



Ottawa, Wednesday, September 13, 2000

Review No.: RR-99-005

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 September 14, 1995, in Review No. RR-94-007, concerning:

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

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of its order made on September 14, 1995, in Review No. RR-94-007.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the above-mentioned order.

Richard Lafontaine

Richard Lafontaine
Presiding Member

Peter F. Thalheimer

Peter F. Thalheimer
Member

James A. Ogilvy

James A. Ogilvy
Member

Michel P. Granger

Michel P. Granger
Secretary

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Place of Hearing: Vancouver, British Columbia
Dates of Hearing: July 17 to 19, 2000
Date of Order and Reasons: September 13, 2000

Tribunal Members: Richard Lafontaine, Presiding Member
Peter F. Thalheimer, Member
James A. Ogilvy, Member

Director of Research: Réal Roy

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(Organization representing B.C. growers)

Darrel H. Pearson
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(Organization representing Washington State growers)

Witnesses:

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General Manager
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George Wright
President
Wrightholm Farms Ltd.

Brent Kelly
President/Owner
Brent Kelly Farms Inc.

Mota Dhaliwal
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(Westfair Foods Ltd.)

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TRIBUNAL: RICHARD LAFONTAINE, Presiding Member
PETER F. THALHEIMER, Member
JAMES A. OGILVY, Member

STATEMENT OF REASONS

BACKGROUND

This is a review, under subsection 76(2) of the *Special Import Measures Act*,¹ of the order made by the Canadian International Trade Tribunal (the Tribunal) on September 14, 1995, in Review No. RR-94-007, concerning whole potatoes, excluding seed potatoes and excluding imports during the period from May 1 to July 31, inclusive, of each calendar year, imported from the United States of America, for use or consumption in the province of British Columbia.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the order and issued a notice of review² on February 4, 2000. The notice was forwarded to all known interested parties. As part of this review, the Tribunal sent questionnaires to agencies and the organization representing B.C. potato growers, to importers and purchasers of potatoes, and to the organization representing growers of whole potatoes in the state of Washington.

The record of this review consists of all relevant documents, including the previous orders and findings, the notice of review, correspondence on file, the public and confidential replies to the questionnaires, the public and protected pre-hearing staff reports, and the public and protected transcripts of the hearing. All public exhibits were made available to interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of the use, disclosure, reproduction, protection and storage of confidential information on the record of the proceedings, as well as the disposal of such confidential information at the end of the proceedings or in the event of a change of counsel.

1. R.S.C. 1985, c. S-15 [hereinafter SIMA].
2. C. Gaz. 2000.I.447.

Public and in camera hearings were held in Vancouver, British Columbia, from July 17 to 19, 2000.

The B.C. Vegetable Marketing Commission (BCVMC) was represented by counsel at the hearing. Evidence was submitted and arguments were made in support of a continuation of the order.

The Washington State Potato Commission (WSPC) was represented by counsel at the hearing. Evidence was submitted and arguments were made in support of a rescission of the order.

The Tribunal also heard evidence from witnesses from Westfair Foods Ltd. (Westfair Foods), who appeared at the hearing at the Tribunal's request.

PRODUCTS

The products that are the subject of this review are whole potatoes (hereinafter potatoes), excluding seed potatoes and excluding imports during the period from May 1 to July 31, inclusive, of each calendar year, imported from the United States of America, for use or consumption in the province of British Columbia.

Potatoes can be sold to either the fresh market or the processing industry. In British Columbia, the bulk of the potato harvest has traditionally been sold to the fresh market. With the closure and movement out of the province in 1998 of Nalley's Canada Ltd., a major potato chip manufacturer, an even greater proportion of the industry's sales are now directed to the fresh market. In British Columbia, the bulk of the potato harvest occurs from August to October, with potatoes that are not sold immediately being stored in storage sheds, where some varieties can be kept until as late as May of the following year and sold to the market.

There are five major types of potatoes, with numerous varieties within each type. The five types are round white, russet, round red, yellow flesh and long white. In British Columbia, round white potatoes and russet potatoes are the predominant types grown for the fresh market. The Russet Norkotah has replaced the Russet Burbank as the principal variety of russet potatoes grown in British Columbia,³ while round red potatoes and round white nugget⁴ potatoes have increased in popularity.⁵

The *Fresh Fruit and Vegetable Regulations*,⁶ which were enacted pursuant to the *Canada Agricultural Products Act*,⁷ 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. BCVMC's Exhibit A-12 at 2, Administrative Record, Vol. 11.

4. Small potatoes, primarily of the Warba variety, ranging in size from 1 5/8 in. to 2 1/4 in. *Transcript of Public Hearing*, Vol. 1, 17 July 2000, at 155 and 156.

5. Tribunal Exhibit RR-99-005-5, Administrative Record, Vol. 1 at 127.

6. C.R.C., c. 285 (1978) [hereinafter Regulations].

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

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

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

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 by weight 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.⁸ Further, imported potatoes of long varieties must have a minimum diameter of 2 in. and a maximum diameter of 3 1/2 in. As a result of the Regulations, imported U.S. potatoes generally meet the same size and quality standards as the Canada No. 1 grade.

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

Count-size potatoes are those of uniform size and shape that are sold in 50-lb. cartons. 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.

DOMESTIC INDUSTRY

The B.C. Vegetable Scheme, enacted by provincial Order in Council on March 20, 1980, under the *Natural Products Marketing (B.C.) Act*,⁹ established the BCVMC, which is empowered to promote, control and regulate the production, transportation, packing, storage and marketing of 13 vegetables, including

8. 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.

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

potatoes, grown in the province. The BCVMC is under the direction of 8 commissioners who are elected by the growers of the regulated vegetables.

