

Ottawa, Wednesday, May 21, 1997

Review No.: RR-96-005

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on May 22, 1992, in Review No. RR-91-004, continuing, without amendment, the finding made by the Canadian Import Tribunal on April 30, 1987, in Inquiry No. CIT-1-87, concerning:

**FRESH, WHOLE, YELLOW ONIONS, ORIGINATING IN OR EXPORTED
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(2) of the *Special Import Measures Act*, has conducted a review of its order made on May 22, 1992, in Review No. RR-91-004, continuing, without amendment, the finding made by the Canadian Import Tribunal on April 30, 1987, in Inquiry No. CIT-1-87.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds its order made on May 22, 1992, in Review No. RR-91-004.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Patricia M. Close
Patricia M. Close
Member

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

Michel P. Granger
Michel P. Granger
Secretary



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**FRESH, WHOLE, YELLOW ONIONS, ORIGINATING IN OR EXPORTED
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Special Import Measures Act - Whether to rescind or continue, with or without amendment, the order made by the Canadian International Trade Tribunal on May 22, 1992, in Review No. RR-91-004, continuing, without amendment, the finding made by the Canadian Import Tribunal on April 30, 1987, in Inquiry No. CIT-1-87.

Place of Hearing: Vancouver, British Columbia
Dates of Hearing: March 20 and 21, 1997
Date of Order and Reasons: May 21, 1997
Tribunal Members: Lyle M. Russell, Presiding Member
Patricia M. Close, Member
Robert C. Coates, Q.C., Member
Director of Research: Peter Welsh
Research Officer: John Gibberd
Economist: Ihn Ho Uhm
Statistical Officer: Po-Yee Lee
Counsel for the Tribunal: Joël J. Robichaud
Registration and Distribution Officer: Joël Joyal

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Marketing Commission

(Representing BC Growers)

Robert McKilligan
B.C. Produce Marketing Association

(Importer)

Darrel H. Pearson
Joel R. Junker
for Washington Potato & Onion Association

(Exporter)

Witnesses:

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General Manager
Lower Mainland Vegetable Distributors Inc.

Jim Sprangers
Owner
Sprangers Farms Ltd.

R.J. (Jim) Alcock
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Food Industry Branch
British Columbia Ministry of Agriculture,
Fisheries and Food

Dennis Law
President
Law Pacific Vegetables Ltd.

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British Columbia Ministry of Agriculture,
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Leigh Seto
Chief Operating Officer
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David L. Darrington
Manager
Agri Pack Inc.

Rodger Hughes
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B.C. Vegetable Marketing Commission

Tim Singh
Manager
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**FRESH, WHOLE, YELLOW ONIONS, ORIGINATING IN OR EXPORTED
FROM THE UNITED STATES OF AMERICA, FOR USE OR CONSUMPTION
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TRIBUNAL: LYLE M. RUSSELL, Presiding Member
PATRICIA M. CLOSE, 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 order made by the Canadian International Trade Tribunal (the Tribunal) on May 22, 1992, in Review No. RR-91-004, continuing, without amendment, the finding made by the Canadian Import Tribunal (the CIT) on April 30, 1987, in Inquiry No. CIT-1-87, concerning fresh, whole, yellow onions (yellow onions), originating in or exported from the United States of America, for use or consumption in the province of British Columbia.

In Notice of Expiry No. LE-96-005² dated September 20, 1996, the Tribunal informed persons and governments that the Tribunal's order concerning yellow onions from the United States was scheduled to expire on May 21, 1997. The Tribunal received a submission from the B.C. Vegetable Marketing Commission (BCVMC) requesting a review and submissions from David Oppenheimer and Associates and Pacific Produce opposing a review. Pursuant to subsection 76(2) of SIMA, the Tribunal decided, on the basis of the submissions, that a review of the order was warranted. The Tribunal issued a notice of review³ on November 22, 1996. This notice was forwarded to all known interested parties. On December 6, 1996, a notice of change of date of public hearing⁴ was issued.

As part of this review, the Tribunal sent questionnaires to the BCVMC, sales agencies, importers and purchasers of yellow onions. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared a public pre-hearing staff report. The record of this review consists of all relevant documents, including the finding and the order continuing the finding, the notice of review, the public and confidential replies to the questionnaires for the 1996 review and the public pre-hearing staff report for the

1. R.S.C. 1985, c. S-15, as amended.
2. *Canada Gazette* Part I, Vol. 130, No. 39, September 28, 1996, at 2771.
3. *Ibid.*, No. 48, November 30, 1996, at 3327.
4. *Ibid.*, No. 50, December 14, 1996, at 3439.

