June 30. Each grower is allocated a quota which is based on a five-year average of the grower's shipments of potatoes during a particular quota period. Growers can produce more than their quota, but the excess will be sold by the grower's sales agency only after all other growers that sell through that agency have delivered their allocated quotas.

The BCVMC sets minimum prices for B.C. potatoes destined for the fresh market once a week, in consultation with the six sales agencies.⁸ The starting point for establishing B.C. potato prices is U.S. market prices, which are adjusted for freight (\$1.50/cwt. to \$3.00/cwt.), the Canada-United States exchange rate and the regular tariff (10.5¢/cwt. in 1995). For much of the crop year, the benchmark U.S. market price is the price of Russet Burbank or Russet Norkotah potatoes from the Columbia Basin in the state of Washington.

When the U.S. market price for a particular potato pack is less than the applicable normal value⁹ as determined by the Department of National Revenue (Revenue Canada), then the normal value, rather than the U.S. market price, is used as the basis for determining a landed Vancouver cost. Adjustments are still made for freight, the Canada-United States exchange rate and the regular tariff. In other words, the normal value sets a "floor" for the price of U.S. potatoes in British Columbia.

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

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

8. Prices of potatoes for processing are negotiated directly with the processors, with monthly prices established for a one-year period.

9. There are currently normal values for 11 different packs of potatoes from each of the states of Washington, California, Oregon and Idaho, for a total of 44 different normal values.

ENFORCEMENT DATA

Table 1 summarizes the value of anti-dumping duties assessed by Revenue Canada for the two findings under review.

	VALUE OF ANTI-DUMPING DUTIES					July-March	
	(\$)					1993-94	1994-95
	1989-90	1990-91	1991-92	1992-93	1993-94	1993-94	1994-95
Anti-Dumping Duties	2,441	11,101	28,524	229,408	345,813	150,558	339,777

Source: Tribunal Exhibit RR-94-007-4 (protected - single copy), Administrative Record, Vol. 15 at 1-459.

In August 1992, Revenue Canada significantly changed the method by which it assesses anti-dumping duties and began to estimate export prices on the basis of U.S. market prices, rather than on the basis of the invoiced price.¹⁰ Therefore, the value of anti-dumping duties collected in the first three years of the review period should not be compared to the value of anti-dumping duties collected in later years.

The value of anti-dumping duties collected in 1993-94 was approximately 50 percent greater than the value in 1992-93, despite the fact that the volume of imports recorded by Revenue Canada was only 30 percent greater.¹¹ During the first nine months of 1994-95, the value of anti-dumping duties collected was more than double the value during the same period in 1993-94, even though the volume of imports, as recorded by Revenue Canada, decreased by nearly 10 percent.

SUMMARY OF INQUIRY NO. ADT-4-84

On June 4, 1984, 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 the state of Washington, had caused, was causing and was likely to cause material injury to the production of like goods in the province.

Counsel for the BCVMC, the complainant, argued that the dumping of netted or russeted potatoes from the United States had caused material injury to B.C. growers in the form of loss of market share, price erosion and loss of producer profits in 1982-83 and 1983-84. In response, counsel for certain exporters and importers argued that potato prices had fluctuated due to changes in supply and demand, and not as a result of the dumping. Counsel for the exporters and importers also claimed that the B.C. industry did not pack count-size potatoes, which had to be imported from the United States.

10. Under the system in place since 1992, anti-dumping duties are automatically levied whenever U.S. market prices are below normal values, regardless of the actual export price. This, effectively, makes anti-dumping duties on U.S. potato imports unavoidable in these circumstances. Such an enforcement methodology is used, among other reasons, to avoid circumvention.

11. Tribunal Exhibit RR-94-007-4 (protected - single copy), Administrative Record, Vol. 15 at 1-459.

The ADT was satisfied that British Columbia represented a regional market for potatoes, noting that little or none of the local harvest was shipped to other provinces or exported abroad and that less than 5 percent of B.C. needs were met by potatoes imported from other provinces.

The ADT characterized B.C. potato prices as being a reflection of Washington prices and concluded that there was a causal link between the dumping and the material injury suffered by B.C. potato growers. The ADT also concluded that, given the large quantity of potatoes grown in the state of Washington, without anti-dumping protection, B.C. growers would continue to suffer material injury.

The ADT was of the view that the claims of material injury by the B.C. potato industry were essentially aimed at imports from the state of Washington and was not persuaded that imports from other states were the cause of the injury suffered by the industry. It noted that landed prices for potatoes from states such as California, Oregon and Idaho tended to be higher than those for potatoes from the state of Washington.

Finally, the ADT noted that non-size A potatoes comprised some 87 percent of the total imports investigated by Revenue Canada. Landed import prices for other sizes tended to be higher and, therefore, in the opinion of the ADT, did not contribute to the price suppression suffered by the industry. The ADT also concluded that B.C. growers did not pack count-size potatoes. Accordingly, the ADT excluded size A, count-size and baker potatoes¹² from its finding of injury.

SUMMARY OF INQUIRY NO. CIT-16-85

On April 18, 1986, 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.