The BCVMC delegates certain of its powers to various sales agencies, which provide growers in a particular region with a sales outlet for their products. There are currently five sales agencies for potatoes: Lower Mainland Vegetable Distributors Inc. (Lower Mainland), the Interior Vegetable Marketing Agency Cooperative, the Island Vegetable Co-operative Association, Port Potato Co. and Vancouver Island Produce. Lower Mainland is the largest of these five agencies, accounting for more than 80 percent¹⁰ of all sales of B.C.-grown potatoes.

ENFORCEMENT DATA

The current normal values¹¹ for potatoes, as provided by the Canada Customs and Revenue Agency (CCRA), have been in effect since 1995. A normal value review was initiated on August 21, 1998, and completed on October 29, 1999. On the basis of the information available, the CCRA determined that no changes were needed to the normal values that were in effect before the re-investigation.¹²

Table 1 summarizes the anti-dumping duties assessed by the CCRA for the order under review.

	Aug. 1 to April 30			Aug. 1 to Dec. 31	
	1996-97	1997-98	1998-99	1998	1999
Anti-dumping Duties	1,629,175	663,201	661,105	432,182	108,554

Source: Tribunal Exhibit RR-99-005-4, Administrative Record, Vol. 1 at 93.

SUMMARY OF REVIEW NO. RR-94-007

After reviewing the evidence in this case in 1995, the Tribunal was of the view that dumping was likely to resume if the order was rescinded. This conclusion was 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 had been sold in British Columbia at depressed and dumped prices on a regular basis since the last review in 1990. The Tribunal noted that the B.C. market exerted a “demand-pull” on U.S. product, as B.C. growers did not have the production capacity to fully meet the potato needs of the B.C. market.

10. *Transcript of Public Argument*, 19 July 2000 at 69.

11. “Normal values are determined on the basis of total costs and expenses associated with growing and harvesting the subject goods using published cost data plus an amount for profit and an estimated amount for packing charges which includes costs, expenses and profit to pack and sell the goods”, Tribunal Exhibit RR-99-005-4, Administrative Record, Vol. 1 at 88.

12. Tribunal Exhibit RR-99-005-4, Administrative Record, Vol. 1 at 87.

The data showed that, over the previous decade, U.S. potato imports had consistently accounted for between 40 and 60 percent of the B.C. market. In the Tribunal's opinion, British Columbia would continue to be a natural export outlet for U.S. potatoes, as it had been in the past, regardless of whether or not there are injury findings in place.

The Tribunal noted 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, was approximately 145 times the volume grown in British Columbia. According to the evidence before the Tribunal, there were growers in the state of Washington that individually grew more potatoes than all the growers combined in British Columbia. Moreover, average yields in the United States were considerably higher than those in British Columbia. The Tribunal noted that the yearly incremental fluctuations in production for the state of Washington alone were greater than the size of the entire B.C. market.

The Tribunal noted that the increases in U.S. production and production capacity from 1989 to 1994 were accompanied by an increasing trend in U.S. potato exports, including fresh potatoes, which were destined, in large part, for British Columbia and other regions of Canada. This indicated to the Tribunal that a certain proportion of the growth in production and capacity, which was increasingly focused in the northwest United States, could not be readily absorbed by U.S. domestic consumption, necessitating its delivery to export markets. Moreover, sales of fresh potatoes in British Columbia constituted a largely residual market for the state of Washington, as 80 to 90 percent of the Washington crop was pre-sold, under annual contracts, to the potato-processing industry. Given the residual nature of these sales, they were prone to low pricing which, on occasion, may not have covered much more than U.S. growers' direct costs of harvesting, shipping and duty.

The above data and trends on U.S. output, acreage, yields and exports indicated to the Tribunal that the conditions which, in the past, had given rise to the dumping of U.S. potatoes in British Columbia continued to be no less present, and there was no indication that this situation was about to change. Under these conditions, U.S. growers had been selling potatoes in British Columbia at below their costs of production, as measured by normal values established by the Department of National Revenue (now the CCRA), on a persistent basis, over the previous five years. On the basis of the foregoing, the Tribunal concluded that U.S. potatoes were likely to continue to be exported to British Columbia at dumped prices, if the order were rescinded.

The Tribunal then considered whether a resumption of dumping was likely to be injurious to the production of potatoes in British Columbia. The Tribunal assessed the sensitivity of B.C. potato prices to dumped U.S. imports, the magnitude of dumping during the review period and the condition of the B.C. potato industry.

The Tribunal concluded that U.S. prices, especially from the state of Washington, were a key benchmark for B.C. prices. The reality for B.C. growers was that their prices simply could not get out of line with prices established in U.S. markets, after making adjustments for transportation, duties and exchange rates. Thus, in the Tribunal's view, B.C. prices would have to fall to U.S. levels, or risk substantial loss of market share, in the event that the anti-dumping duties were removed. The Tribunal considered that the magnitude of the price declines which were likely to ensue, had the anti-dumping duties been removed, were, potentially, highly significant.

The Tribunal noted that, since the previous review, the B.C. potato industry had made significant efforts to enhance its competitiveness. Despite these efforts, it was the Tribunal's opinion that the potato

industry in British Columbia continued 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.

Given the foregoing, the Tribunal found that there was a likelihood of injury to B.C. potato growers had the anti-dumping duties imposed by the order on U.S. imports been removed.

During the hearing, it was revealed 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.

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

In sum, the Tribunal considered 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.

OTHER DECISIONS CONCERNING WHOLE POTATOES

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

On April 18, 1986, in Inquiry No. CIT-16-85, the Canadian Import Tribunal 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 of like goods.

On June 4, 1984, in Inquiry No. ADT-4-84, the Anti-dumping Tribunal 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.