1991 review. All public exhibits were made available to interested parties, while protected exhibits were provided only to counsel who had filed with the Tribunal a declaration and undertaking not to disclose confidential information.

On March 11, 1997, the Tribunal allowed in part a motion of the Washington Potato & Onion Association (the Washington Association) seeking a full response to nine interrogatories that the Washington Association had served on the BCVMC. The Tribunal ordered that the information be filed with the Tribunal and served on counsel for the Washington Association by March 18, 1997.

Public and *in camera* hearings were held on March 20 and 21, 1997, in Vancouver, British Columbia. The BCVMC was represented by counsel, submitted evidence and made arguments in support of a continuation of the order. The B.C. Produce Marketing Association (the B.C. Association) also appeared at the hearing and submitted evidence in support of a rescission of the order. The Washington Association was represented by counsel, submitted evidence and made arguments in support of a rescission of the order.

SUMMARY OF PREVIOUS FINDING AND ORDER

Inquiry No. CIT-1-87

On April 30, 1987, the CIT found that the dumping in British Columbia of yellow onions originating in or exported from the United States, for use or consumption in the province of British Columbia, had caused and was likely to cause material injury to the production in Canada of like goods. An exclusion was made for the period from April 1 to August 15 of each year because BC growers historically had not supplied the market in commercial quantities to any extent during that period.

The CIT found that British Columbia constituted a regional market. It also found no reason to treat imported jumbo and colossal onions any differently from medium yellow onions, even though BC production of jumbo onions was relatively small. Furthermore, the CIT found that the class of goods to which its inquiry and finding pertained was yellow onions imported from the United States, without distinction or exemption for size.

The CIT observed that the prices of US yellow onions were primarily determined by the yearly volume of US yellow onion production and that there was an inverse correlation between the size of the US onion harvest and market prices; the larger the crop, and consequently the storage holdings, the lower the market prices of onions. The CIT noted that minimum prices for BC yellow onions were based on the net landed cost of onions imported from the state of Washington and that BC and Washington prices moved in parallel.

Review No. RR-91-004

On May 22, 1992, following a review of the CIT's finding, the Tribunal found that the conditions necessary for the existence of a regional industry remained satisfied. The Tribunal also concluded that there would be a concentration of dumped imports into the BC market if the finding were rescinded.

The Tribunal concluded that there are often wide swings in the home market price of perishable commodities such as onions. It noted that the Department of National Revenue (Revenue Canada), in accordance with Canadian legislation and the *Agreement on Implementation of Article VI of the General*

Agreement on Tariffs and Trade,⁵ had used cost of production models to establish normal values. This, the Tribunal noted, gives rise to normal values that frequently exceed the exporters' home market prices when market forces cause prices in the exporting country to swing lower. This is likely to occur on many occasions during the marketing period of a perishable commodity such as onions.

The Tribunal concluded that the BC yellow onion industry was likely to be materially injured from the resumption of dumping, in the absence of a finding, and continued the finding.

PRODUCT

The goods under review are fresh, whole, yellow onions originating in or exported from the United States, for use or consumption in the province of British Columbia. Yellow onions are globe shaped with dry, dark yellow or light brown skins. There are many different varieties of yellow onions, and a grower will make the choice of variety based on such factors as climatological conditions, time of seeding and harvesting and storability. No matter what the variety, however, the harvested product is marketed and sold as yellow onions.

Yellow onions marketed in import, export or interprovincial trade are graded and sized according to sections 71 to 78 of the *Fresh Fruit and Vegetable Regulations*⁶ made under the *Canada Agricultural Products Act*.⁷ These regulations include requirements covering appearance, brightness, firmness and size grading. In discussing the yellow onion market, three size categories are generally used. They are small, medium and jumbo, with jumbo onions having a minimum diameter of 3 in.

BC growers mainly grow medium yellow onions and do not specialize in jumbo yellow onions. For example, in 1995, the size distribution of yellow onion sales of sales agencies was as follows: 4 percent small, 83 percent medium and 13 percent jumbo.⁸ Many growers in the United States, however, concentrate their efforts in growing jumbo onions.⁹ In 1996, on average, more than 70 percent of the onions grown by eight Washington growers, that comprised 40 percent of the harvested onion acreage in the state of Washington, were jumbo onions.¹⁰

DOMESTIC INDUSTRY

Recently, there have been approximately 20 yellow onion growers in British Columbia.¹¹ On average, growers have about 20 acres of yellow onions, the largest operations having around 50 acres.¹²

5. Geneva, March 1980, GATT BISD, 26th Supp. at 171.

6. C.R.C., Vol. II, c. 285, as amended.

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

8. Tribunal Exhibit RR-96-005-17.1, Administrative Record, Vol. 3.2 at 39-42; Tribunal Exhibit RR-96-005-17.2, Administrative Record, Vol. 3.2A at 11; Tribunal Exhibit RR-96-005-17.3, Administrative Record, Vol. 3.2B at 9-12; and Tribunal Exhibit RR-96-005-17.4C, Administrative Record, Vol. 3.2B at 74-77.

