



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2020-002

Certain Whole Potatoes

*Order and reasons issued
Wednesday, June 2, 2021*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on September 9, 2015, in Expiry Review No. RR-2014-004, concerning:

CERTAIN WHOLE POTATOES

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of the order made on September 9, 2015, in Expiry Review No. RR-2014-004, concerning the dumping of whole potatoes, excluding seed potatoes, excluding imports during the period from May 1 to July 31, inclusive, of each calendar year, and excluding red potatoes, yellow potatoes and the exotic potato varieties, regardless of packaging, and white and russet potatoes imported in 50-lb. cartons in the following count sizes: 40, 50, 60, 70 and 80, and excluding whole potatoes certified as organic by a recognized certification agency, imported from the United States of America, for use or consumption in the province of British Columbia.

The Tribunal's order in Expiry Review No. RR-2014-004 continued, with amendment, its order made on September 10, 2010, in Expiry Review No. RR-2009-002, continuing, without amendment, its order made on September 12, 2005, in Expiry Review No. RR-2004-006, continuing, with amendment, its order made on September 13, 2000, in Review No. RR-99-005, continuing, without amendment, its order made on September 14, 1995, in Review No. RR-94-007, continuing, with amendment, its order made on September 14, 1990, in Review No. RR-89-010, which continued, without amendment, (1) the finding of the Anti-dumping Tribunal made on June 4, 1984, in Inquiry No. ADT-4-84, concerning whole potatoes with netted or russeted skin, excluding seed potatoes, in non-size A, also commonly known as strippers, originating in or exported from the state of Washington, United States of America, for use or consumption in the province of British Columbia, and (2) the finding of the Canadian Import Tribunal made on April 18, 1986, in Inquiry No. CIT-16-85, concerning whole potatoes, originating in or exported from the United States of America, for use or consumption in the province of British Columbia, excluding seed potatoes, and excluding whole potatoes with netted or russeted skin in non-size A, originating in or exported from the state of Washington.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its order in respect of the aforementioned goods.

Cheryl Beckett
Cheryl Beckett
Presiding member

Susan D. Beaubien
Susan D. Beaubien
Member

Georges Bujold
Georges Bujold
Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	March 31, 2021
Tribunal Panel:	Cheryl Beckett, Presiding Member Susan D. Beaubien, Member Georges Bujold, Member
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STATEMENT OF REASONS

INTRODUCTION

[1] The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ has conducted an expiry review of the order made on September 9, 2015, in *Expiry Review No. RR-2014-004*,² concerning the dumping of certain whole potatoes, imported from the United States, for use or consumption in the province of British Columbia (the subject goods).

[2] Under *SIMA*, findings of injury or threat of injury and the associated protection in the form of anti-dumping or countervailing duties expire five years from the date of the finding or, if one or more orders continuing the finding have been made, the date of the last order made under paragraph 76.03(12)(b), unless the Tribunal initiates an expiry review before that date. The order in *Expiry Review No. RR-2014-004* was scheduled to expire on September 8, 2020.

[3] The Tribunal's mandate in this expiry review is to determine whether the rescission of the order is likely to result in injury to the domestic industry. If so, the order may be continued, with or without amendment, for a further five years. In the absence of likely injury to the domestic industry, the order will be rescinded.

PROCEDURAL BACKGROUND

[4] The Tribunal issued its notice of expiry review on July 29, 2020. This notice triggered the initiation of an investigation by the Canada Border Services Agency (CBSA) on July 30, 2020, to determine whether the expiry of the Tribunal's order was likely to result in the continuation or resumption of dumping of the subject goods.

[5] On December 24, 2020, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods.³

[6] On December 29, 2020, following the CBSA's determination, the Tribunal began its expiry review, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the order was likely to result in injury to the domestic industry.

[7] The period of review (POR) for the Tribunal's expiry review was August 1, 2017, to October 31, 2020, comprising three full years and the period of August 1 to October 31, 2020 (interim 2020). For comparative purposes, information was also collected and presented for August 1 to October 31, 2019 (interim 2019).

[8] The Tribunal sent letters asking the British Columbia Vegetable Marketing Commission (BCVMC), sales agencies regulated by the BCVMC, known domestic growers and importers of certain whole potatoes, and known foreign growers of the subject goods to respond to questionnaires that had been posted on its website. The Tribunal received a reply from the BCVMC and four replies from sales agencies stating that their members grew or imported certain whole potatoes during the POR. The Tribunal also received 14 replies to the grower questionnaire from companies stating that

¹ R.S.C., 1985, c. S-15 [*SIMA*].

² *Certain Whole Potatoes* (9 September 2015), RR-2014-004 (CITT) [*Expiry Review No. RR-2014-004*].

³ Exhibit RR-2020-002-04.

they produced certain whole potatoes during the POR, and eight replies to the importer questionnaire from companies stating that they imported certain whole potatoes during the POR.⁴ No replies to the foreign grower questionnaire were received.⁵

[9] Using the questionnaire responses and other information on the record, Tribunal staff prepared public and protected versions of the Investigation Report, which were placed on the record on February 17, 2021.

[10] The BCVMC filed submissions in support of a continuation of the order, which were made on behalf of several sales agencies that market potatoes and all registered potato growers in British Columbia.⁶ The BCVMC also filed a report by Mr. Al Mussell on the economics of potato exports from Idaho, Washington, and Oregon to British Columbia, and sought to have him qualified as an expert witness.⁷ The Tribunal received no objections to the admissibility of Mr. Mussell's evidence as expert testimony. Upon reviewing Mr. Mussell's *curriculum vitae* and the contents of his report, the Tribunal qualified Mr. Mussell as an expert in the areas of agricultural economics, including agri-food trade and policy.⁸

[11] The Tribunal did not receive any submissions opposing the continuation of the order. No requests for any product exclusion were filed. Loblaws Inc. filed a notice of participation but did not file any evidence or submissions.

[12] As such, the best evidence available to the Tribunal was the evidence led by the BCVMC, which was not contradicted or otherwise contested by any opposing evidence. This included the expert evidence of Mr. Mussell, who, by way of his expert witness report, provided some relevant objective and uncontradicted information.⁹

[13] On February 23, 2021, the Tribunal advised the parties that, due to COVID-19 measures, the evidentiary portion of the hearing would be conducted in writing and a public videoconference hearing would be held for final arguments.¹⁰ As no submissions were received from parties opposed to a continuation of the order, the Tribunal informed the parties on March 15, 2021, that the hearing would instead be held by way of written submissions only, pursuant to rule 25.1 of the *Canadian International Trade Tribunal Rules*.¹¹

⁴ The Tribunal received two replies to the importers' questionnaire from companies stating that they imported certain whole potatoes from the United States over the POR but which were for use or consumption in Canadian provinces or territories other than British Columbia. The data from these two importers were not included in the Tribunal's Investigation Report.