Counsel for the BCVMC, the complainant, argued that the dumping had caused material injury in the form of price erosion, loss of market share and a complete loss of grower profits during 1985-86. Counsel for the Western Growers Association, a trade association of growers, packers and shippers in Arizona and California, argued that California potatoes had always sold at a premium in the B.C. market and were generally not available at the same time as the locally grown product. Counsel for two Washington exporters argued in favour of a finding of no injury, but in the event of an injury finding, requested that California not be granted an exclusion. Finally, a representative of Fletcher's Fine Foods, a B.C. potato processor, requested an exclusion to allow the company to compete with processed potato products imported from the United States.

The CIT concluded that the central economic fact of life in the B.C. fresh potato business was that prices for potatoes grown in British Columbia were totally dependent on landed Vancouver prices for competing products from the United States. The CIT found that the record U.S. crop of 1985-86 had led to a total collapse of U.S. potato prices. In the view of the CIT, the downward pressure on B.C. prices exerted by falling U.S. prices had resulted in B.C. growers experiencing staggering losses during the first two quarters of 1985-86.

With respect to the future, the CIT was of the opinion that the bumper U.S. crop would continue to flow into the market, at prices that were likely to remain depressed. Therefore, the CIT concluded that, in the

12. Baker potatoes are large potatoes.

absence of anti-dumping measures, B.C. potato growers would continue to suffer material injury from dumped imports from the United States.

The CIT was not persuaded that California should be excluded from the finding, concluding that dumped potatoes from California had also contributed to the material injury suffered by B.C. potato growers. The CIT was concerned that excluding any states from the finding would simply invite importers to redirect their potato purchasing.

Finally, the CIT was also not persuaded that the exclusion requested by Fletcher's Fine Foods was justified, noting that B.C. growers had indicated their willingness to supply the company's needs.

SUMMARY OF REVIEW NO. RR-89-010

On September 14, 1990, the Tribunal continued, without amendment, the findings in Inquiry Nos. ADT-4-84 and CIT-16-85.

Counsel for the BCVMC claimed that the injury finding in Inquiry No. CIT-16-85 had had a stabilizing effect on the B.C. potato industry and that B.C. growers had been able to increase their share of the market by five to seven percentage points since 1985-86. The submission of the B.C. potato industry to continue the findings was unopposed by importers, exporters or other parties.

With respect to the likelihood of resumption of dumping, the Tribunal first noted that there had been very little dumping of potatoes from 1986 to September 1989. However, the Tribunal was of the view that the tendency not to dump had been affected less by the findings and more by U.S. market conditions, where widespread drought and strong demand by processors had led to sharply increased potato prices.

With respect to the likelihood of material injury should dumping resume, the Tribunal noted that net market returns to B.C. growers had been negative in five of the last seven years, with positive returns forecast for 1989-90 only as a result of the exceptionally high potato prices. The Tribunal concluded that, as long as tight supply conditions continued in the United States, import prices would remain high and that, therefore, B.C. growers would not be materially injured. However, the Tribunal was also of the view that, with a return to more normal supply and demand conditions, U.S. prices would return to their historical levels, which would likely be below normal values. In these circumstances, B.C. potato growers would be materially injured.

ECONOMIC INDICATORS

B.C. Potato Industry

Table 2 summarizes the selected economic indicators for the B.C. potato industry for the period of the current review.

From 1989-90 to 1993-94, the number of harvested acres of potatoes in British Columbia increased by 7 percent, with the majority of the growth occurring in 1993-94. There was a 9 percent improvement in yields over the same period, with the highest yields occurring in 1992-93. As a result of the increase in acreage and yields, the production of potatoes rose by 17 percent from 1989-90 to 1993-94. The significant decrease in production in 1990-91 reflects the adverse growing conditions in that year.

Table 2
SELECTED ECONOMIC INDICATORS
B.C. POTATO INDUSTRY

	1989-90	1990-91	1991-92	1992-93	1993-94	<u>July-December</u>	
	1989-90	1990-91	1991-92	1992-93	1993-94	1993-94	1994-95
Production (000 cwt.)	1,506	940	1,568	1,620	1,760		
Harvested Acres	6,584	5,259	5,993	5,985	7,050		
Yield (cwt./acre)	229	179	262	271	250		
B.C. Sales (000 cwt.)	1,194	881	1,186	1,208	1,270	680	780
Percent Change	-	(26)	35	2	5	-	15
Imports (000 cwt.)	<u>968</u>	<u>925</u>	<u>1,140</u>	<u>1,363</u>	<u>1,723</u>	<u>834</u>	<u>698</u>
Percent Change		(4)	23	20	26		(16)
Total Market (000 cwt.)	2,162	1,806	2,326	2,571	2,993	1,514	1,478
Percent Change		(16)	29	11	16		(2)
Market Shares							
B.C. Sales (%)	55	49	51	47	42	45	53
Imports (%)	45	51	49	53	58	55	47
	1989-90	1990-91	1991-92	1992-93	1993-94	<u>July-March</u>	
	1989-90	1990-91	1991-92	1992-93	1993-94	1993-94	1994-95
Average Import Price ¹ (\$/cwt.)	22.12	22.69	14.34	15.71	15.14	15.04	14.27
	1989-90	1990-91	1991-92	1992-93	1993-94	<u>July-May</u>	
	1989-90	1990-91	1991-92	1992-93	1993-94	1993-94	1994-95
B.C. Coast Average							
Russet Prices¹ (\$/pack)							
5/10-lb. Bale	8.07	7.59	5.89	8.57	7.64	-	7.06
10/5-lb. Bale	8.39	8.22	6.89	9.96	9.16	-	7.89
100 Count Size	9.65	9.75	6.67	8.48	9.76	-	8.35
80 Count Size	10.89	11.75	7.17	10.40	14.78	-	8.71
Late Potatoes² (\$/cwt.)							
Grower Revenue	9.71	9.63	5.55	10.28	10.93	-	-
Cost of Production	<u>8.15</u>	<u>8.80</u>	<u>9.50</u>	<u>9.88</u>	<u>10.34</u>	-	-
Net	1.56	0.83	(3.95)	0.40	0.59	-	-