POSITION OF PARTIES

BCVMC

The BCVMC submitted that British Columbia remains a regional market because almost all the potatoes grown in British Columbia are currently sold in British Columbia. Only a small proportion of the B.C. potatoes are shipped to other provinces, and very few potatoes have been shipped from other provinces to British Columbia over the years. Although the volumes of imports of potatoes from other provinces into the B.C. market increased during the crop years under review, this was the result of unusual situations not likely to recur.¹³ Further, the retail sector, with companies such as Westfair Foods and Overwaitea Food

13. One factor was the short-lived Lake Diefenbaker project in Saskatchewan where low-priced potatoes from that province flooded the market in the western provinces, including British Columbia. *Transcript of Public Argument*, 19 July 2000, at 70. Another factor is referred to in the confidential “Closing Statement of the British Columbia Vegetable Marketing Commission”, “Aid to Argument”, Administrative Record, Vol. 18 at 22.

Group, and the foodservice sector, such as Serca Foodservice Inc., support local product when quality and price are comparable to those of other growers. Westfair Foods made it clear that it intended to do business with the B.C. growers and that its intention was to continue as long as its needs are satisfied.¹⁴

The BCVMC argued that, if dumping resumed, there would likely be a concentration of dumped potatoes from the United States in the B.C. market because British Columbia continues to account for a disproportionate share of Canadian imports of U.S. potatoes.¹⁵ British Columbia continues to be a natural and traditional market for potatoes from the states of Washington, Oregon, Idaho and California. These states continue to have enormous production capacity, and the potatoes that they grow were consistently sold at depressed and dumped prices during the review period. Furthermore, the state of Washington increased its production capacity in 1999 by some 7,000 acres, more than the total acreage for potato production in British Columbia, and that state is the source of the largest proportion of potato imports into British Columbia. Consequently, B.C. potato growers are most vulnerable to overproduction in the state of Washington. The BCVMC contended that historical patterns of U.S. potato production, as well as the recent and planned increases in U.S. potato production, demonstrate that British Columbia will continue to be an export target for U.S. potatoes.

The BCVMC argued that, given the character of the U.S. potato industry and, in particular, the Washington potato industry, the dumping of potatoes in the B.C. fresh market is a by-product of the U.S. growers' primary source of revenue, which is the processing industry. Approximately 90 percent of the potatoes grown in the state of Washington are slated for the processing industry, while the remaining 10 percent are available for the fresh market. When U.S. growers are not able to sell their surplus potatoes to the processing industry, these potatoes are sold to the fresh market. The resulting increased supply, or even the threat of that supply, drives the prices for the fresh market potatoes downward and contributes to the dumping of potatoes in the B.C. fresh market.¹⁶

The BCVMC stated that B.C. growers are price takers in their own market, as potato prices in British Columbia are based on the landed price of U.S. potatoes in Vancouver. Therefore, the returns of B.C. potato growers are directly linked to the prevailing price of U.S. potatoes. Given that U.S. potato prices have been below normal values most of the time since 1995, B.C. potato growers would have been forced, in the absence of anti-dumping protection, to meet U.S. depressed prices. This would have resulted, according to the BCVMC, in significant price erosion which, in turn, would have seriously impacted the growers' revenues, market share and profitability.¹⁷

According to the BCVMC, the stability provided by normal values has permitted B.C. growers to obtain positive returns on their investments. They have made significant investments in their operations to remain competitive and to improve the quality of their potatoes. B.C. potato growers and, in particular, Lower Mainland growers have succeeded over the review period in making inroads in market share previously held by U.S. producers by virtue of their ability to supply a consistently high-quality product, as well as high levels of service, particularly for red and white potatoes. Those inroads would not have been possible without the price protection provided by normal values. Without normal values, B.C. growers could not have competed with the price of dumped product and would have been forced to sell their product below

14. *Transcript of Public Argument*, 19 July 2000, at 147 and 148.

15. From 1996 to 1999, between 43 and 54 percent of all U.S. potatoes imported into Canada were imported into British Columbia. *Transcript of Public Argument*, 19 July 2000, at 72.

16. *Transcript of Public Argument*, 19 July 2000, at 13.

17. *Ibid.* at 35.

their cost of production. As potatoes are a commodity, they are price-sensitive, and any downward pressure on the price of one type of potato will affect the price of other types. Therefore, market gains are dependent upon B.C. growers remaining competitive. The removal of normal values, it was argued, would place their investments and borrowing at severe risk. The BCVMC submitted that the continued survival of the B.C. potato industry is dependent upon U.S. potatoes not being imported at prices below the U.S. cost of production, as this would lead to price erosion and reduced grower returns.

With respect to yields, the BCVMC argued that the Columbia Basin yields, which were used by the WSPC in their comparison to the B.C. yields, are not typical of yields in the northwest United States and that the lower yields in Oregon and California should also be taken into account.

Finally, the BCVMC argued that all B.C. growers receive the same price for potatoes of the same grade and variety. It submitted that there was no evidence to suggest that certain growers, such as those with large farms or those specializing in particular varieties of potatoes, would be less susceptible to material injury from dumping, should it continue, and that all or almost all of the B.C. potato production would be injured if anti-dumping duties were removed.

In subsequent reply to the WSPC's argument that no industry could remain in business for 16 years, by continually selling below cost,¹⁸ the BCVMC argued that it had not done so, noting that 90 percent of the Washington industry is in processing, and 10 percent in table stock.¹⁹ The BCVMC added that the Washington industry had to go to the processing industry because it has not been able to survive in the fresh market.²⁰

WSPC

The WSPC submitted that British Columbia is no longer a regional market. It argued that, in its consideration, the Tribunal must examine the data to determine whether or not the level of sales outside British Columbia are such that a regional market no longer exists. To support its argument, the WSPC submitted that there were substantial volumes of potatoes shipped from other provinces to British Columbia during the period of review.²¹ Consequently, consideration should be given to past, present and future factors, including the length of time during which the regional market failed to exist.