⁵ The Tribunal received replies from two growers located in the United States stating they did not grow certain whole potatoes during the POR.

⁶ Exhibit RR-2020-002-A-02 at para. 3.

⁷ Exhibit RR-2020-002-A-01; Exhibit RR-2020-002-A-01A.

⁸ Exhibit RR-2020-002-40.

⁹ The Tribunal notes that its mandate is to determine whether the rescission of the order, which provides a remedy against the dumping of the subject goods, is likely to result in injury to the domestic industry. It therefore considered the information on subsidies in the U.S. potato market, included in the expert witness report, only to the extent that it was relevant to the issues before the Tribunal.

¹⁰ Exhibit RR-2020-002-02A; Exhibit RR-2020-002-37. The Tribunal also reserved the right to hold a file hearing if there were no opposing parties (Exhibit RR-2020-002-02A at 2, 4).

¹¹ Exhibit RR-2020-002-39.

[14] On March 26, 2021, the Tribunal requested additional information from the BCVMC relating to its revenue loss estimates, expected prices and its weekly minimum selling prices over the POR.¹² The BCVMC provided the information on March 31, 2021, as requested.¹³

[15] A file hearing took place on March 31, 2021, without the presence of parties.

PRODUCT

Product definition

[16] The subject goods are defined as whole potatoes, excluding seed potatoes, excluding imports during the period from May 1 to July 31, inclusive, of each calendar year, and excluding red potatoes, yellow potatoes and the exotic potato varieties, regardless of packaging, and white and russet potatoes imported in 50-lb. cartons in the following count sizes: 40, 50, 60, 70 and 80, and excluding whole potatoes certified as organic by a recognized certification agency, imported from the United States of America, for use or consumption in the province of British Columbia.

Product information

[17] The CBSA provided the following additional product information:¹⁴

[28] Unlike virtually all other potato producing regions in North America, BC's potato sector does not have a processing industry. It is strictly geared toward the production of fresh potatoes for the table stock market. As a result, potato producers rely solely on fair market access to the fresh potato market, i.e., the table potato and food service markets, within BC to survive.

[29] In contrast, 75% of the potatoes produced in Oregon, Washington State and Idaho during the POR were sold to the potato processing industry, with the remaining portion sold to the fresh potato market.

[30] Potatoes destined for the processing industry can be sold in the fresh potato market; however, many varieties grown for the fresh market can only be sold in the fresh market as they are unsuitable for processing. Accordingly, fresh and processed potatoes produced in the US compete directly with fresh potatoes produced in BC.

[31] In both Canada and the US, the bulk of the potato harvest occurs from August to October, with potatoes that are not sold immediately being stored in storage sheds, where some varieties can be kept until the beginning of the following summer.

BCVMC

[18] The BCVMC is a commission established by provincial legislation and is empowered to regulate the production, transportation, packing, storing and marketing of certain storage and greenhouse crops grown in British Columbia, including potatoes.

¹² Exhibit RR-2020-002-41; Exhibit RR-2020-002-41A; Exhibit RR-2020-002-41B (protected).

¹³ Exhibit RR-2020-002-A-16; Exhibit RR-2020-002-A-17 (protected).

¹⁴ Exhibit RR-2020-002-03A.

[19] The BCVMC licenses and registers all producers of regulated products and sub-delegates its marketing powers to sales agencies, which are owned by licensed B.C. producers. There are five sales agencies, as well as one shipper-producer, that market potatoes in British Columbia:

- BC Fresh Vegetables Inc. (BC Fresh);
- Fraserland Organics Inc.;
- Island Vegetable Co-operative Association;
- Vancouver Island Farm Products Inc.;
- Okanagan Grown Produce Ltd.; and
- VIP Produce Ltd.¹⁵

[20] Goods marketed and sold under the BCVMC umbrella account for about 85 percent of sales of potatoes in British Columbia. The remaining 15 percent is outside of the BCVMC's regulatory control and includes potatoes sold through farmers' markets and on-farm stands, and potatoes grown north of the 53rd parallel.¹⁶

[21] The BCVMC, in consultation with the agencies, sets weekly minimum selling prices of potatoes under its control. This price represents the lowest prices that the agencies may set for the sale of potatoes that week. However, sales agencies may give promotions to encourage sales of certain varieties or packaging types that would result in a selling price that is lower than the BCVMC weekly minimum price.

[22] The weekly minimum prices are based on the landed Vancouver price of U.S. potatoes.¹⁷ The BCVMC also relies on B.C. inventory statistics, data on pricing and availability of potatoes in the U.S. market published in the U.S. Department of Agriculture's National Potato and Onion Report, the North American Potato Market News newsletter, and market reports prepared by the United Potato Growers of Canada and the United Potato Growers of America.

[23] The BCVMC has no authority over prices of imported goods sold in British Columbia.

LEGAL FRAMEWORK

[24] The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the order in respect of the subject goods is likely to result in injury or retardation for the domestic industry.¹⁸ Pursuant to subsection 76.03(12), if the Tribunal determines that the expiry of the order is unlikely to result in injury, it is required to rescind it. However, if it determines that the

¹⁵ Exhibit RR-2020-002-A-04 at para. 13. VIP Produce Ltd. is a producer that directly markets its own regulated production without the involvement of an agency, under a licensing agreement with the BCVMC. Fraserland Organics Inc. exclusively markets organic potatoes, which are excluded from the order.

¹⁶ Exhibit RR-2020-002-A-04 at paras. 33-34.

¹⁷ *Ibid.* at paras. 19-20.

¹⁸ Subsection 2(1) of *SIMA* defines "injury" as "material injury to the domestic industry" and "retardation" as "material retardation of the *establishment* of a domestic industry" [emphasis added]. Given that there is currently an established domestic industry, the issue of whether the expiry of the order is likely to result in retardation does not arise in this expiry review.

expiry of the order is likely to result in injury, the Tribunal is required to continue the order, with or without amendment.

[25] Before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what constitutes “like goods” in relation to the subject goods and whether there is more than one class of goods. Once that determination has been made, the Tribunal must determine what constitutes the “domestic industry”.