9. US standards separate onions with a diameter of 3 in. or more into two size categories, jumbo and colossal. Unless otherwise indicated, references herein to US jumbo onions include colossal onions.

10. Tribunal Exhibit RR-96-005-I-3B (protected - single copy), Administrative Record, Vol. 10 at 199-208.

11. *Public Pre-Hearing Staff Report*, Tribunal Exhibit RR-96-005-5, Administrative Record, Vol. 1 at 122.

12. *Ibid.*; and Tribunal Exhibit RR-96-005-I-1D (protected - single copy), Administrative Record, Vol. 10 at 137, 156 and 157.

It is common practice for yellow onion growers to grow a number of different crops on their farms. In 1994, yellow onions accounted for approximately 2 percent of harvested acres and 3 percent of the sales value of field vegetable production in British Columbia.¹³ Information on the record for 7 BC growers indicates that, in 1995, somewhere in the neighbourhood of 15 percent of their vegetable sales consisted of yellow onions.¹⁴

Approximately 80 percent of the BC onion crop is sold through co-operatives acting as sales agencies, while the remainder is sold at roadside. The sales agencies are appointed by the BCVMC. While sales agencies are responsible for the marketing of the onions, growers retain ownership of the onions and are responsible for charges and marketing costs until the onions are purchased by either wholesalers or processors. Growers are also responsible for the storage, grading and sizing of yellow onions and store the yellow onions in on-farm facilities specifically designed for onion storage.

The BCVMC is composed of growers from across British Columbia and was established by the B.C. Vegetable Scheme, which was enacted by Order-in-Council in 1980, under the *Natural Products Marketing (B.C.) Act*.¹⁵ The BCVMC is empowered to promote, control and regulate the production, transportation, packing, storage and marketing of regulated vegetables. The BCVMC delegates certain of its powers regarding yellow onions to co-operatives that act as sales agencies for growers in a particular area. A quota system is used to regulate the flow of production to the market. Growers are allocated sales quotas based on consistent delivery over the years. Deliveries from quota holders must clear the market before excess production is sold.

The BCVMC has jurisdiction over the entire province for regulated vegetables and, for administrative purposes, the province is divided into three districts. District I covers the Lower Mainland and the Fraser Valley; District II encompasses Vancouver Island; and District III covers the interior of British Columbia. Currently, yellow onions are sold by two sales agencies in District I and one sales agency in each of the other two districts.

The BCVMC establishes minimum weekly prices in consultation with the co-operatives which, in turn, establish their price lists based on the minimum prices. Since the finding, the prices set by the BCVMC have been a function of the normal values for yellow onions determined by Revenue Canada, the exchange rate, the customs duty and shipping costs. During periods when US selling prices exceed the normal value, US prices become the basis for establishing BC selling prices, as they were before the finding. It is noted that delivery quotas and prices for other regulated vegetables grown and sold in British Columbia are handled in the same way as they are for yellow onions.

POSITION OF PARTIES

The BCVMC

Counsel for the BCVMC argued that the fundamental factors underlying the 1987 finding and the 1992 order have not changed. They argued that British Columbia is still a regional market. Furthermore, there is an imminent threat of material injury to the BC yellow onion growers that would almost immediately translate into actual material injury, in the event of a rescission of the normal values. In addition, there will be

13. *Public Pre-Hearing Staff Report*, Tribunal Exhibit RR-96-005-5, Administrative Record, Vol. 1 at 122.

14. Tribunal Exhibit RR-96-005- I-1D (protected - single copy), Administrative Record, Vol. 10 at 10, 21, 29, 33, 58, 60, 67, 79, 116 and 130.

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

a concentration of dumped imports in the regional market, and the dumping will cause material injury to the producers of all, or almost all, of the production of like goods in the regional market.

According to counsel for the BCVMC, the evidence shows that all domestically produced yellow onions, jumbo, medium and small, are like goods to the subject goods. Furthermore, to create a separate class of goods on the basis of size alone would result in an overnight shift from the purchase of BC small and medium yellow onions to the purchase of jumbo and colossal onions supplied by US growers, resulting in serious injury to the BC onion industry.