The WSPC argued that the evidence from Westfair Foods was critical to the issue of regional market. For a number of years, that company moved substantial quantities of No. 2 potatoes from Alberta, Saskatchewan and Manitoba to British Columbia because it could not source its supply from British Columbia and because B.C. suppliers were unwilling to provide private labelling. This changed in 1999-2000 when B.C. growers, in particular those in the Lower Mainland, agreed to meet Westfair Foods' conditions, including private labelling. The WSPC conceded that the agreement will likely continue in the future, provided B.C. growers meet the conditions set out by Westfair Foods and remain price-competitive. However, the WSPC argued that extra-provincial prices will remain a force that will encourage or discourage the movement of potatoes to British Columbia from other western provinces.

18. *Transcript of Public Argument*, 19 July 2000, at 116.

19. *Ibid.* at 168.

20. *Ibid.*

21. Purchases of potatoes from other provinces for the crop years 1996-97, 1997-98 and 1998-99 represented, respectively, 9, 11 and 14 percent of the B.C. market. See Table 2 in this statement of reasons.

Therefore, the B.C. potato market is no longer isolated because of the effects of these extra-provincial prices, regardless of whether there are actual inter-provincial movements of potatoes to British Columbia.

Should the Tribunal find that a regional market does exist, however, the WSPC conceded that it would appear that there is a concentration of U.S. potatoes in British Columbia inasmuch as the import share of potatoes in the B.C. market and the ratio of B.C. imports to total Canadian imports are relatively high.

However, for an injury finding to be made in a regional market, the WSPC argued, any dumping must cause or threaten to cause injury to all or almost all of the production of like goods in the region. In this case, the WSPC asserted that the evidence of revenues and costs supplied by the B.C. industry does not meet this test.

In order to demonstrate this failure, the WSPC restated the costs and profits of the B.C. industry's cost of production model by removing the return on investment factor from the costs of production over the review period. The WSPC argued that this is not a true cost, but an opportunity cost. By removing the return on investment from the cost of production, the WSPC argued that the industry remained in a substantial loss position in 1996, generated profits in both 1997 and 1999, and broke even in 1998. The picture of one bad year, two average years and one good year, even without the protection from dumping, is not dissimilar from that which one would expect in normal agricultural economics, it submitted. Further, although three years do not completely make up for the one bad year, other factors such as yields and economy of scale, which are unrelated to the dumping, account for the difference. The WSPC argued that these other factors need to be considered in the analysis and deducted from the assessment of material injury caused by dumping.

The WSPC stated that Washington potato growers have substantial advantages resulting from reduced costs achieved through economies of scale or size. In addition, they benefit from substantially higher yields than do their counterparts in British Columbia, with the result that Washington growers' fixed costs of production are spread over a larger volume and are, therefore, lower on a unit basis. The WSPC submitted that, if B.C. growers were in the same position as Washington growers, that factor alone would reduce fixed costs by almost 50 percent. Even if B.C. growers are unable to achieve Washington yield levels, the WSPC argued that some of the larger B.C. growers would have economies of scale which would translate into higher profits. These higher profits would, the WSPC asserted, result in less injury from dumping for those growers.

The WSPC suggested that, for British Columbia, the point of efficiency might be 250 acres per farm. In the WSPC's estimation, the five²² B.C. growers that meet this point of efficiency would have had returns in excess of the figures, net of the effects of dumping, and would not, therefore, have suffered injury caused by dumping. The WSPC argued that, even though some smaller-scale growers would have suffered material injury, this is not sufficient to meet the "all or almost all" test for material injury to a regional market.

With respect to the issue of the likelihood of dumping if the order is rescinded, the WSPC argued that there is not likely to be dumping to the extent that would cause material injury. Specifically, the WSPC submitted that historical normal values and margins of dumping have been overstated and are not indicative of what is likely to occur in the future. It argued that no industry could remain in business for 16 years by continually selling below cost, let alone expand. The WSPC submitted that Washington potato growers have not regularly been selling below the cost of production and that they have been making profits for many years

22. The evidence shows that only four growers in British Columbia planted 250 acres or more of potatoes. BCVMC's Exhibit RR-99-005-A-19, Administrative Record, Vol. 11.

because the normal values exceed costs by a range of 9 to 26 percent. Because of consolidation and investment, it asserted, costs of production have tended to fall over time, even though some costs may have increased. In addition, the WSPC submitted that the CCRA's method of calculating export prices inflates the data respecting dumping as the use of "mostly" prices does not account for the higher-value sales.²³ Mostly prices are determined in a telephone survey and represent a range which can vary by as much as \$1.00 per hundredweight at any point in time.

The WSPC contended that there was no evidence to support the claim by the BCVMC that individual Washington growers produce for both the processing industry and the fresh market and, thereby, share the profits and losses. To the contrary, most growers produce for one or the other. Moreover, it argued that the potato-processing industry, which has been virtually non-existent in British Columbia, has trended upward for both the state of Washington and the United States as a whole. By contrast, the market for fresh potatoes has been relatively stable over the last five years, and the volumes have not trended upward for either the state of Washington or the United States as a whole. The result is, according to the WSPC, that the actual volumes of Washington production available for the fresh market are far lower than the numbers put forward by the BCVMC.

ANALYSIS

In determining whether the order should be continued or rescinded, the Tribunal must address three questions. First, it must determine whether the criteria that allow an injury finding to be made on a regional basis are still present. Second, it must decide whether there is a likelihood of continued or resumed dumping from the United States, if the order is rescinded.²⁴ And third, it must determine whether the continued or resumed dumping is likely to cause injury to the B.C. potato industry.

Before addressing these questions, and although this was not in dispute by the parties, 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.