Notes:

1. Average import prices are expressed in terms of \$/cwt., while B.C. Coast list prices are expressed in terms of \$/pack.
2. The grower revenue and cost of production data are from the Farm Income Insurance Program.

Source: Public Pre-Hearing Staff Report, June 13, 1995, Tribunal Exhibit RR-94-007-5, Administrative Record, Vol. 1 at 134.

The volume of U.S. potatoes imported into British Columbia rose from 0.968 million cwt. in 1989-90 to 1.723 million cwt. in 1993-94, an increase of 78 percent. However, during the first nine months of 1994-95, the volume of imports was 16 percent lower than it had been during the same period in 1993-94.

The states of Washington, California and Oregon account for approximately 95 percent of imports of U.S. potatoes into British Columbia, with the state of Washington alone representing 53 to 64 percent of annual imports over the review period. On average, approximately 60 percent of the annual volume of imports of potatoes from the United States enters British Columbia during the months of April, May, June, July and August, with June and July being the months with the greatest shares of imports.

The average unit price of imports fell from \$22.12/cwt. in 1989-90 to \$15.14/cwt. in 1993-94. During the first nine months of 1994-95, the average unit price of imports was \$14.27/cwt., which was 5 percent lower than during the comparable period in 1993-94 and was the lowest average price recorded during the period analyzed.

The market for potatoes in British Columbia grew from 2.162 million cwt. in 1989-90 to 2.993 million cwt. in 1993-94, an increase of 39 percent. During the first six months of 1994-95, the market was 2 percent smaller than it had been during the same period in 1993-94.

From 1989-90 to 1993-94, B.C. growers lost 13 percentage points of market share to imports from the United States, with their share of the market falling from 55 to 42 percent. However, during the first six months of 1994-95, the share of the market accounted for by sales of B.C. potatoes was 8 percentage points higher than it had been during the same period in 1993-94.

During the period analyzed, average list prices for B.C. russet potatoes were at their lowest in 1991-92, followed by 1994-95.

Grower revenue for late potatoes, the bulk of the B.C. crop, exceeded the costs of production in each of the crop years examined, with the exception of 1991-92.

U.S. Potato Industry

Table 3 gives selected economic indicators for the U.S. potato industry.

Potato production in the United States grew steadily during the review period, rising from 370 million cwt. in 1989 to 459 million cwt. in 1994, an increase of 24 percent. The increase in output resulted from increases both in acreage, which grew from 1.282 million acres in 1989 to 1.377 million acres in 1994, and in yield, which rose from 289 cwt./acre to 334 cwt./acre during the same six years.

The states of Washington, California, Oregon and Idaho account for approximately 60 percent of total U.S. potato production. The Russet Burbank is the dominant variety of potato grown in the states of Washington, Oregon and Idaho, with harvesting taking place largely in the late summer and early fall.¹³ In California, the majority of production is in spring potato varieties, such as round red and long white potatoes, which tend to be harvested beginning in April.

13. Tribunal Exhibit RR-94-007-28, Administrative Record, Vol. 1A at 187.

Table 3						
SELECTED ECONOMIC INDICATORS						
U.S. POTATO INDUSTRY						
	1989	1990	1991	1992	1993	1994
United States						
Production (000 cwt.)	370,444	402,110	417,622	425,367	428,693	459,342
Harvested Acres	1,281,500	1,370,600	1,374,400	1,315,000	1,317,000	1,376,800
Yield (cwt./acre)	289	293	304	323	326	334
Washington						
Production (000 cwt.)	64,310	67,980	75,435	69,300	88,500	88,920
Harvested Acres	118,000	132,000	141,000	132,000	150,000	152,000
Yield (cwt./acre)	545	515	535	525	590	585
California						
Production (000 cwt.)	17,831	18,082	16,361	15,592	14,932	15,267
Harvested Acres	48,700	50,300	45,200	42,900	41,500	41,700
Yield (cwt./acre)	366	359	362	363	360	366
Oregon						
Production (000 cwt.)	23,298	23,450	22,170	21,075	23,103	25,784
Harvested Acres	50,000	53,000	50,000	45,000	49,400	53,200
Yield (cwt./acre)	466	442	443	468	468	485
Idaho						
Production (000 cwt.)	102,475	119,070	122,175	127,050	126,192	134,340
Harvested Acres	353,000	383,000	393,000	378,000	388,000	408,000
Yield (cwt./acre)	290	311	311	336	325	329
		July-June				July-April
		1990-91	1991-92	1992-93	1993-94	1994-95
Washington Russet Prices (US\$/cwt.)						
5/10-lb. Bale		9.29	4.63	8.26	7.32	6.63
10/5-lb. Bale		11.28	6.62	10.29	9.32	8.63
100 Count Size		14.76	7.71	12.38	11.99	9.40
80 Count Size		18.99	12.60	19.28	22.14	11.07
Source: <u>Public Pre-Hearing Staff Report</u> , June 13, 1995, Tribunal Exhibit RR-94-007-5, Administrative Record, Vol. 1 at 134.						