Counsel for the BCVMC submitted that, unless the importers and exporters can demonstrate that there has been substantial change in the situation of the domestic industry, the order should be continued. They argued that exporters did not present any evidence to show that US growers would not dump if anti-dumping duties were removed. Rather, in their view, the evidence showed that there is a likelihood of resumption of dumping if the order is rescinded. There is also evidence that yellow onion growers in the state of Washington have increased their acreage by over 60 percent and that their production is now almost 40 times the total production of yellow onions in British Columbia.

Counsel for the BCVMC argued that the BC growers could not compete with the US industry if the order were rescinded, that onions were imported at prices that are below normal values and that farmers in British Columbia would cease growing onions. According to counsel, prices of BC yellow onions would follow prices set in the United States, resulting in price depression and suppression, negative returns to growers and a decline in profitability.

Furthermore, counsel for the BCVMC argued that, in the absence of normal values, investment losses would inevitably ensue, as growers' equipment can only be used for growing yellow onions. There would also be a loss of employment and, because of an agricultural land freeze in British Columbia, farmers, forced to cease growing onions, would not be able to sell their land. In counsel's view, the real and imminent harm which would result to BC onion growers, if the order were rescinded, is not attributable to factors other than the pricing practices of US growers.

The Washington Association

Counsel for the Washington Association argued that it is not enough to say that nothing has changed since 1987 in order to continue the order. If that were enough, however, they argued that things have changed in a material way. Counsel argued that subsection 76(5) of SIMA creates a framework which provides that a finding will be in place for only five years unless it is proven that there is a cause for continuation. Counsel referred to the *World Trade Organization Agreement on Implementation of Article VI of GATT 1994*¹⁶ in support of this contention. Counsel acknowledged that British Columbia still constitutes a regional market for yellow onions.

Counsel for the Washington Association argued that, in the past 10 years, imports have not been concentrated in the regional market as a result of dumping, but rather they have been there to fill a void caused by insufficient production in the regional market. Counsel argued that imports from the United States paralleled consumption patterns in British Columbia and were not focused on injuring the domestic industry. Counsel referred to the evidence which showed that, over the past 5 years, US imports either maintained or

16. Signed at Marrakesh on April 15, 1994.

increased their share of a growing market. They also referred to the evidence that the BC industry has been able to sell all of its production.

According to counsel for the Washington Association, US growers are shipping into the BC market a product which is different from what is grown by the BC industry. US growers, for the most part, export jumbo and colossal onions, while the BC industry produces mostly small and medium onions. Counsel argued that, as long as there is this element of product differentiation, there will always be a so-called concentration of imports because the marketplace demands it. Counsel also argued that any growth that has occurred in US production is in jumbo onions and that this does not equate to dumping.

Counsel for the Washington Association also attempted to show that prices of jumbo and colossal onions in the United States have been above normal values, with the exception of the year 1995-96, and that there is no likelihood of a resumption of dumping of jumbo and colossal onions in the BC regional market. Counsel submitted that the prices of jumbo onions when landed in Canada, even absent the anti-dumping duties, have been at levels that were well above comparable costs to BC growers.

With respect to the issue of likelihood of injury, counsel for the Washington Association argued that, if the BC growers are vulnerable at all, it is as a result of their inability to grow the desired jumbo and colossal onions. In counsel's view, one reason that some growers may have been slow in switching to jumbo onions is that they were not told by the agencies representing them that this market was growing.

Counsel for the Washington Association submitted that there is no evidence to support a finding that the industry or, more particularly, all or almost all of the growers are likely to suffer material injury if the order is rescinded. Counsel noted that there is no separate onion cost breakout for individual growers and no discrete financial statements for onions and that the cost of production model presented into evidence by the BCVMC does not reflect the real situation of the industry and, therefore, is not helpful to the Tribunal. In counsel's view, the Tribunal cannot conclude that there will be material injury simply on the basis that prices of medium onions are better with the normal values in place. Pricing alone is not enough to show whether there is a causal relationship between dumping and material injury. The Tribunal must be able to measure the effect that lower prices will have on the financial performance of the industry.

In the event that the Tribunal decides to continue the order, counsel for the Washington Association argued that the period during which no anti-dumping duties are imposed should be widened to commence on February 1 of each year, because of the evidence which showed that BC production is no longer available at this time. The second alternate argument made by counsel is that jumbo onions should be excluded from a continuation of the order on the basis that there is a separate market for jumbo onions and that they are not likely to be dumped in the future. Finally, counsel stated that the Washington Association would be making an application for an opportunity to make public interest representations under section 45 of SIMA in the event that the Tribunal continued the order.