Regional Market Considerations

Subsection 2(1.1) of SIMA provides that:

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

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

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

23. *Transcript of Public Argument*, 19 July 2000, at 123.

24. On April 15, 2000, certain amendments to SIMA came into effect that give, *inter alia*, the CCRA the jurisdiction to determine whether there is a likelihood of dumping. The new provisions apply to reviews commenced after April 15, 2000. They are, therefore, not applicable to this review, which commenced on February 4, 2000.

The Tribunal is of the view that the two conditions for a regional market are met. Table 2 summarizes regional market data for the B.C. potato industry for the period of the current review. First, the volume of potatoes sold by B.C. growers in the B.C. market during the period under review accounted for over 94 percent of total B.C. potato production. Therefore, the Tribunal is of the opinion that the B.C. growers continue to sell all or almost all of their production in British Columbia. Second, in 1999-2000, imports into British Columbia of potatoes grown in other provinces declined drastically from their levels during the previous three years.²⁵ Based on the evidence provided by Westfair Foods, the single largest importer into the B.C. market of potatoes grown in other provinces, it appears likely that, for the foreseeable future, imports into British Columbia of potatoes grown in other provinces will remain at or near their current levels.²⁶ Therefore, the Tribunal is persuaded that growers located elsewhere in Canada do not, to any substantial degree, currently supply the demand for potatoes in the B.C. market, nor are they likely to do so in the foreseeable future.

Table 2
B.C. Regional Potato Market Data

	<u>Aug. 1 to Apr. 30</u>		
	1996-97	1997-98	1998-99
Shipments by B.C. growers to other provinces (000 cwt)	26	21	42
As a percentage of B.C. growers' total shipments in British Columbia	3	3	6
Imports by B.C. growers from other provinces (000 cwt)	9	16	11
Imports in B.C. by others from other provinces (000 cwt)	<u>172</u>	<u>199</u>	<u>219</u>
Total imports from other provinces (000 cwt)	181	215	230
As a percentage of the B.C. market	9	11	14
Imports in B.C. from the U.S. as a percentage of the B.C. market	47	54	45
Imports in the rest of Canada from the U.S. as a percentage of the rest of the Canadian market ¹	4	4	4
Imports in B.C. from the U.S. as a percentage of total imports in Canada from the U.S.	45	54	43

1. Annual 1996, 1997 and 1998. Canadian market data are not available for the period from August 1 to April 30. Canadian production data include seed potatoes.

Sources: Replies to Tribunal questionnaires, Department of Agriculture and Agri-Food, Statistics Canada and pre-hearing staff report.

25. Prior to crop year 1999-2000, Westfair Foods purchased two thirds of its potato requirements for the B.C. market from growers in provinces other than British Columbia, with the remaining one third of its requirements being met by imports from the United States. Beginning in 1999-2000, Westfair Foods purchased half of its potato requirements for the B.C. market from B.C. growers, one sixth from other provinces, and the remaining one third from the United States. *Transcript of Public Hearing*, Vol. 2, 18 July 2000, at 424, 439 and 440.

26. *Transcript of Public Hearing*, Vol. 2, 18 July 2000, at 474.

Where the conditions in paragraphs 2(1.1)(a) and (b) of SIMA are met, the Tribunal has found, in previous cases, that a regional market exists and that the producers in the market may be considered to be a regional industry. In those cases where a regional industry is found to exist, subsection 42(5) of SIMA provides, in part, that:

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

- (a) there is a concentration of those goods into the regional market; and
- (b) the dumping or subsidizing of those goods has caused injury or retardation or is threatening to cause injury to the producers of all or almost all of the production of like goods in the regional market.

With respect to the criteria relating to a concentration of dumped imports, the evidence shows that, during the period under review, between 43 and 54 percent of the total imports into Canada from the United States were destined for the B.C. market.²⁷ Furthermore, during the period under review, U.S. imports accounted for between 45 and 54 percent of the B.C. potato market and for approximately 4 percent of the potato market in the rest of Canada.²⁸ For its part, the WSPC indicated that it would appear that the concentration test was met.²⁹ Therefore, the Tribunal is of the opinion that, if it were to rescind the order, there would likely be a concentration of dumped imports into the B.C. market. The question of whether the dumping of those goods is likely to cause injury to the producers of all or almost all of the production of like goods in the regional market is dealt with in the discussion on the likelihood of material injury.

Market and Industry Indicators

Table 3 contains the key market and industry indicators for the B.C. potato market.

27. See Table 2.

28. *Ibid.*

29. *Transcript of Public Argument*, 19 July 2000, at 88.

Table 3
Key Market and Industry Indicators

	<u>Aug. 1 to Apr. 30</u>			<u>Aug. 1 to Dec. 30</u>	
	<u>1996-97</u>	<u>1997-98</u>	<u>1998-99</u>	<u>1998</u>	<u>1999</u>
Sales in British Columbia from					
B.C. Production (000 cwt)	890	635	680	440	515
Imports from United States (000 cwt)					
By Growers	11	22	13	1	6
By Other Importers	<u>956</u>	<u>1,000</u>	<u>744</u>	<u>472</u>	<u>572</u>
Total Imports – United States	967	1,022	757	474	578
Imports from Provinces (000 cwt)					
By Growers	9	16	11	33	41
By Other Importers	<u>172</u>	<u>199</u>	<u>219</u>	<u>N/A</u>	<u>N/A</u>
Total Imports from Provinces (000 cwt)	181	215	230	33	41
Market (000 cwt)	<u>2,038</u>	<u>1,873</u>	<u>1,668</u>	<u>946</u>	<u>1,135</u>
Market Share (%)					
Sales by Growers from Own Production	44	34	41	46	45
Imports from United States					
By Growers	1	1	1	0	1
By Other Importers	<u>47</u>	<u>53</u>	<u>44</u>	<u>50</u>	<u>50</u>
Subtotal	47	54	45	50	51
Imports from Provinces					
By Growers	0	1	1	3	4
By Other Importers	<u>8</u>	<u>11</u>	<u>14</u>	<u>N/A</u>	<u>N/A</u>
Subtotal	9	11	14	N/A	N/A
Total Market (%)	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>
Average Price (C\$/cwt)					
Imports:					
United States	13.10	16.94	18.61	17.99	18.59
Washington State	11.43	14.93	16.79	17.50	18.18
British Columbia	14.06	15.78	16.86	17.21	17.82
	Calendar Year				
<u>Harvested Acres (000)</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	
United States ¹	1,453	1,354	1,388	1,333	
Washington State ¹	161	152	165	170	
British Columbia ²	6	5	6	N/A	
<u>Yield (cwt/acre)</u>					
United States ¹	350	345	343	359	
Washington State ¹	590	580	565	560	
British Columbia ²	251	201	213	N/A	