From 1989 to 1994, potato production increased in the states of Washington, Idaho and Oregon, with the rates of increase in the former two states being 38 and 31 percent, respectively. Yields in the state of Washington are by far the highest in the United States, followed by those in Oregon.

Prices for Washington russet potatoes varied considerably during the five crop years analyzed, with the two lowest levels being recorded in 1991-92 and 1994-95.

POSITION OF PARTIES

The BCVMC

Counsel for the BCVMC submitted that the evidence and issues presented during the course of the review could be distilled into two essential questions, namely, is it likely that potatoes from the United States will be dumped in British Columbia if the findings are rescinded, and, if so, is the dumping likely to cause material injury to the B.C. potato industry? Counsel argued that the evidence presented by the BCVMC demonstrated that both these questions could only be answered in the affirmative.

With respect to British Columbia being a regional market for potatoes, counsel for the BCVMC referred to the four-part test established by the CIT in Inquiry No. CIT-8-87¹⁴ and argued that each of the four requirements listed therein had been satisfied when the findings were first made in 1984 and 1986 and that these requirements continue to be met today.

In the view of counsel for the BCVMC, there was ample evidence that B.C. potatoes were like goods to U.S. potatoes, with the two having the same physical characteristics and competing directly with one another in the marketplace.

Counsel for the BCVMC submitted that historical patterns of U.S. potato production, as well as recent and planned increases in U.S. potato acreage, mean that British Columbia will continue to be an export target for U.S. potatoes. Further, the high U.S. production levels have resulted in depressed prices in the United States. In fact, U.S. prices were significantly below normal values throughout the period from 1990-91 to 1994-95, with the exception of a portion of the 1990-91 crop year. Finally, counsel noted that the normal values now in effect, which are based on U.S. costs of production, had been set in December 1990. In the view of the B.C. potato industry, it was likely that these normal values understated current U.S. costs of production. Therefore, if higher normal values were in place, the degree of dumping which would occur in the future would be even greater than that which has occurred.

Counsel for the BCVMC argued that the dramatic increase in U.S. potato production since the last review, coupled with the very serious pricing pressure experienced by growers in the northwest United States, makes the propensity to dump potatoes in British Columbia very clear. The threat of dumping becomes even more apparent in light of the fact that U.S. potatoes supply approximately 47 percent of the fresh market in British Columbia. Counsel argued that the imposition of anti-dumping duties on imports priced below normal values does not prevent U.S. imports from entering British Columbia. Rather, it provides B.C. growers, that are price takers, with an opportunity to remain competitive.

With respect to the effects of dumping on the B.C. potato industry, counsel for the BCVMC submitted that the removal of the anti-dumping duties would result in significant price erosion and reduced market share, to the extent that B.C. growers would not be able to cover their costs of production and would

14. *Certain Hot Rolled Carbon Steel Concrete Reinforcing Bars, Bars and Structural Originating in or Exported from Mexico and the United States of America for Use or Consumption in the Province of British Columbia*, Finding, December 22, 1987, Statement of Reasons, January 7, 1988, at 5.

not be able to continue farming potatoes. Further, B.C. growers would not continue to make investments to improve the efficiency of planting, harvesting and packaging or to construct long-term storage facilities.

Finally, counsel for the BCVMC argued that both the evidence of previous cases dealing with potatoes and the evidence led in the current review show that the removal of anti-dumping duties for certain periods of the crop year or in relation to certain potato varieties would have negative repercussions for all potato production in British Columbia. Such an approach would invite importers to find means of circumventing the protection afforded to B.C. growers. For example, if anti-dumping duties were in place for only part of the year, then low-price potatoes could be imported and stored when anti-dumping duties were not in force and sold afterwards. A seasonal exclusion would also discourage B.C. growers from making investments in storage facilities.

The Association

Counsel for the Association submitted that maintaining anti-dumping duties for the protection of the B.C. potato industry was only a band-aid solution that addressed the symptoms and was not a cure for the problem. The difficulties being experienced by the B.C. potato industry are the result of other factors and are not due to the dumping of potatoes from the United States. Counsel contended that B.C. growers have higher costs for labour, land and other inputs than do Washington growers. In addition, yields are lower and farms are smaller in British Columbia than in the state of Washington. The result is that B.C. growers will always have higher costs than their Washington counterparts.

Further, counsel for the Association noted that, because there is relatively little processing in British Columbia, growers must sell more of their lower-grade products in the fresh market. In comparison, in the state of Washington, growers sell the majority of their production to processors, leaving the best products for the fresh market. In addition, counsel argued that the *Agricultural Land Commission Act*,¹⁵ by forcing farmers to continue to use their land for agricultural purposes, prevented them from making the most economic use of their land.