LIKE GOODS AND CLASSES OF GOODS

[26] In order for the Tribunal to determine whether the resumed or continued dumping of the subject goods is likely to cause material injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.¹⁹

[27] Subsection 2(1) of *SIMA* defines “like goods”, in relation to any other goods, as follows:

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

(b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

[28] In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors. These include the physical characteristics of the goods, such as composition and appearance, and their market characteristics, such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs.²⁰

[29] In the last three expiry reviews, the Tribunal found that potatoes grown in British Columbia that were defined in the same manner as the subject goods constituted like goods in relation to the subject goods.²¹ The Tribunal found that U.S. potatoes and B.C. potatoes are commodity products that are highly substitutable. In particular, the Tribunal noted that white and russet potatoes have similar physical characteristics and uses, and are grown and harvested using similar methods.²² The Tribunal also considered that there was only one class of goods.²³

[30] The BCVMC submitted that the evidence continues to demonstrate that B.C. potatoes are like goods in relation to the subject goods. It notably referred to the evidence provided by Mr. Murray

¹⁹ Should the Tribunal determine that there is more than one class of goods in this expiry review, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (FC).

²⁰ See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

²¹ *Expiry Review No. RR-2014-004* at paras. 29-31; *Certain Whole Potatoes* (10 September 2010), RR-2009-002 (CITT) [*Expiry Review No. RR-2009-002*] at paras. 87-89; *Certain Whole Potatoes* (12 September 2005), RR-2004-006 (CITT) [*Expiry Review No. RR-2004-006*] at para. 60.

²² *Expiry Review No. RR-2014-004* at paras. 29-30.

²³ *Ibid.* at para. 31.

Driediger of BC Fresh, the largest sales agency that markets potatoes in B.C., who stated that U.S. potatoes and B.C. potatoes remain highly substitutable products.²⁴

[31] The Tribunal is satisfied that there is no evidence on the record that would warrant a departure from its conclusions reached in the previous expiry reviews. Accordingly, the Tribunal remains of the view that B.C. potatoes are like goods in relation to the subject goods and that there is a single class of goods.

DOMESTIC INDUSTRY/REGIONAL MARKET

[32] In this expiry review, the Tribunal must consider whether British Columbia continues to constitute a regional market for potatoes. This assessment consequentially affects the definition of the domestic industry.

[33] Subsection 2(1) of *SIMA* defines “domestic industry” as follows:

... subject to subsection (1.1), the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, **domestic industry** may be interpreted as meaning the rest of those domestic producers.

[34] Where a regional market is alleged to exist, as in this case, the relevant provision is subsection 2(1.1) of *SIMA*, which provides as follows:

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.

[35] If a regional industry is found to exist in accordance with subsection 2(1.1) of *SIMA*, subsection 42(5) provides as follows:

Where subsection 2(1.1) applies in respect of the dumping or subsidizing of goods to which the preliminary determination applies, 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

²⁴ Exhibit RR-2020-002-A-06 at paras. 33-40.

(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.

[36] Based on the above provisions, the Tribunal will consider three conditions, each of which must be met, to determine whether the regional market analysis should continue to apply.²⁵ Specifically, the Tribunal will examine:

- Whether all or almost all of the like goods were sold in the B.C. market;
- Whether B.C. demand was to any substantial degree supplied by like goods from elsewhere in Canada; and
- Whether there is a concentration of dumped goods in the B.C. market.

[37] With respect to the first condition, in previous expiry reviews, the Tribunal considered this condition to be met if at least 80 percent of B.C. production was sold in British Columbia.²⁶ In the present expiry review, over 80 percent of B.C. potatoes were sold in British Columbia in each crop year of the POR, with the exception of interim 2020.²⁷ The BCVMC argued, and the Tribunal accepts, that as interim 2020 only reflects three months, it is not representative of a full crop year.

[38] The BCVMC also submitted that the majority, if not all, of unregulated sales of like goods (i.e. the 15 percent of sales of like goods that occur outside of the BCVMC's regulatory control) were also likely to be sales within the B.C. market, as they were largely direct-to-consumer sales occurring in smaller communities. The BCVMC argued that if these unregulated sales were taken into consideration, the percentage of sales of like goods in the B.C. market would likely be even higher. In view of the foregoing, the Tribunal finds that there is sufficient evidence to demonstrate that the first condition is met.

[39] The Tribunal also finds that the second condition is met. Mr. Andre Solymosi of the BCVMC stated that it is unusual to see potatoes in the B.C. market from elsewhere in Canada during the dutiable period (i.e. August 1 to April 30).²⁸ Mr. Driediger stated that potatoes from other Canadian provinces are limited to a small quantity of russet potatoes from Prince Edward Island and small packs of creamer potatoes from Alberta.²⁹ These accounts are consistent with the Tribunal's data, which shows that potatoes from other Canadian provinces represented a small fraction of the B.C. market in each year of the POR.³⁰

[40] With respect to the third condition, the Tribunal considered whether there is a concentration of dumped goods in the B.C. market. In order to do so, the Tribunal examined the value of subject goods relative to the value of the entire B.C. market and the proportion of total imports into Canada

²⁵ *Expiry Review No. RR-2014-004* at paras. 44-45.

²⁶ *Expiry Review No. RR-2009-002* at para. 92; *Expiry Review No. RR-2004-006* at para. 63.

²⁷ Exhibit RR-2020-002-06.01 (protected) at Table 4.

²⁸ Exhibit RR-2020-002-A-04 at paras. 35-36.

²⁹ Exhibit RR-2020-002-A-06 at para. 20. Mr. Driediger also explained that in April 2020, BC Fresh imported russet potatoes from Alberta in response to demand shifts resulting from restrictions on restaurants in response to the COVID-19 pandemic (see Exhibit RR-2020-002-A-06 at para. 21).

³⁰ Exhibit RR-2020-002-06.01 (protected) at Table 4.

that were destined for British Columbia.³¹ The value of subject goods represented a significant percentage of the total value of the B.C. market, and a considerable proportion of the value of total U.S. imports into Canada was destined for British Columbia.³² This evidence persuades the Tribunal that there is a concentration of subject goods in the B.C. market.

[41] Accordingly, the Tribunal determines that British Columbia remains a regional market and that the growers in that market constitute a separate domestic industry. The Tribunal will conduct its likelihood of injury analysis on this basis.

[42] The question of whether the dumping of those goods is likely to cause injury to the growers of all or almost all of the production of like goods in the regional market, as set out in paragraph 42(5)(b) of *SIMA*, is dealt with below in the discussion on the likelihood of injury.