1. Agriculture Statistics Board, National Agricultural Statistics Service, U.S. Department of Agriculture.

2. B.C. Ministry of Agriculture.

Note: Numbers and percentages may not add up due to rounding.

N/A = Not available.

The share of the B.C. market held by B.C. growers from sales from their own production fell from 44 percent in 1996-97 to a low of 34 percent in 1997-98, and then recovered to a level of 41 percent in 1998-99. The drop in market share held by B.C. growers in 1997-98 was due principally to a severe drop in B.C. potato production in that year, caused by poor weather conditions during the harvest which resulted in many potatoes being left unharvested in the fields.³⁰ As well, imports into British Columbia from growers in other provinces escalated over the period under review. This escalation resulted from a failure of B.C. growers to meet the contract demands of Westfair Foods, a major retailer of potatoes in the B.C. market,³¹ and from the fact that an abnormal surplus of potatoes originating in Saskatchewan was directed to the B.C. market.³² B.C. growers were able to come to contract terms for the 1999-2000 crop year with Westfair Foods,³³ and the conditions that led to the surplus Saskatchewan potato production are understood to no longer exist.³⁴

Likelihood of Continued or Resumed Dumping

Evidence put on the record by both parties confirms that there has been continued dumping of U.S. potatoes in the B.C. market since the last review in 1995.³⁵ The record shows that “mostly”³⁶ prices, which are based largely on Columbia Basin prices in the state of Washington and which are used to determine the export prices of potatoes for anti-dumping duty purposes, have been, on average, lower than normal values, between 37 and 78 percent of the entire period from 1995-96 to 1999-2000.³⁷ However, the Tribunal notes that, if the anomalous 1995-96 crop period³⁸ were excluded from the calculation of the percentage of time during which dumping occurred, the foregoing percentages would be significantly higher, ranging from a low of 46 percent to a high of 94 percent. If only the three-year review period from 1996-97 to 1998-99 is taken into account, the percentage of time during which dumping occurred would range from a low of 56 percent to a high of 94 percent. The Tribunal concludes that, regardless of which time periods or which party’s calculations are used, the evidence is convincing that there has been continued dumping of U.S. potatoes in the B.C. market and that this dumping has occurred at a high level of frequency.

In addition to the frequency with which dumping has occurred, the evidence shows that, in 1998-99 alone, “mostly” prices were as much as 55 percent lower than normal values. The evidence also shows that, in 1996-97 and 1997-98, these prices were below normal values by as much as 67 percent and 52 percent respectively.³⁹ The WSPC argued that this situation results from the fact that normal values, as prescribed by

30. BCVMC’s Exhibit A-2 at 4, Administrative Record, Vol. 11.

31. *Transcript of Public Hearing*, Vol. 2, 18 July 2000, at 425 and 426; and *Transcript of In Camera Hearing*, Vol. 2, 18 July 2000, at 57 and 58.

32. *Transcript of Public Argument*, 19 July 2000, at 70, 146 and 147.

33. *Transcript of Public Hearing*, Vol. 2, 18 July 2000, at 460.

34. *Transcript of Public Hearing*, Vol. 1, 17 July 2000, at 57, and Vol. 2 18 July 2000, at 469.

35. Tribunal Exhibit RR-99-005-5, Administrative Record, Vol. 1 at 125.

36. “The export price is . . . the preponderant, or as referred to in Market News, the ‘mostly’ selling price when such a price is quoted. In the absence of a ‘mostly’ selling price quoted in the Market News, the export price is specified as the straight average of the price range quoted”. Tribunal Exhibit RR-99-005-41A, Administrative Record, Vol. 1 at 286.

37. BCVMC’s Exhibit A-1 at 8, Administrative Record, Vol. 11; and Foreign Agency’s Exhibit B-17 at 18, Administrative Record, Vol. 13.

38. A period when the U.S. potato crop was down 5 percent and U.S. potato prices were higher than usual. BCVMC’s Exhibit A-1 at 7 and 9, Administrative Record, Vol. 11.

39. BCVMC’s Exhibit A-1, Tab 5, Administrative Record, Vol. 11.

the CCRA, are too high, while the U.S. selling prices used by the CCRA to establish the margins of dumping are too low.⁴⁰ On the matter of normal values, the Tribunal's position is very clear that it is not its role to update or review the normal values that have been calculated by the CCRA.⁴¹ In that connection, the Tribunal notes that the CCRA initiated a review of the normal values for potatoes on August 21, 1998, completed this review on October 29, 1999, and made no changes to the normal values that were in effect before its re-evaluation.⁴²

Due to a significant improvement in yields (11 percent higher in 1999 than in 1995), total U.S. production of potatoes in 1999 was the second highest annual production since 1995.⁴³ However, total acres planted and harvested in the United States declined modestly over that period,⁴⁴ except for most of the northwestern United States. In the state of Washington alone, acreage planted and harvested increased from 147,000 acres in 1995 to 170,000 acres in 1999.⁴⁵ The Tribunal notes that Washington potato production in 1999 was close to 18 percent higher than in 1995 and was the highest on record for that state. The evidence also shows that yields in the states of Washington, Oregon and California are significantly higher than the U.S. average.⁴⁶ While yields in Idaho are below the U.S. average, the area planted in Idaho represents close to 29 percent, and the area harvested close to 30 percent, of the U.S. totals. As a result, in 1999, although the yield per acre in Idaho was 40 percent lower than in the state of Washington, potato production in Idaho was 40 percent higher than in the state of Washington.