Counsel for the Association expressed concern that, with the ongoing protection of anti-dumping duties, B.C. potato growers would make additional investments in an industry that could never be competitive and would suffer greater losses when anti-dumping duties were eventually removed. Sooner or later, B.C. growers would have to compete with market prices as set in the United States.

Finally, counsel for the Association contended that the lower Canadian dollar provides B.C. growers with a significant amount of protection.

ANALYSIS

In determining whether the findings should be continued or rescinded, the Tribunal must address three questions. First, it must establish whether the criteria which allow an injury finding to be made on a regional basis are still present. Second, it must decide whether there is a likelihood of resumed dumping from the United States, if the findings are rescinded. And third, the Tribunal must determine whether the resumption of dumping is likely to cause injury to the B.C. potato industry.

15. R.S.B.C. 1979, c. 9. The *Agricultural Land Commission Act* restricts the uses to which agricultural lands can be put and essentially limits existing agricultural land to continued use for farming.

Before addressing these questions, the Tribunal notes that U.S. potatoes and B.C. potatoes are substitutable to a very high degree, having the same physical characteristics and uses. Therefore, the Tribunal finds B.C. potatoes to be like goods to U.S. potatoes for the purposes of SIMA.

Criteria for a Regional Finding

In this review, the Tribunal notes that, with respect to the question of a regional industry, there is a two-step analysis which must be done in order to continue the injury findings on a regional basis. The first part of this analysis is set out under subsection 2(1.1) of SIMA, which defines the criteria for determining whether a territory constitutes a regional market. If a regional market is found, the second part of the analysis, described in subsection 42(5) of SIMA, requires that, in order for an injury finding to be made, there must be a concentration of dumped imports into the regional market and the dumped imports must be causing injury to all or almost all of the production of like goods in the regional market.¹⁶

Subsection 2(1.1) of SIMA states that:

[i]n 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.

Subsection 42(5) of SIMA states, in part, that:

the Tribunal shall not find that the dumping or subsidizing of [the subject] goods has caused injury ... 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 is threatening to cause injury to the producers of all or almost all of the production of like goods in the regional market.

The Tribunal considers that each of the criteria set out in the above subsections is met in this case or is likely to be met, if the findings are rescinded and anti-dumping duties are removed. With respect to the regional market criteria in subsection 2(1.1) of SIMA, data collected by the Department of Agriculture indicate that less than 1 percent of B.C. potato production is sold outside the province and that less than 1 percent of the B.C. market is supplied by potatoes shipped from other provinces.¹⁷ It is clear to the

16. Pursuant to paragraph 188(4)(b) of the *World Trade Organization Agreement Implementation Act* (the WTO Act), S.C. 1994 c. 47, the Tribunal is to conduct a review under subsection 76(2) of SIMA of a finding in effect on January 1, 1995, in accordance with SIMA as amended by the WTO Act, where notice of the initiation of the review is given on or after January 1, 1995, as in this case. Accordingly, the SIMA provisions cited, subsections 2(1.1) and 42(5), are the relevant SIMA provisions as added by the WTO Act.

17. Public Pre-Hearing Staff Report, June 13, 1995, Tribunal Exhibit RR-94-007-5, Administrative Record, Vol. 1 at 158.

Tribunal, therefore, that British Columbia continues to constitute a regional market within the meaning of this subsection.

With respect to the criteria relating to a concentration of dumped imports set out under subsection 42(5) of SIMA, the Tribunal notes that British Columbia accounts for a disproportionate share of Canadian imports of U.S. potatoes. Specifically, from 1989 to 1994, not less than 30 percent of all U.S. potato imports into Canada were destined for British Columbia.¹⁸ Further, according to available data, in the rest of Canada, U.S. imports of potatoes represent approximately 5 percent of the potato market, compared to the situation in British Columbia where U.S. imports have historically accounted for close to 50 percent of the market.¹⁹ These patterns indicate to the Tribunal that, if the findings were rescinded and if dumping resumed, there would be a concentration of dumped imports into the B.C. market.

Finally, with respect to the requirement under subsection 42(5) of SIMA that dumping cause injury to all or almost all of the production of like goods in the regional market, the Tribunal notes that potatoes are a commodity product and that the prices received by all growers are basically the same for potatoes of the same grade and variety. Historically, the effects of dumping have been industry-wide, and there is no evidence to suggest that certain types of growers, e.g. growers with large farms or those that specialize in particular varieties of potatoes, would necessarily be less susceptible to injury from dumping should the anti-dumping duties be removed. Accordingly, the Tribunal is of the view that, if the findings were rescinded and if injurious dumping were to occur, then all or almost all of B.C. potato production, as represented by the BCVMC, would be injured.

Likelihood of Resumption of Dumping

After reviewing the evidence in this case, the Tribunal is of the view that dumping is likely to resume if the findings are rescinded. This conclusion is based on the fact that British Columbia is a natural and traditional market for potatoes from the major U.S. potato-growing states, that these states have an enormous and increasing production capacity, with large volumes of potatoes potentially available for export and that important packs of U.S. potatoes have been sold in British Columbia at depressed and dumped prices on a regular basis since the time of the last review in 1990.