LIKELIHOOD OF INJURY ANALYSIS

[43] An expiry review is forward-looking.³³ It follows that evidence from the period during which an order or a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.³⁴

[44] There is no presumption of injury in an expiry review; findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the World Trade Organization.³⁵ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.³⁶

[45] In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term. The relevant time period is generally considered to be a period that can extend up to 24 months from the date on which the order or finding would be rescinded.³⁷ In this case, the Tribunal was not presented with any argument that it should consider a different period. Therefore, the Tribunal finds it appropriate to focus its analysis on the next 24 months.

[46] Subsection 37.2(2) of the *Special Import Measures Regulations*³⁸ lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed below.

³¹ *Expiry Review No. RR-2014-004* at para. 60; *Expiry Review No. RR-2009-002* at paras. 97-98; *Expiry review No. RR-2004-006* at para. 66; *Certain Whole Potatoes* (13 September 2000), RR-99-005 (CITT) at 12; *Certain Whole Potatoes* (14 September 1995), RR-94-007 (CITT) at 14.

³² Exhibit RR-2020-002-06.01 (protected) at Table 4.

³³ *Certain Dishwashers and Dryers* (procedural order dated 25 April 2005), RR-2004-005 (CITT) at para. 16.

³⁴ *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) [*Thermoelectric Containers*] at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See also *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions*] at para. 21.

³⁵ *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

³⁶ *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

³⁷ *Carbon Steel Screws* (2 September 2020), RR-2019-002 (CITT) at para. 133.

³⁸ S.O.R./84-927 [*Regulations*].

Changes in market conditions

[47] In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the order were rescinded, the Tribunal will first consider changes in international and domestic market conditions.³⁹

[48] The Tribunal finds that conditions in the U.S. potato market have not changed significantly since the last expiry review. U.S. production levels remain high, with the majority of production occurring in Idaho, Oregon and Washington (the western states). Production in the western states alone dwarfs the entire apparent B.C. market.⁴⁰ The Tribunal notes that the western states are particularly relevant as they are the primary suppliers to British Columbia. In this regard, few questionnaire respondents reported subject imports in B.C. from states other than the western states.⁴¹

[49] The Tribunal also finds that the B.C. potato market has not changed significantly since the last expiry review. The B.C. market continues to rely on U.S. imports to meet demand, particularly during the non-dutiable period of May 1 to July 31, and B.C. growers remain price takers.⁴² As such, given its relatively small size, the B.C. market continues to be highly subject to the influence of conditions prevailing in the U.S. market, as was the case in previous expiry reviews.

[50] Furthermore, the B.C. and U.S. potato markets continue to be highly integrated. B.C. remains a natural outlet for U.S. potatoes, particularly from the western states, due to proximity and well-established supply chains.

[51] Looking forward, there is no indication that there will be any material changes in these conditions in the near to medium term.

[52] The first half of 2020 saw the onset of the COVID-19 pandemic, which caused jurisdictions worldwide to impose containment measures, which pushed the global economy into a recession and disrupted economic activity. The United States saw lower demand in 2020, signalled by lower potato shipments and more potatoes in storage.⁴³ In British Columbia, government measures affecting restaurants and food service led to decreased demand for potatoes in that sector, which was offset by a spike in retail demand.⁴⁴ The evidence shows that, as the pandemic began before the 2020/2021 crop was planted, B.C. growers were able to adjust their 2020/2021 plantings to respond to these demand shifts, i.e. reducing plantings of varieties used by the food service industry and increasing plantings of other varieties. B.C. growers expect to make similar adjustments to the 2021/2022 crop.⁴⁵ However, on a longer-term basis, food service demand is expected to recover to pre-pandemic levels as containment measures lift and restaurant demand increases.⁴⁶

³⁹ See paragraph 37.2(2)(j) of the *Regulations*.

⁴⁰ Exhibit RR-2020-002-A-05 (protected) at 235; Exhibit RR-2020-002-06.01 (protected) at Table 9.

⁴¹ Exhibit RR-2020-002-05.01 at 6 and Table 2. States other than the western states included California and Florida.

⁴² Exhibit RR-2020-002-A-06 at para. 22.

⁴³ Exhibit RR-2020-002-13.01 at 142, 1610-1611.

⁴⁴ Exhibit RR-2020-002-A-06 at paras. 15-17.

⁴⁵ *Ibid.* at paras. 15-16; Exhibit RR-2020-002-A-07 (protected) at paras. 15-16.

⁴⁶ Exhibit RR-2020-002-A-06 at para. 16.

Likely import volume of subject goods

[53] Paragraph 37.2(2)(a) of the *Regulations* directs the Tribunal to consider the likely volume of the dumped goods if the order is allowed to expire and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped goods, either in absolute terms or relative to the production or consumption of like goods.

[54] This assessment may encompass the likely performance of the foreign industry, the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether trade measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.⁴⁷

[55] The BCVMC submitted that there are large volumes of potatoes in the United States that can easily be diverted into the B.C. market, and that if the order is rescinded, low-priced subject goods will enter the B.C. market in significant volumes.

[56] In the previous expiry review, the Tribunal also found that U.S. production, acreages and crop yields were “extremely high” relative to those of the B.C. industry.⁴⁸ The evidence in this review indicates that this remains the case.

[57] From 2017 to 2020, U.S. growers had an annual production of 432 to 450 million hundredweight (cwt) potatoes each year.⁴⁹ Year over year, production remained relatively stable in 2018 and declined in 2019 and 2020. The BCVMC argued that these levels of production are not driven by market demand, resulting in a consistent oversupply. In this regard, the Tribunal notes that the CBSA found that surplus production in the U.S. industry has increased and that the oversupply of potatoes is expected to widen further over anticipated demand in the near to medium term.⁵⁰ This is also consistent with the Tribunal’s finding in the previous expiry review that U.S. production levels were not driven by demand or subject to effective regulatory controls, resulting in overproduction.⁵¹

[58] More specifically, the majority of U.S. potatoes are grown in the western states, which supplied the bulk of subject goods in British Columbia over the POR.⁵² From 2017 to 2020, the western states grew upwards of 259 million cwt of potatoes each year, which represented between 58 and 60 percent of total annual U.S. production.⁵³

[59] In comparison, B.C. growers produced a fraction of the volumes of subject goods grown in the western states alone. The vast majority of potatoes produced in the western states are russet and white potatoes, as opposed to yellow, red or exotic potatoes, which are excluded from the Tribunal’s

⁴⁷ Paragraphs 37.2(2)(d), (f), (h) and (i) of the *Regulations*.

⁴⁸ *Expiry Review No. RR-2014-004* at paras. 90 and 92.