The B.C. Association

In the B.C. Association's written submission, it was argued that: (1) yellow onions grown in British Columbia are different from those grown in the state of Washington; (2) the order protects the BC growers when they are not sending product to the market; (3) the order does not provide protection that helps the BC industry to better supply the market; (4) the anti-dumping duty can result in US prices that are higher than normal values; (5) prices of US jumbo and colossal yellow onions do not affect

the BC medium yellow onion market; and (6) the anti-dumping duty does not help growers and is, in effect, another tax on consumers.

ANALYSIS

Regional Industry

In deciding whether to continue or rescind the order, the Tribunal first considered whether a regional industry for yellow onions continued to exist in British Columbia. More particularly, the Tribunal considered whether the two conditions set out in subsection 2(1.1) of SIMA remain satisfied, that is, whether (a) the producers in the market sell all or almost all of their production of like goods in the market and whether (b) the demand in the market is not, to any substantial degree, supplied by producers of like goods located elsewhere in Canada.

The Tribunal is of the opinion that the two conditions in subsection 2(1.1) of SIMA are met and that a regional industry for yellow onions continues to exist in British Columbia. More particularly, the evidence shows that, during the period from 1992 to 1996, growers exported negligible volumes of BC yellow onions outside of Canada and shipped negligible volumes of BC yellow onions to markets elsewhere in Canada.¹⁷ The evidence also shows that yellow onions grown in other provinces and sold in British Columbia accounted for approximately 3 percent of the market in the first nine months of 1996, 1 percent of the market in 1995 and less than 1 percent of the market in the period from 1992 to 1994.¹⁸

In order to continue the order, the Tribunal must find that there is a likelihood of resumption of dumping in the regional market and that the resumption of dumping is likely to cause injury to the yellow onion industry in British Columbia.¹⁹ In a decision relating to the likelihood of injury to production in a regional market, a finding or an order may not be continued unless the Tribunal finds that the dumping is likely to be concentrated in the regional market and that injury is likely to be caused to the producers of all or almost all of the production of like goods in the regional market.²⁰

Likelihood of Resumption of Dumping

The Tribunal notes that there can be considerable volatility in the markets for agricultural products, including that for yellow onions. The prices of agricultural products can vary widely over time, as supplies increase or decrease in response to various factors, such as growing conditions, for which weather is a determining factor. Adverse changes in weather conditions can produce poor harvests and short supplies which, in turn, lead to higher prices. Higher prices, in turn, may lead to increased production and excess supplies which may result in lower prices. On the other hand, the normal values in this case, do not fluctuate with prices, as they are based on cost of production models. Under such a system, the dumping of agricultural products generally does not occur on a continuous basis. Instead, dumping tends to occur when the supply of agricultural products exceeds demand and prices fluctuate downward below normal values. At other times, prices are likely to be near normal values or, when supplies are short, well above normal values.

17. *Public Pre-Hearing Staff Report*, Tribunal Exhibit RR-96-005-5, Administrative Record, Vol. 1 at 127.

18. *Ibid.* at 131-32.

19. Subsection 2(1) of SIMA defines the term “injury” as “material injury to a domestic industry.”

20. See, for example, *Fresh, Whole, Yellow Onions, Originating in or Exported from the United States of America, for use or Consumption in the Province of British Columbia*, Canadian International Trade Tribunal, Review No. RR-91-004, *Order and Statement of Reasons*, May 22, 1992, at 9.

Taking into account how agricultural markets work, the Tribunal compared Washington yellow onion prices to normal values in order to better understand the prices that BC growers might face in the absence of an order. The comparison focused on weekly prices of medium and jumbo yellow onions (excluding colossal yellow onions) for the period from mid-August to March of each of the crop years 1992-93 to 1995-96 and for the period from mid-August to early October 1996 of crop year 1996-97.

The comparison shows that prices of yellow onions were below normal values many times over the review period, though less so for jumbo onions.²¹ For the 131 weeks included in the comparison, medium yellow onion prices were below normal values in 90 weeks and jumbo yellow onion prices were below normal values in 65 weeks.

The comparison also shows that the prices of Washington yellow onions were above normal values for significant periods of time over the review period, particularly in the case of jumbo yellow onions. More specifically, the Tribunal found that prices of Washington medium yellow onions were above normal values in 41 weeks out of a total of 131 weeks or 31 percent of the time. Furthermore, when prices of medium yellow onions were above normal values, they were at times considerably above normal values. For example, in two weeks in crop year 1993-94, prices of medium yellow onions reached a level 142 percent above normal values.

The Tribunal's analysis shows that prices of jumbo yellow onions exceeded normal values much more frequently than did prices of medium yellow onions, being above normal values in 66 out of 131 weeks. Also, the degree to which prices of jumbo onions exceeded normal values was greater than in the case of medium onions. For example, in two weeks in crop year 1993-94, prices of jumbo onions climbed to a level 272 percent above normal values.