The evidence shows that, over the three-year period from 1996 to 1998, average annual potato production in the state of Washington alone was greater than the average annual potato production in all of Canada.⁴⁷ The evidence also shows that the combined volume of potato production in the states of Washington, Idaho and Oregon in 1998 has grown to over 300 times the volume of B.C. production.⁴⁸ More specifically, the volume of potato production in the state of Washington has grown to over 100 times the volume of B.C. potato production,⁴⁹ and it is estimated that Washington's annual shipping volume of fresh potatoes is "equivalent to a five-year supply of the total B.C. fresh market production".⁵⁰

Given these increases in production volumes, the Tribunal sees no reason to believe that the state of Washington or other U.S. states will be any less aggressive in their export marketing efforts, including their efforts to export potatoes to British Columbia. In his written statement of evidence, Mr. Pat Boss, Executive Director of the WSPC, confirmed that "British Columbia is an important market of fresh potatoes for

40. *Transcript of Public Argument*, 19 July 2000, at 122 and 123.

41. *Transcript of Public Hearing*, Vol. 1, 17 July 2000, at 9.

42. Tribunal Exhibit RR-99-005-4, Administrative Record, Vol. 1 at 87.

43. Tribunal Exhibit RR-99-005-5, Administrative Record, Vol. 1 at 176.

44. *Ibid.* at 173.

45. *Ibid.* at 175.

46. The 1999 yields in the states of Washington, Oregon, California and Idaho were, respectively, 560, 505, 445 and 339 cwt/acre. The average yield in the United States was 359 cwt/acre. Tribunal Exhibit RR-99-005-5, Administrative Record, Vol. 1 at 176.

47. Tribunal Exhibits RR-99-005-5 and RR-99-005-38, Administrative Record, Vol. 1 at 176 and 262 respectively.

48. Tribunal Exhibit RR-99-005-5, Administrative Record, Vol. 1 at 127 and 176. At the time of the last review, the volume of production of the four principal exporting states to British Columbia was approximately 145 times the volume grown in British Columbia. Tribunal Exhibit RR-99-005-1, Administrative Record, Vol. 1 at 19.

49. Tribunal Exhibit RR-99-005-5, Administrative Record, Vol. 1 at 127 and 176.

50. Tribunal Exhibits RR-99-005-5 and RR-99-005-5D, Administrative Record, Vol. 1 at 142 and 176; and *Transcript of Public Argument*, 19 July 2000, at 22.

Washington State potato growers”.⁵¹ In that connection, the Tribunal notes that data obtained from the U.S. Department of Agriculture reveal that, in 1998, 58.1 percent of all potatoes grown in the state of Washington were Russet Burbank potatoes, a variety that may be sold to both the processing industry and the fresh market.⁵² Accordingly, the Tribunal is of the view that U.S. potato growers, and Washington potato growers in particular, will continue to target the B.C. market as aggressively in the future as they have done in the past.

The volume of U.S. potatoes imported into British Columbia in 1998-99 was 22 percent lower than in 1996-97. However, the Tribunal notes that, during the period from August to December 1999, imports of potatoes from the United States increased by 22 percent over the same five-month period in 1998. This supports the WSPC’s contention that volatility is a part of the normal cyclical nature of potato production and, indeed, of agricultural production in general. The Tribunal notes, however, that, over the period from 1996-97 to 1998-99, U.S. imports accounted for between 45 and 54 percent of the market in British Columbia and that 80 percent of those imports originated in the state of Washington.⁵³ The Tribunal also notes the export orientation of Washington potato growers, which ship some 90 percent of their potatoes out of state.⁵⁴ The Tribunal is, therefore, of the view that U.S. growers are likely to continue dumping in the B.C. market at significant margins of dumping.

Likelihood of Material Injury

The Tribunal then considered whether continued dumping was likely to be injurious to the producers of all or almost all of the production of potatoes in British Columbia.

The Tribunal notes that the WSPC argued that the model used by the BCVMC for the determination of costs of production for potatoes grown in British Columbia included certain costs attributed to return on investment that, in its view, more properly should have been shown as an amount for profit.⁵⁵ In presenting that argument, counsel for the WSPC noted that Dr. Joseph F. Guenther had included a similar return on investment in his construction of Columbia Basin potato production costs, an approach that counsel again concluded to be incorrect.⁵⁶ Since Dr. Guenther appeared as an expert witness for the WSPC, the Tribunal is not inclined to so readily dismiss the approach also taken by the WSPC’s own expert witness with regard to the treatment of return on investment. The Tribunal notes that the treatment of “return on investment” as either a cost or an amount for profit is an issue upon which the legal and economic fraternities representing the WSPC appear to be divided. However, the Tribunal found instructive the fact that witnesses for both parties to this review took the same approach for the treatment of return on investment, i.e. they all included this item as a cost factor in their cost of production models. In the circumstances, the Tribunal finds no basis in the evidence to support the alternative methodology proposed by counsel for the WSPC regarding the calculation of costs of production for potatoes in British Columbia. In any case, as will be discussed below, the treatment of return on investment in this matter is not considered by the Tribunal to be determinative of the question of injury caused by dumping.