⁴⁹ Exhibit RR-2020-002-A-06 at 64; Exhibit RR-2020-002-13.01 at 1378, 1502. As of 2019, the USDA discontinued estimates of production for Alaska, Illinois, Kansas, Maryland, Missouri, Montana, New Jersey, New York, North Carolina, and Virginia (together, the “Discontinued States”). The estimates of the Discontinued States for the production year 2018 were added to the estimates of the production for the years 2019 and 2020.

⁵⁰ Exhibit RR-2020-002-03A at paras. 86-88.

⁵¹ *Certain Whole Potatoes* (9 September 2015), RR-2014-004 (CITT) at para. 87.

⁵² Exhibit RR-2020-002-13.01 at 1378, 1502; Exhibit RR-2020-002-22.

⁵³ Exhibit RR-2020-002-13.01 at 1378, 1502; Exhibit RR-2020-002-A-02 at 32; Exhibit RR-2020-002-A-06 at 64.

order.⁵⁴ According to United States Department of Agriculture (USDA) data, in each year from 2017 to 2019, the majority of acres planted in each of the western states were for russet potatoes.⁵⁵ As such, when combined with acres planted for white potatoes, the evidence indicates that at least 90 percent of the acres planted in each of the western states produced subject goods.⁵⁶

[60] From 2017 to 2020, the western states also led the U.S. industry in terms of acres planted and yield per acre. The western states consistently accounted for approximately half of total U.S. acres planted.⁵⁷ Notably, Idaho and Washington were the only states to plant more than 100,000 acres annually, with over 300,000 and 155,000 acres planted respectively.⁵⁸

[61] In addition, acres planted declined from 2017 to 2020 at both the total U.S. level and in the western states, though the decline was smaller in the western states.⁵⁹ The evidence also shows that yield per acre in the western states increased from almost 499 cwt per acre in 2017 to 522 cwt per acre in 2020, compared to fluctuations between 359 cwt per acre to 373 cwt per acre in all other states.⁶⁰

[62] The Tribunal also notes that the western states only grow fall potatoes, which are planted in the spring, harvested during the months of July to October, then stored and marketed through to the next harvest.⁶¹ In 2018, fall potato production in the western states represented 65 percent of all U.S. fall potatoes.⁶² The BCVMC argued, and the Tribunal accepts, that the concentration of fall potatoes in the western states is particularly relevant as B.C. growers primarily compete with U.S. fall potatoes.

[63] As noted above, the bulk of potatoes produced in the western states are used for processing. Many varieties of processing potatoes can also be sold for table use (also referred to as “fresh potatoes”), whereas many table varieties are not suitable for processing.⁶³ The evidence also shows that some potatoes are planted as “flex” potatoes, that is potatoes for which there are no firm processing contracts in place and that can be sold for either processing or table use.

[64] The BCVMC argued, and the Tribunal agrees, that any surplus in potatoes in the western states can therefore easily be diverted for sale on B.C.’s fresh market. Based on 2020 data, the BCVMC also submitted that a one-percent surplus in processing potatoes in the western states would result in 2.6 million cwt of potatoes that could be diverted for sale on the fresh market. This represents a volume that, standing alone, is several times larger than the apparent size of the entire B.C. market in that year.

⁵⁴ Exhibit RR-2020-002-13.01 at 1757.

⁵⁵ *Ibid.* at 1777.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.* at 1377-1378, 1501-1502; Exhibit RR-2020-002-A-06 at para. 95 and at 62.

⁵⁸ Exhibit RR-2020-002-13.01 at 1377-1378, 1501-1502; Exhibit RR-2020-002-A-06 at para. 95 and at 62.

⁵⁹ Exhibit RR-2020-002-A-06 at 60; Exhibit RR-2020-002-13.01 at 1377, 1501.

⁶⁰ Exhibit RR-2020-002-13.01 at 1377-1378, 1501-02; Exhibit RR-2020-002-A-06 at 62.

⁶¹ Exhibit RR-2020-002-13.01 at 1247.

⁶² *Ibid.* at 1248.

⁶³ Exhibit RR-2020-002-13.01 at 1773-1775; Exhibit RR-2020-002-A-01 at para. 5; Exhibit RR-2020-002-A-06 at paras. 102-104.

[65] It is also evident that British Columbia remains an attractive market for U.S. suppliers and that U.S. potatoes are readily available to B.C. purchasers. This is consistent with the fact that B.C. demand is largely met by U.S. potatoes during the non-dutiable period. Even with the anti-dumping duties in place, U.S. suppliers have maintained a competitive position within the B.C. market, as evidenced by the strong presence of subject goods throughout the POR.⁶⁴ Although market share held by the subject goods declined during the POR, subject goods made up the vast majority of imported potatoes in each period of the POR, with potatoes from other Canadian provinces comprising a minimal share of the B.C. import market.⁶⁵

[66] Mr. Driediger explained that there are well-established supply chains between the western states and British Columbia. He stated that there is daily contact between U.S. shippers and B.C. customers. U.S. packing houses frequently offer to sell low-priced russet potatoes to BC Fresh.⁶⁶ Mr. Driediger also stated that an order of U.S. potatoes from Washington placed at 8 a.m. could be delivered to a warehouse in British Columbia by 4 p.m. that same day, due to their proximity and established supply chains.⁶⁷

[67] In view of these conditions, the Tribunal finds that there is a persistent supply of potatoes in the United States, concentrated in the western states, that can be easily diverted into the B.C. market. The Tribunal therefore finds that it is very likely that the rescission of the order would result in a significant increase in the volume of subject goods.

Likely price effects of subject goods

[68] The Tribunal must consider whether, if the order is allowed to expire, the dumping of subject goods is likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred.⁶⁸ In this regard, the Tribunal distinguishes the price effects of the dumped goods from any price effects that would likely result from other factors affecting prices.

[69] In the previous expiry reviews, the Tribunal found that B.C. growers are price takers and that the best indicator of future prices in British Columbia is U.S. market prices.⁶⁹ The evidence in the present review indicates that these conditions have not changed.

[70] B.C. growers continue to set their prices against prices of subject goods. The BCVMC, in consultation with the sales agencies, sets weekly minimum prices for B.C. potatoes. Mr. Solymosi explained that the most important factor in determining these prices is the price of U.S. potatoes in the B.C. market, as this is the price against which B.C. potato producers must compete in order to retain sales.⁷⁰ Prices of U.S. russet potatoes are particularly important, as these potatoes are the lowest-priced in the fresh market.⁷¹

⁶⁴ Exhibit RR-2020-002-06.01 (protected) at Table 7.