Based on its analysis of pricing trends of Washington yellow onions, the Tribunal considers that, in the absence of an order, there could be times in the future when yellow onion prices would be below normal values. The remainder of the time, prices will be at or above normal values and may sometimes be considerably above them. The Tribunal does not consider that increases in onion acreage and production in the United States will necessarily lead to a structural imbalance in the market, taking into account increases in domestic and export demand for US onions.²² Accordingly, this suggests that the price patterns observed over the review period are unlikely to change significantly in the future.

Likelihood of Material Injury

In its assessment of how the rescission of the order might affect the BC yellow onion industry, the Tribunal first analyzed the likely effect of rescinding the order on the BC industry's production and financial performance. It then identified a number of factors, other than dumping, that have affected industry performance and that are likely to affect performance in the future.

In the absence of an order, BC yellow onion growers would have to compete directly with US prices of yellow onions. At times, those prices may be below the floor prices established by normal values. The Tribunal, however, is not convinced that the incidence of occasionally lower prices will cause the industry to cease growing yellow onions, as it has argued it would do.

21. The price and normal value comparisons are based on data provided in the *Public Pre-Hearing Staff Report*, Tribunal Exhibit RR-96-005-5, Administrative Record, Vol. 1 at 124, 172-76 and 179.

22. Exporter's Exhibit C-2 at 2, Administrative Record, Vol. 13A.

There are a number of reasons underlying this conclusion. BC growers have an established position in the market, accounting for just over one quarter of the sales in the BC market. The growers have made recent investments in buildings, equipment and research to improve the productivity of their yellow onion operations and to maximize the tonnage produced by their yellow onion crops.²³ Research has been undertaken in such areas as yellow onion varieties, plant density and insect and weed control.

Another consideration is the important role that yellow onions have played in mixed vegetable farms for a considerable period of time and the fact that they have been an important source of revenue.²⁴ Yellow onions are a rotation crop and, without them, remaining crops might suffer.²⁵ More importantly, the growers indicated that it would be difficult to find a replacement crop with favourable market prospects, particularly if it was one of the crops regulated by the BCVMC.²⁶

A further reason is that having yellow onions as part of a mix of crops provides protection against the risk of crop failure and is sound financial practice. Growers can balance depressed prices for one crop against strong prices for other crops. This was supported by one BC grower who stated that “not every crop is a winner every year.”²⁷ The Tribunal also notes that some of the other vegetable crops that yellow onion growers have grown in their crop mixes, such as carrots, beets and cabbage, have not been protected by injury findings covering imports originating in the United States.²⁸

Another reason why BC growers are likely to continue to grow yellow onions is that they tend to supply one segment of the market, while imports tend to supply another segment. The fact that Washington exports of onions account for a major proportion of US onion imports into the BC market and the evidence and testimony of Washington growers have convinced the Tribunal that a significant portion of US sales of yellow onions into the BC market is likely to be jumbo yellow onions.^{29,30} A witness indicated that Washington growers only supply medium or small onions to the BC market when there is no local supply and their customers request them.³¹ The BC industry, on the other hand, concentrates on producing medium yellow onions, and the Tribunal also heard evidence to indicate that BC growers have been able to sell all of their onion production.³² In light of the focus of Washington growers on jumbo yellow onions and the focus

23. Manufacturer’s Exhibits A-3 at 2, A-4 at 1-2 and A-6 at 1-2, Administrative Record, Vol. 11A; and *Transcript of Public Hearing*, Vol. 1, March 20, 1997, at 178-85.

24. Manufacturer’s Exhibits A-3 at 1, A-4 at 1 and A-6 at 1, Administrative Record, Vol. 11A; and Tribunal Exhibit RR-96-005-I-1D (protected - single copy), Administrative Record, Vol. 10 at 10, 21, 23, 25, 27, 29, 31, 33, 37, 45, 58, 60, 64, 66, 67, 79, 92, 104, 115-16 and 130-33.

25. Manufacturer’s Exhibits A-3 at 2, A-4 at 1 and 3 and A-6 at 1 and 3, Administrative Record, Vol. 11A.

26. Manufacturer’s Exhibit A-3 at 2, Administrative Record, Vol. 11A; and *Transcript of Public Hearing*, Vol. 1, March 20, 1997, at 168-69 and 191-92.

27. *Transcript of Public Hearing*, Vol. 1, March 20, 1997, at 204.

28. Manufacturer’s Exhibits A-3 at 1 and A-6 at 1, Administrative Record, Vol. 11A; *Transcript of Public Hearing*, Vol. 1, March 20, 1997, at 186 and 214; and Tribunal Exhibit RR-96-005-I-1D (protected - single copy), Administrative Record, Vol. 10 at 21, 23 and 25.