With respect to British Columbia being a natural and traditional market for U.S. potatoes, the Tribunal notes that many U.S. growers are within easy transportation distance of the principal B.C. market, the Greater Vancouver area. For example, the Columbia Basin in the state of Washington, one of the most important potato-growing regions in the entire United States, is only a few hours' drive from Vancouver. Moreover, cross-border marketing is facilitated by the fact that the potato varieties grown in the state of Washington and British Columbia are very similar and that U.S. and Canadian potato grading systems are more or less comparable. In addition, the B.C. market exerts a "demand-pull" on U.S. product, as B.C. growers do not have the production capacity to fully meet the potato needs of the B.C. market.

These circumstances have resulted in imports of potatoes from the United States playing an important role in meeting the demands of B.C. retailers, the foodservice industry, processors and consumers. In this regard, the data show that, over the past decade, U.S. potato imports have consistently accounted for between 40 and 60 percent of the B.C. market.²⁰ Moreover, the ability of U.S. suppliers to capture and hold

18. *Ibid.*

19. *Ibid.*

20. *Ibid.* at 199.

substantial market share in British Columbia does not appear to have been affected by the existence of the injury findings in the past, nor is there any indication that this situation is likely to change in the foreseeable future. In short, in the opinion of the Tribunal, British Columbia will continue to be a natural export outlet for U.S. potatoes, as it has been in the past, regardless of whether or not there are injury findings in place.

The Tribunal notes that the volume of potatoes grown in the states of Washington, California, Oregon and Idaho, the four states principally responsible for exports to British Columbia, is approximately 145 times the volume grown in British Columbia.²¹ In 1993, the 150,000 acres of potatoes harvested in the state of Washington alone was 21 times larger than the number of acres harvested in all of British Columbia.²² According to the evidence before the Tribunal, there are growers in the state of Washington that individually produce more potatoes than all the growers combined in British Columbia.²³

Moreover, as previously indicated in the section entitled "Economic Indicators," average yields in the United States are considerably higher than those in British Columbia, 30 percent higher in 1993, with the state of Washington, the single most important source of supply to the B.C. market, having the highest yield in the United States. Yearly yields can, of course, vary widely, as changes in climatic conditions, the presence or absence of disease and other such factors exert their effect on production. In this connection, the Tribunal notes that the yearly incremental fluctuations in production for the state of Washington alone, as indicated in Table 3, are greater than the size of the entire B.C. market. Given the relatively stable nature of potato demand and these wide swings in production, it is evident that, from time to time, there will be imbalances in U.S. supply-demand conditions that will create surpluses for export markets, including British Columbia.

Notwithstanding these fluctuations, there was a steady and significant growth trend in the U.S. potato industry over the review period. Again, as shown in Table 3, output, acreage and yields in the United States rose by 24, 7 and 16 percent, respectively, from 1989 to 1994. In contrast, the B.C. potato industry showed much more modest growth over the same period, especially when compared to the increases in output and acreage, as noted below, in the key state of Washington.

Underlying these national U.S. growth averages, the evidence shows that the proportion of total U.S. potato production accounted for by the states of Washington, California, Oregon and Idaho increased²⁴ from 1989 to 1994, reinforcing the position of the northwest United States as the dominant potato-producing region of the United States. The state of Washington, in particular, recorded potato output and acreage growth rates that, at 38 and 29 percent, respectively, were well above U.S. national averages. In this connection, the evidence suggests that the state of Washington will play an ever-increasing role in U.S. potato production.²⁵

The Tribunal notes that the increases in U.S. production and production capacity from 1989 to 1994 have been accompanied by an increasing trend in U.S. potato exports, including fresh potatoes, which are destined, in large part, for British Columbia and other regions of Canada.²⁶ As alluded to earlier, this indicates to the Tribunal that a certain proportion of the growth in production and capacity, which is

21. *Ibid.* at 160 and 181.

22. *Ibid.* at 149 and 160.

23. Transcript of Public Hearing, Vol. 1, July 10, 1995, at 80.

24. Public Pre-Hearing Staff Report, June 13, 1995, Tribunal Exhibit RR-94-007-5, Administrative Record, Vol. 1 at 160 and 183.

25. Manufacturer's Exhibit A-13, Administrative Record, Vol. 7.

26. Tribunal Exhibit RR-94-007-28, Administrative Record, Vol. 1A at 183, 196 and 197.

increasingly focused in the northwest United States, cannot be readily absorbed by U.S. domestic consumption, necessitating its delivery to export markets. Moreover, for a state such as Washington, sales of fresh potatoes in British Columbia constitute a largely residual market, as 80 to 90 percent of the Washington crop is pre-sold, under annual contracts, to the potato-processing industry.²⁷ Given the residual nature of these sales, they are prone to low pricing which, on occasion, may not cover much more than U.S. growers' direct costs of harvesting, shipping and duty.²⁸

The above data and trends on U.S. output, acreage, yields and exports indicate to the Tribunal that the conditions which, in the past, have given rise, from time to time, to the dumping of U.S. potatoes in British Columbia continue to be no less present today than they have been previously, and there is no indication that this situation is about to change in the future. Under these conditions, U.S. growers have been selling potatoes in British Columbia at below their costs of production, as measured by Revenue Canada normal values, on a persistent basis, over the past five years. The evidence shows that certain packs of potatoes have been more prone to dumping than others, such as the 5/10-lb. bales of Russet Burbanks and Russet Norkotahs from the state of Washington, one of the highest-volume imports, which were dumped in every year of the five-year review period.²⁹ The evidence also shows that the incidence of dumping on all varieties and packages of potatoes increased substantially in the 1994-95 crop year compared to previous crop years.³⁰

On the basis of the foregoing, the Tribunal concludes that U.S. potatoes are likely to continue to be exported to British Columbia at dumped prices, if the findings are rescinded.