⁶⁵ Exhibit RR-2020-002-05.01 at Table 5; Exhibit RR-2020-002-06.01 (protected) at Table 11.

⁶⁶ Exhibit RR-2020-002-A-06 at paras. 50-52, 111; Exhibit RR-2020-002-A-07 (protected) at paras. 50-52.

⁶⁷ Exhibit RR-2020-002-A-06 at para. 112.

⁶⁸ Paragraph 37.2(2)(b) of the *Regulations*.

⁶⁹ *Expiry Review No. RR-2014-004* at para. 109-110; *Expiry Review No. RR-2009-002* at para. 158.

⁷⁰ Exhibit RR-2020-002-A-04 at paras. 19-20.

⁷¹ *Ibid.* at para. 26.

[71] While some buyers are willing to pay a modest premium for B.C. grown potatoes, the evidence indicates that others would not purchase local potatoes unless they were priced at, or below, prices of U.S. imports.⁷² In addition, consolidation in the B.C. retail industry has increased retailers' buying power and their ability to insist that B.C. potatoes be priced on par with, or lower, than U.S. potatoes.⁷³ As put by Mr. Driediger, "the reality for B.C. growers is that their prices cannot get out of line with prices established in U.S. markets, after making adjustments for transportation, duties and exchange rates."⁷⁴ The Tribunal notes that this is consistent with the Tribunal's finding in the previous expiry review that certain retailers used U.S. prices to negotiate prices for B.C. potatoes.⁷⁵

[72] Altogether, the Tribunal finds that like goods are priced relative to subject goods and cannot exceed the prices of subject goods, aside from a modest domestic price premium. The subject goods therefore act as a price ceiling for the like goods. This relationship was reflected in the Tribunal's data for the POR, which showed that prices of like goods and subject goods tended to move in the same direction between periods examined, although prices of subject goods increased by a greater amount than those of the like goods.⁷⁶

[73] The BCVMC submitted that if the order were rescinded, prices would drop to U.S. market levels from the normal values set by the CBSA. In turn, this would force B.C. growers to lower their prices to similar levels.⁷⁷ The BCVMC submitted, and the Tribunal agrees, that the appropriate metric for likely prices of subject goods is accordingly the U.S. "Mostly" prices as set out in the USDA National Potato and Onion Report, and which represent the selling prices for russet potatoes originating in the Columbia Basin, adjusted for currency fluctuations and freight charges to British Columbia (adjusted U.S. Mostly prices).

[74] The Tribunal finds that the adjusted U.S. Mostly prices represent the price at which U.S. goods would likely be sold in B.C. without anti-dumping duties. It follows that, without the order, the BCVMC's weekly minimum prices would be set against adjusted U.S. Mostly prices, rather than with reference to normal values set by the CBSA.

[75] To assess the likely impact on prices of like goods if the order were rescinded, the Tribunal examined the adjusted U.S. Mostly prices for Washington state and normal values set by the CBSA for the two most common product packages, i.e. 5 x 10-lb. poly bales of russets and 10 x 5-lb. poly bales of russets.⁷⁸ These were compared to the BCVMC weekly minimum prices for russet potatoes.⁷⁹

⁷² Exhibit RR-2020-002-A-06 at paras. 46-47.

⁷³ *Ibid.* at para. 60.

⁷⁴ *Ibid.* at para. 46.

⁷⁵ *Expiry Review No. RR-2014-004* at paras. 109, 113.

⁷⁶ Exhibit RR-2020-002-05.01 at Table 20; Exhibit RR-2020-002-06.01 (protected) at Table 19.

⁷⁷ The BCVMC also argued that U.S. producers can and do sell below cost of production, due to significant excess supply. The BCVMC also argued that the normal values set by the CBSA were outdated and allowed U.S. producers to sell below cost of production. The Tribunal notes that the setting of normal values falls within the jurisdiction of the CBSA. The Tribunal will only consider these factors to the extent that they are relevant to the issue before the Tribunal, which is to determine the likely price effects of subject goods on like goods.

⁷⁸ The Tribunal examined the normal values submitted by the BCVMC, which were adjusted for freight to Vancouver and for currency fluctuations. Exhibit RR-2020-002-22. The Tribunal also notes that the term "poly bale" is a generic industry term used to describe a type of potato packaging.

⁷⁹ Data contained in spreadsheets filed by BCVMC in response to Tribunal RFIs at Exhibit RR-2020-002-A-17 (protected) at 14-16.

[76] The evidence confirmed that the average adjusted U.S. Mostly prices for both products were considerably lower than the prices of B.C. russets in all periods of the POR. The adjusted U.S. Mostly prices for 5 x 10-lb. poly bales were also lower than their normal values in all periods of the POR. For the 10 x 5-lb. poly bales, the adjusted U.S. Mostly prices marginally exceeded normal values during the periods of August 2019 to April 2020 and August 2020 to February 2021.⁸⁰

[77] When the modest domestic price premium described by Mr. Driedger was applied to the adjusted U.S. Mostly prices, the data indicated that B.C. prices would have been between 6 and 20 percent lower in each period of the POR without the benefit of the order. Further, the Tribunal accepts the evidence of the BCVMC that, in the absence of anti-dumping duties, the B.C. market would be more accessible to importers, and domestic premiums would likely decline or even be eliminated, resulting in an even greater decline in prices.⁸¹

[78] Based on the data examined, U.S. prices saw increases in late 2019 and early 2020. However, having regard to the longer-term trend over the POR, the Tribunal is not convinced that this short-term rise in U.S. domestic prices predicts a likely material increase in U.S. domestic prices over the next 24 months.⁸² In this regard, the Tribunal also notes that this period of rising U.S. domestic prices corresponded with lower potato supply due to late plantings in the Columbia Basin and an early freeze in Idaho in 2019.⁸³ These circumstances are unusual and, therefore, not indicative or predictive of sustained price increases over the short to medium term.

[79] Furthermore, despite these increases, U.S. domestic prices remained considerably lower than the prices of like goods. The evidence also indicates that U.S. prices began decreasing at the end of 2020 and remained stable in early 2021.⁸⁴

[80] On the basis of the above evidence, the Tribunal finds that absent anti-dumping duties, B.C. prices would be competing with adjusted U.S. Mostly prices, which have been generally lower over the POR than normal values and the prices of like goods. There is no evidence to indicate that the generally low-price trends in the U.S. Mostly prices seen over the POR are likely to change in the near to medium term. The Tribunal therefore finds that, in the absence of the order, subject goods would likely significantly undercut the prices of the like goods.