29. *Public Pre-Hearing Staff Report*, Tribunal Exhibit RR-96-005-5, Administrative Record, Vol. 1 at 130.

30. Exporter’s Exhibits C-2 at 1 and 2 and C-3 at 1, Administrative Record, Vol. 13A; Tribunal Exhibit RR-96-005-I-3B (protected - single copy), Administrative Record, Vol. 10 at 199-208; and *Transcript of Public Hearing*, Vol. 2, March 21, 1997, at 330, 332 and 333.

31. Exporter’s Exhibit C-2 at 2, Administrative Record, Vol. 13A.

32. *Transcript of Public Hearing*, Vol. 1, March 20, 1997, at 122.

of BC growers on medium onions, the Tribunal believes that BC growers are likely to be able to continue to sell all of their yellow onion production in the BC market in the future.

Finally, the Tribunal believes that, from a financial standpoint, BC farmers will continue to have an interest in growing yellow onions. With the order in place, BC growers have had the benefit not only of relatively high floor prices but also of US prices that were sometimes significantly higher than normal values. Absent the order, they are likely to continue to benefit from periods of high, and sometimes very high, prices, as well as face periods of lower prices. Over the long run, the net effect is likely to be such as to ensure that yellow onion production is a financially viable activity.³³

The Tribunal considers that the testimony that it heard from the BC yellow onion industry strongly supports this conclusion. One industry representative stated that, from a farm management perspective, growers will continue to grow a crop over the short term of one to two years, as long as they are covering the direct costs of growing the crop and making a contribution to other costs.³⁴ He went on to say that this is particularly the case for a mixed enterprise type of farm. Another witness for the industry indicated that, over the longer term, a grower has to meet all of its costs.³⁵ He did not expect a grower to cover the full cost of a crop in every year, but he said that it is necessary to have some years when full costs are covered and other years when full costs are more than covered to make up for those years when costs are not fully covered. Also, a BC grower stated that it is his expectation to make money in every year on every crop even though he does not do so every year.³⁶

It is the Tribunal's view that a variety of factors, other than the dumping of US onions, are likely to have a much larger impact on the BC industry's performance in the future. The Tribunal reached this conclusion after a careful examination of the industry's past performance and an analysis of the various factors that have affected that performance, such as the climate, the regulatory environment and the scale of operations.

The Tribunal's examination of the industry's performance over the past 10 years shows that the BC market for yellow onions has grown, but that BC growers have not significantly improved their position in that market. This conclusion is based on production, acreage and market data presented in the following table. Because of differences in data sources for imports, market and growers' share, data for the two review periods are not strictly comparable. However, there was significant growth in the market in the 1992-95 period. It is clear that the BC growers' market share declined in the first period and did not increase significantly in the second period. Production and acreage data, which are comparable over the 10-year period, would confirm the Tribunal's conclusion that BC growers have not significantly expanded their share of what the Tribunal considers to be a growing onion market.

33. This analysis does not take into account recourse that the industry may have with respect to low prices, such as the temporary duty snap-back under the *North American Free Trade Agreement*, done at Ottawa, Ontario, on December 11 and 17, 1992, at Mexico, D.F., on December 14 and 17, 1992, and at Washington, D.C., on December 8 and 17, 1992 (in force for Canada on January 1, 1994), Chapter Seven, Annex 702.1.

34. *Transcript of Public Hearing*, Vol. 1, March 20, 1997, at 129-30.

35. *Ibid.* at 247-48.

36. *Transcript of In Camera Hearing*, Vol. 1, March 20, 1997, at 32-33.

British Columbia, where most of the yellow onions are grown, are such that BC growers are unlikely to capture a much larger share of the expanding market for jumbo yellow onions.⁴⁰

A witness for an importer/wholesaler indicated that growers in the BC coastal region have difficulty growing a larger and consistent onion because of the climatic problems that the growers face.⁴¹ A BC grower located in the Okanagan Valley explained the advantages of growing onions in a drier climate as compared to the coastal region.⁴² He noted that a drier climate meant fewer problems with diseases and that one part of his farm had grown onions continuously since 1969.⁴³ Another witness for an importer/wholesaler indicated that, based on his experience from processing onions, US onions produce a better finished product with a longer shelf life than do BC onions because US onions have a lower water content, having been grown in drier conditions.⁴⁴ A Washington onion grower indicated that the fact that the Columbia River Basin only receives 7 in. of annual rainfall was an advantage that permits growers to regulate the growth of onions and plays a part in disease control and the storability of onions.⁴⁵ He also stated that he could imagine the problems that BC growers would have with so much rainfall.⁴⁶ A representative for the BC industry suggested that the reason that growers in the BC interior obtained a higher percentage of jumbo onions in comparison to growers in the coastal region might very well be due to soil type.⁴⁷ Finally, one importer/wholesaler felt that he was not qualified to comment directly on the effects that different soil and climate conditions have on onions, but was quite clear in indicating that onions grown in the interior were of a better quality than those grown in the coastal region.⁴⁸