Likelihood of Injury³¹

The next issue for the Tribunal to consider is whether a resumption of dumping is likely to be injurious to the production of potatoes in British Columbia. In this regard, the Tribunal assessed the sensitivity of B.C. potato prices to dumped U.S. imports, the magnitude of dumping which occurred during the review period and the current condition of the B.C. potato industry.

With respect to the sensitivity of B.C. prices to dumped imports, the Tribunal is of the view that, if dumping were to resume, there would be an immediate and pervasive decline in B.C. potato prices. The size and proximity of U.S. potato suppliers and the important share of the B.C. market that U.S. potatoes have traditionally held mean that U.S. prices, especially from the neighbouring state of Washington, are a key benchmark for B.C. prices. The reality for B.C. growers is that their prices simply cannot get out of line with prices established in U.S. markets, after making adjustments for transportation, duties and exchange rates. Potatoes are a commodity product, with potatoes of comparable grade, quality and size generally commanding, more or less, the same price. Thus, B.C. prices would have to fall to U.S. levels, or risk substantial loss of market share, in the event the anti-dumping duties were removed. The dynamics of this situation were alluded to in the testimony of the General Manager of B.C. Coast who stated that, on

27. Tribunal Exhibit RR-94-007-15D, Administrative Record, Vol. 1A, at 25.12; and Transcript of Public Hearing, Vol. 1, July 10, 1995, at 245.

28. Tribunal Exhibit RR-94-007-15D, *ibid.*

29. Manufacturer's Exhibits A-2F.A to A-2J.A, Administrative Record, Vol. 7.

30. Tribunal Exhibit RR-94-007-15A.1, Administrative Record, Vol. 14A at 1-278.

31. Subsection 2(1) of SIMA (since January 1, 1995) provides that "injury" means material injury to a domestic industry.

one occasion, when the sales agency had tried to price potatoes at \$1/cwt. above the landed cost of U.S. potatoes, “[t]he whole place just shut right down.”³²

The Tribunal considers that the magnitude of the price declines which are likely to ensue, should the anti-dumping duties be removed are, potentially, highly significant. In this connection, the Tribunal notes that average prices received by farmers for fresh potatoes in the United States from 1989 to 1994 were quite unstable, fluctuating by nearly 50 percent over the period.³³ This price volatility was reflected in the anti-dumping duties that were levied on U.S. potato imports. For example, from September 1992 to May 1995, anti-dumping duties assessed on 5/10-lb. bales of Russet Burbanks and Russet Norkotahs from the state of Washington ranged from a low of US\$0.20/cwt. to a high of US\$3.45/cwt.³⁴ As a percentage of normal values, this represented dumping margins which ranged up to 41 percent.

The Tribunal notes that price declines of the above order of magnitude would clearly have a significant effect on the profitability of B.C. growers. As shown in Table 2, B.C. growers had modest positive net returns in four of the five years from 1989-90 to 1993-94, ranging from a high of \$1.56/cwt. in 1989-90 to a low of \$0.40/cwt. in 1992-93. However, owing to the substantial loss incurred in 1991-92, there was an overall negative average return of \$0.11/cwt. over the five-year period from 1989-90 to 1993-94. Given the magnitude of the dumping margins described above and the levels of profitability achieved with the anti-dumping duties in place, it seems reasonable to conclude that, without the anti-dumping duties, potato prices would have fallen to levels which would have made operations at profitable levels problematic. Indeed, all the grower witnesses gave testimony to this effect.³⁵

The Tribunal notes that, since the last review, the B.C. potato industry has made significant efforts to enhance its competitiveness by undertaking extensive investment in equipment, by conducting ongoing research into better varieties of potatoes and by establishing a new sales agency. Despite these efforts, it is the opinion of the Tribunal that the potato industry in British Columbia continues to face certain competitive challenges when compared to the potato industry in the United States and, in particular, to the potato industry in the state of Washington, the most direct source of competition for B.C. growers.

For example, the state of Washington has, on average, better growing conditions for potatoes than does British Columbia, in terms of climate, soil quality and drainage. In addition, there are extensive, low-cost irrigation facilities which provide growers with a predictable supply of water year-round. Moreover, as already noted, farms in British Columbia are significantly smaller than those in the state of Washington, which enables Washington growers to enjoy economies of scale unavailable to B.C. growers. Land costs are also lower in the state of Washington because the potato-producing areas are not close to large centres of population, as they are in British Columbia. In addition, as noted earlier, about 80 to 90 percent of the Washington crop is pre-sold, under annual contract, to the processing market. This provides Washington growers with a more stable and secure income flow than B.C. growers, that are primarily dependent on the less predictable conditions of the fresh market.