51. Foreign Agency’s Exhibit B-18 at 6, Administrative Record, Vol. 13.

52. Tribunal Exhibit RR-99-005-43, Administrative Record, Vol. 1 at 294.

53. Tribunal Exhibit RR-99-005-5, Administrative Record, Vol. 1 at 132.

54. *Ibid.* at 177.

55. *Transcript of Public Argument*, 19 July 2000, at 91.

56. *Ibid.*

The WSPC also argued that factors other than dumping were at the core of the problems that the B.C. potato industry was experiencing in competing with U.S. imports in the B.C. market. More specifically, the WSPC argued that the issues of “yield” and “economies of scale” associated with the relative sizes of the average potato farm in the state of Washington and in British Columbia were at the root of these difficulties. In the WSPC’s view, the effect of these other factors has to be considered and deducted from the BCVMC’s calculation of injury caused by dumping.⁵⁷ The Tribunal rejects this argument. The Tribunal concludes that the notions of “yield” and “economies of scale” are factors to be considered in determining costs of production and are not “other factors”, as provided for in SIMA, to which injury may be attributed. In other words, they are part and parcel of the cost of production equation and are not separate factors, as argued by the WSPC, to be analyzed in determining the cause of injury.

The WSPC further argued that there is a number of B.C. growers⁵⁸ each planting at least 250 acres of potatoes, which, according to the WSPC, is the minimum acreage needed to support an economical operation and to cover growing, packing and storage costs.⁵⁹ These growers, it was argued, are sufficiently large to be able to compete efficiently with U.S. imports if the anti-dumping duties are removed and, consequently, injury could not be determined by the Tribunal to be likely to be caused to the producers of all or almost all of the production of potatoes in British Columbia. While the Tribunal can accept that a rescission of the order would have a different impact on potato farmers depending on the size of their operations, it does not agree with the WSPC’s argument. The Tribunal found more persuasive the financial evidence submitted by the BCVMC that showed that, while the aggregated B.C. potato industry’s profits totaled \$5.25 million over the period from 1996 to 1999, with positive results being achieved in each year, in the absence of the order, the industry would, instead, have experienced a deficit totaling some \$2 million. The BCVMC arrived at the latter figure by estimating the amount of the injury, in the form of lower prices and lower gross revenues, that would have occurred in that same time period, absent anti-dumping duties. The Tribunal notes that this approach⁶⁰ was not contested by the WSPC. In the Tribunal’s view, a loss of this magnitude constitutes a level of injury which is material to the producers, both individually and in the aggregate, of all or almost all of the production of potatoes in British Columbia. The Tribunal is of the view that, should the order be rescinded, this injury is likely to occur in the future and is likely also to become more severe, as the B.C. market would become much more subject to price competition from the United States. This increased price competition, coupled with the U.S. industry’s huge export potential, will significantly depress prices of like goods and likely result in: lower revenues; reduced profits; lower returns on investment; a reduced ability to raise capital; a loss of market share, especially for smaller growers; the failure of some growers; and a reduction in employment in the industry.

If the order is rescinded, the Tribunal is of the view that U.S. imports will enter British Columbia in high volumes and at dumped prices that will be injurious to the domestic industry. As noted earlier, the evidence shows that the margins of dumping, as computed by the BCVMC using CCRA data, were as high as 67 percent over the period of review.⁶¹ All parties acknowledge that potatoes are a commodity. As a commodity, potatoes are price sensitive, and any downward pressure on the price of one type of potato will affect the price of other types. The Tribunal is of the view that all B.C. producers are price takers and concludes that, if the order is rescinded, prices will have to fall substantially in order to meet the landed

57. *Transcript of Public Argument*, 19 July 2000, at 96.

58. *Ibid.* at 100.

59. Foreign Agency’s Exhibit B-1 at 22, Administrative Record, Vol. 13.

60. Tribunal Exhibit RR-99-005-RI-1B at 2, Table 3, Administrative Record, Vol. 9.

61. BCVMC’s Exhibit A-1, Tab 5, Administrative Record, Vol. 11.

prices in British Columbia of U.S. potatoes. Accordingly, rescission of the order is likely to cause injury even to those larger producers, which would have no alternative but to lower their prices to meet U.S. import prices in order to maintain their market share.

The evidence shows that, since the last review in 1995, B.C. growers have made improvements in the quality of service and product that they provide⁶² and have developed new niche markets for their potatoes.⁶³ The Tribunal found that some consolidation and rationalization has taken place in the B.C. industry, particularly with respect to marketing and packing operations. In that regard, the evidence shows that growers have made significant investments in new storage facilities and packing equipment since 1995. Twenty growers, representing 72 percent of the total volume of production in the B.C. industry, made capital investments totaling more than \$10 million for buildings and equipment during the period from January 1996 to early June 2000.⁶⁴

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

CONCLUSION

For the foregoing reasons, the Tribunal is of the view that the order relating to imports of whole potatoes, excluding seed potatoes and excluding imports during the period from May 1 to July 31, inclusive, of each calendar year, imported from the United States of America, for use or consumption in the province of British Columbia, should be continued.

Richard Lafontaine

Richard Lafontaine
Presiding Member

Peter F. Thalheimer

Peter F. Thalheimer
Member

James A. Ogilvy

James A. Ogilvy
Member

62. *Transcript of Public Hearing*, Vol. 2, 18 July 2000, at 480, 487 and 488; and BCVMC's Exhibit A-15 at 1, Administrative Record, Vol. 11.

63. *Transcript of Public Hearing*, Vol. 2, 18 July 2000, at 491 to 493; and BCVMC's Exhibits A-14 at 2 and A-15 at 1, Administrative Record, Vol. 11.

64. Tribunal Exhibit RR-99-005-RI-1 at 6, Table 1, Administrative Record, Vol. 9.