It is obvious from the market data cited above that the improvements in yields have not been sufficient to enable the BC growers to increase their market share. For this to have happened would have required a substantial increase in acreage planted, either through expansion by existing growers or an increase in the number of growers. Other things being equal, the Tribunal would have expected such developments to occur with anti-dumping duties in place for 10 years. The fact that they did not occur suggests that other factors are at play which either outweigh or counteract the benefits of the order.

On the evidence, the Tribunal cannot escape the conclusion that one of the reasons that the BC industry has been unable to increase its market share much beyond one quarter of the BC market are the rigidities flowing from the regulated marketing system. The testimony of the growers, although not critical of the system as a whole, left little doubt that the system of sales quotas which gives preference to historical suppliers has a dampening effect on any plans that a grower might have to increase production and capture a larger share of the market. Two of the growers indicated that it would be difficult to switch from onions to another regulated crop without having quota, as they would not want to be stuck with the crop if supply exceeded demand.⁴⁹ This, in turn, suggests that a significant increase in yellow onion production might be risky without quota and that it would be safer to increase acreage in small increments. This was borne out by a grower witness who indicated that he would take a chance on five more acres of yellow onions without holding quota.⁵⁰

40. In 1995, the yellow onion sales of the two sales agencies located in District I accounted for 81 percent of all of the yellow onion sales made by BC sales agencies.

41. *Transcript of Public Hearing*, Vol. 2, March 21, 1997, at 310.

42. *Transcript of Public Hearing*, Vol. 1, March 20, 1997, at 205.

43. *Ibid.*

44. Importer's Exhibit B-4, Administrative Record, Vol. 13.

45. *Transcript of Public Hearing*, Vol. 2, March 21, 1997, at 327.

46. *Ibid.* at 350.

47. *Transcript of Public Hearing*, Vol. 1, March 20, 1997, at 93.

48. *Ibid.* at 293.

49. *Ibid.* at 168-69 and 191-92.

50. *Ibid.* at 217.

The Tribunal is also of the view that the setting of minimum prices by the BCVMC for yellow onion sales made by sales agencies restricts the competitiveness of the BC market. When supply exceeds demand, growers with yellow onions to sell, that are not covered by quotas, cannot lower their prices as an incentive to encourage sales. The Tribunal also had the impression from listening to the testimony of BC growers that the BC marketing system, to a degree, distances growers from events in the marketplace and may screen the growers from important market intelligence that they need to plan their operations. The Tribunal compared this situation with that of the Washington growers that act as their own sales agents and must track the market closely. As a result, Washington growers saw the potential for jumbo yellow onions long before BC growers.⁵¹

Aside from climate and the regulatory environment, another related and perhaps consequential factor at play is the scale of onion growing operations. BC growers, on average, have about 20 acres of yellow onions, with the largest yellow onion operations having about 50 acres. In contrast, the eight growers that accounted for 40 percent of the harvested tonnage of onions in the state of Washington averaged 676 acres of onions.⁵² This difference in scale does have cost implications, with Washington growers being able to obtain economies of size not available to BC growers.

In summary, the evidence shows that, over the past 10 years, the BC industry has shown little growth and has not, in any significant way, responded to the increasing demand for jumbo yellow onions. The Tribunal believes that the BC industry's performance over the last 10 years has been significantly affected by factors such as the climate, the BC marketing system and the scale of operations. It is clear that the BCVMC sees the order as an important underpinning of the price-setting regime. Rescinding the order may necessitate changes in the way prices are set, but the Tribunal's overall conclusion is that any export prices into the regional market that are below normal values, which may occur when the order is rescinded, will not be so severe in either degree or duration as to cause material injury to the BC yellow onion industry.

CONCLUSION

For the foregoing reasons, the Tribunal hereby rescinds its order in respect of yellow onions, originating in or exported from the United States, for use or consumption in the province of British Columbia.

Lyle M. Russell

Lyle M. Russell
Presiding Member

Patricia M. Close

Patricia M. Close
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

51. *Ibid.* at 181,182 and 188-90.

52. Tribunal Exhibit RR-96-005-I-3B (protected - single copy), Administrative Record, Vol. 10 at 199-208.