[81] In addition, having regard to the position of the B.C. growers as price takers in the market, the evidence indicates that B.C. domestic prices would necessarily follow declining U.S. import prices. As such, in the absence of the order, it is likely that the prices for the like goods will converge with the lower prices prevailing in the United States.

[82] The Tribunal therefore also finds that if the order were rescinded, subject imports would likely significantly depress the prices of the like goods.

⁸⁰ *Ibid.*

⁸¹ Exhibit RR-2020-002-A-16 at 5.

⁸² In this regard, Mr. Mussell stated that producers in the western states have sold potato crops at a loss in recent years and there is no indication that these low-priced trends will cease, as the U.S. potato industry benefits from various subsidies that offset the losses. Exhibit RR-2020-002-A-01 at paras. 41-43.

⁸³ Exhibit RR-2020-002-13.01 at 68, 109, 111, 113, 114.

⁸⁴ Exhibit RR-2020-002-A-17 (protected).

Likely impact of the subject goods on the domestic industry

[83] The Tribunal will assess the likely impact of the above volumes and prices on the domestic industry if the order were rescinded, taking into consideration the recent performance of the domestic industry.⁸⁵

[84] In this analysis, the Tribunal distinguishes the likely impact of the dumped goods from the likely impact of any other factors affecting or likely to affect the domestic industry.⁸⁶

Recent performance of the domestic industry

[85] Over the POR, B.C. growers saw positive performance in several key indicators.

[86] The overall B.C. market for certain whole potatoes contracted over the POR.⁸⁷ Sales of like goods also decreased in each period of the POR, but B.C. growers gained and maintained a small increase in market share.⁸⁸ Exports of like goods also increased over the POR, particularly in interim 2020 as compared to interim 2019.⁸⁹

[87] For the surveyed growers, revenues from sales of like goods grew in each period of the POR. Like goods remained profitable for B.C. growers, with the exception of 2019/2020.⁹⁰ Direct employment and the number of hours worked also increased in each period of the POR. B.C. growers consistently sold out their inventories by the end of April, i.e. the end of the dutiable period.⁹¹

[88] The BCVMC submitted that farms made significant investments in equipment and technology to improve yields. Indeed, although the acreages planted for like goods by B.C. growers remained relatively steady over the POR, harvests increased steadily from 2017/2018 to 2019/2020.⁹² Acres planted, yields and harvests of like goods saw a slight decrease in interim 2020 as compared to interim 2019, but harvests of other potatoes, as well as total potato harvests, increased considerably.⁹³

[89] As noted above, the BCVMC submitted, and the Tribunal accepts, that B.C. growers reduced plantings of like goods and increased plantings of other potato varieties in response to shifting market demands as customers dined at home more often due to COVID-19 containment measures.⁹⁴ The evidence also shows that growers have planned significant investments in new equipment if the order remains in place.⁹⁵

⁸⁵ Paragraphs 37.2(2)(c), (e) and (g) of the *Regulations*.

⁸⁶ See paragraph 37.2(2)(k) of the *Regulations*.

⁸⁷ Exhibit RR-2020-002-05.01 at Table 10.

⁸⁸ *Ibid.* at Tables 10, 12; Exhibit RR-2020-002-06.01 (protected) at Tables 9, 10, 11.

⁸⁹ Exhibit RR-2020-002-05.01 at Table 16; Exhibit RR-2020-002-06.01 (protected) at Table 16.

⁹⁰ Exhibit RR-2020-002-05.01 at Table 22; Exhibit RR-2020-002-06.01 (protected) at Table 22.

⁹¹ Exhibit RR-2020-002-05.01 at Tables 27, 29; Exhibit RR-2020-002-06.01 (protected) at Table 29.

⁹² Exhibit RR-2020-002-05.01 at Table 26.

⁹³ *Ibid.*

⁹⁴ Exhibit RR-2020-002-A-06 at paras. 15-16.

⁹⁵ Exhibit RR-2020-002-A-07 (protected) at 14; Exhibit RR-2020-002-A-10 at para. 25; Exhibit RR-2020-002-05.01 at Table 28.

[90] This recent performance indicates that, with the order in place, the domestic industry has been able to increase its market share, increase employment, make significant investments in new equipment and technology, and experiment with new varieties to meet changing market demands.

[91] However, the evidence also indicates that B.C. growers remain vulnerable to downward pricing pressure from subject imports. For the reasons that follow, the Tribunal finds that the sustainability of the B.C. potato industry would likely be at significant risk should the order be rescinded.

[92] In particular, there is ample evidence to support a finding of likely injury resulting from the resumed or continued dumping of the subject goods to all or almost all of the regional production, if the order were to be rescinded.

Likely impact of the rescission of the order on the domestic industry

[93] According to the BCVMC, the B.C. potato industry would not survive if the order were not continued.

[94] The Tribunal has already found that if the order is allowed to expire, significantly increased volumes of low-priced subject imports would enter the B.C. market. The BCVMC argued that this would reduce or even eliminate the profitability of the 2021/2022 crop year, which would in turn reduce revenues and market shares in the following season.

[95] Witness statements from representatives of B.C. growers were filed in support of these arguments. For example, Mr. Peter Guichon of Felix Farms Ltd. stated that without the order, his farm, and the B.C. industry generally, would be irreparably injured within the next year.⁹⁶

[96] Mr. Guichon also stated that, without anti-dumping measures, his farm would incur substantial losses in the 2021/2022 crop year and would expect to substantially reduce plantings for the 2022/2023 crop year, which would have a severe impact on the farm's profitability and result in considerable loss of market share.⁹⁷ Witnesses from other farms also made similar statements, which confirmed the vulnerable position of B.C. growers.⁹⁸

[97] The evidence also shows that farms would stop growing russet potatoes if the order were not continued, as growers would be unable to compete with dumped prices.⁹⁹

[98] Several witnesses explained, and the Tribunal accepts, that russet potatoes are vital to the viability of a farm's potato business, and in many cases, to farm operations as a whole.¹⁰⁰ Russets dominate the B.C. market, as the market typically demands more russets than any other potato. As a result, they are the "backbone" of the farming operation.¹⁰¹

⁹⁶ Exhibit RR-2020-002-A-10 at paras. 34-35.

⁹⁷ *Ibid.* at paras. 35-36.

⁹⁸ Exhibit RR-2020-002-A-08 at para. 32; Exhibit RR-2020-002-A-12 at paras. 27-28; Exhibit RR-2020-002-A-14 at para. 32.