It would appear that, over the past two years or so, some of the competitive advantages that may have accrued to U.S. growers from the above factors may have been offset, at least to some extent, by the

32. Transcript of Public Hearing, Vol. 1, July 10, 1995, at 221.

33. Public Pre-Hearing Staff Report, June 13, 1995, Tribunal Exhibit RR-94-007-5, Administrative Record, Vol. 1 at 163.

34. *Supra*, note 30.

35. Manufacturer’s Exhibits A-5, A-6, A-7, A-8 and A-9, Administrative Record, Vol. 7.

appreciation of the U.S. dollar against the Canadian dollar. However, such exchange rate offsets are clearly transient in nature and do not alter the underlying competitive conditions affecting U.S. imports into B.C. potato markets. Under these conditions, it is clear to the Tribunal that U.S. potato producers have the ability to sell product in British Columbia at prices which may be very challenging for B.C. producers to meet at consistently profitable levels, even in the absence of dumping. However, when U.S. potatoes are found to be dumped at significant margins, as they have been in the past, and as the Tribunal believes that they are likely to be dumped, the effect may be to tilt the playing field so significantly in favour of U.S. potatoes that the very viability of the B.C. industry may be threatened.

Given the foregoing, the Tribunal finds that there is a likelihood of injury to B.C. potato growers should the anti-dumping duties imposed by the findings on U.S. imports be removed.

Seasonal Exclusion

Pursuant to subsection 76(4) of SIMA, the Tribunal has the authority and the discretion to continue a finding of material injury, with or without amendment, as the circumstances require. After reviewing the evidence in this case, the Tribunal is of the view that it is appropriate in this case to exclude, from the findings of material injury, potatoes imported from the United States during a certain period of each calendar year.

During the hearing, the Tribunal put questions to its own witness, Mr. Nieboer, Director, Produce Merchandising, at Overwaitea Food Group, one of the largest food retailers in British Columbia, about whether there was any period in the year when B.C. potatoes were not available to supply the company's requirements. He testified that there was a three-month "window," running from approximately May to July, during which russet potatoes, the predominant potato variety sold in British Columbia, were essentially unavailable from local supply.³⁶ According to Mr. Nieboer, during this period, the company's russet requirements were met by U.S. suppliers. The essence of this testimony was basically confirmed by replies to similar Tribunal questions that were put to the general managers of the two largest B.C. sales agencies, namely, B.C. Coast and Lower Mainland Vegetable Distributors Inc.³⁷

This testimony is corroborated by storage data collected by the Department of Agriculture which indicate very low levels of potatoes in storage in British Columbia during May and June.³⁸ The evidence before the Tribunal also shows U.S. potato imports to be at their highest levels during the summer period, a supply pattern consistent with the shortage of domestic product.³⁹

The Tribunal notes that, during the summer months, the B.C. potato industry is able to supply a limited quantity of early, red and white potatoes.⁴⁰ However, it is clear to the Tribunal, from the evidence, that the availability of these varieties does not make up for the fact that local russet potatoes are not available and that there is a fundamental shortfall of B.C. supply to meet B.C. demand.⁴¹

36. Transcript of Public Hearing, Vol. 2, July 11, 1995, at 340-42.

37. *Ibid.*, Vol. 1, July 10, 1995, at 233-34 and 237-38.

38. Public Pre-Hearing Staff Report, June 13, 1995, Tribunal Exhibit RR-94-007-5, Administrative Record, Vol. 1 at 157.

39. *Ibid.* at 153-54.

40. Transcript of Public Hearing, Vol. 1, July 10, 1995, at 238.

41. *Ibid.*, Vol. 2, July 11, 1995, at 309.

The Tribunal notes that counsel for the BCVMC argued that a seasonal exclusion could lead to circumvention of the findings. They postulated that importers might bring large quantities of U.S. potatoes into British Columbia and store them during the summer period in which anti-dumping duties are not in effect and offer them for sale during the fall period when anti-dumping duties are again in force. In the opinion of the Tribunal, the scenario described by counsel cannot be considered, at this time, more than a remote theoretical possibility. The Tribunal notes that there are substantial costs involved in building long-term storage facilities, which would represent a major hurdle for anyone considering such a plan. Moreover, any imported potatoes stored in the summer for fall sale would have the major disadvantage of having to compete with B.C. fresh supply and consumers' general preference for freshly dug potatoes.⁴²

In sum, the Tribunal considers that anti-dumping duties on potatoes imported from the United States should not be in force from May 1 to July 31 of each calendar year. The Tribunal recognizes that the precise date on which the B.C. industry is unable to supply the bulk of its customers' needs may vary from year to year. However, the Tribunal believes that the three-month period which it has defined is reasonably representative of the average market circumstances prevailing in most years.

CONCLUSION

For the foregoing reasons, the Tribunal is of the view that the findings relating to imports of potatoes originating in or exported from the United States should be continued, but amended to exclude imports during the period from May 1 to July 31, inclusive, of each calendar year.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

42. *Ibid.* at 346.