⁹⁹ Exhibit RR-2020-002-A-12 at para. 28; Exhibit RR-2020-002-A-14 at para. 32.

¹⁰⁰ Exhibit RR-2020-002-A-06 at paras. 30-32; Exhibit RR-2020-002-A-08 at paras. 30, 35-40; Exhibit RR-2020-002-A-10 at paras. 19, 42; Exhibit RR-2020-002-A-12 at paras. 28, 31; Exhibit RR-2020-002-A-14 at paras. 31-33.

¹⁰¹ Exhibit RR-2020-002-A-06 at para. 28; Exhibit RR-2020-002-A-10 at para. 19.

[99] Mr. Heppell explained that production of russets allows significant economies of scale, which keep costs of production manageable.¹⁰² The evidence demonstrates that if production of domestic russet potatoes ceased, it is likely that subject imports would quickly gain substantial market share.¹⁰³

[100] Based on the statements filed by the witnesses, the Tribunal finds that although B.C. growers could try to respond by increasing production of other like goods, specifically white potatoes, these potatoes are substitutable for U.S. russet potatoes. As such, they would also be vulnerable to being displaced by lower-priced subject goods.¹⁰⁴

[101] The evidence shows that B.C. growers have limited opportunities to mitigate the impacts of subject goods. There is insufficient demand to increase planting of other potato crops, and growers are also restricted in their ability to plant alternative crops, due to the statutory restrictions on farmland in B.C.¹⁰⁵

[102] The evidence further indicates that without a sufficient and competitive supply of like goods, specifically russet potatoes, the viability of other potato crops would also be jeopardized, as buyers prefer to purchase all their potatoes from one supplier.¹⁰⁶

[103] According to the uncontradicted testimony of witnesses for the BCVMC, farms would lose equipment assets, sell acres and significantly reduce employment, in the absence of the order.¹⁰⁷ The evidence also shows that farms would lose returns on the investments that were made to expand and improve production.¹⁰⁸

[104] In view of the foregoing, the Tribunal finds that the evidence put forward by the BCVMC is persuasive and cogently supports a finding that resumed dumping of the subject goods is likely to cause a significant adverse impact on the performance of B.C. growers over the next 12 to 24 months.

[105] To assess the likely financial impact of subject goods, the BCVMC estimated the revenues that would have been lost by growers regulated by the BCVMC if the order had not been continued in *Expiry Review No. RR-2014-004*. In the Tribunal's view, this estimate was overly broad, as it was based on all potato types, not just like goods.

[106] The Tribunal performed its own analyses to assess potential lost revenues in each full year of the POR using confidential data submitted by the BCVMC in its response to questions from the Tribunal sent on March 26, 2021.¹⁰⁹ The Tribunal compared the adjusted U.S. Mostly prices for the 5 x 10-lb. poly bales of russets and 10 x 5-lb. poly bales of russets to the average BCVMC weekly minimum selling prices for the same goods for each dutiable period of the POR. This enabled the

¹⁰² Exhibit RR-2020-002-A-12 at para. 14.

¹⁰³ Exhibit RR-2020-002-A-08 at para. 32; Exhibit RR-2020-002-A-10 at para. 36.

¹⁰⁴ Exhibit RR-2020-002-A-08 at paras. 33-34; Exhibit RR-2020-002-A-12 at para. 29; Exhibit RR-2020-002-A-14 at para. 32.

¹⁰⁵ According to the BCVMC, land used by B.C. potato growers is subject to the B.C. *Agricultural Land Commission Act*, SBC 2002, c. 36, which limits use to farm and limited related uses only.

¹⁰⁶ Exhibit RR-2020-002-A-06 at para. 30; Exhibit RR-2020-002-A-08 at para. 19; Exhibit RR-2020-002-A-10 at para. 18; Exhibit RR-2020-002-A-12 at para. 13; Exhibit RR-2020-002-A-14 at para. 20.

¹⁰⁷ Exhibit RR-2020-002-A-08 at para. 26; Exhibit RR-2020-002-A-09 at para. 14; Exhibit RR-2020-002-A-12 at paras. 25-26, 32; Exhibit RR-2020-002-A-14 at paras. 26-27, 34.

¹⁰⁸ Exhibit RR-2020-002-A-08 at paras. 37-38.

¹⁰⁹ Exhibit RR-2020-002-A-17.

Tribunal to estimate how much revenue per cwt would have been lost if the like goods had been sold at the adjusted U.S. Mostly prices, with and without the lowest price premium identified by Mr. Driediger.¹¹⁰

[107] The Tribunal then multiplied the decline in revenue per cwt by the volume of like goods sold in each period.¹¹¹ As the like goods could not be separated by package type, the Tribunal applied the price reduction for 5 x 10-lb. poly bale packages and for the 10 x 5-lb. poly bale packages across the volume of like goods and took the results of both calculations into account. Under both scenarios, B.C. growers would have lost significant revenue over the POR.

[108] In summary, the Tribunal is satisfied that, if the order is rescinded, production and sales volumes of like goods, as well as their selling prices, would be significantly reduced. This would result in reduced profitability, loss of employment and declining returns on investments, and would consequently threaten the viability of the entire B.C. potato industry.

[109] The Tribunal therefore finds that the reduction in domestic prices or sales volumes that is likely to result from the resumed or continued dumping of the subject goods would be sufficient to cause material injury to all or almost all of the B.C. industry over the next 12 to 24 months.¹¹²

Other factors

[110] Pursuant to paragraph 37.2(2)(k) of the *Regulations*, the Tribunal may consider any other factors that are relevant in the circumstances.¹¹³

[111] In view of the timing of this expiry review, the Tribunal also considered whether the COVID-19 pandemic and safety measures taken in response could adversely affect the B.C. industry in the next 24 months.

[112] There is some evidence that such measures had some impact on supply chains and on demand in certain sectors in British Columbia. Although the pandemic has seriously affected both the U.S. and Canadian economies as a whole, the impacts on the potato industries appear to be transitory and limited in nature. In fact, there is little persuasive evidence indicating that these adverse effects, such as they are, are likely to persist in the near to medium term. Crucially, nothing suggests that the COVID-19 pandemic and its repercussions are likely to cause U.S. producers to reduce production and exports or increase their prices. The Tribunal therefore finds no basis to conclude that any likely future injury suffered by the B.C. industry could be attributed to the COVID-19 pandemic.

¹¹⁰ The BCVMC corrected an error in its initial domestic premium estimate. The revised estimate is found at Exhibit RR-2020-002-A-17 (protected) at footnote 5.

¹¹¹ Exhibit RR-2020-06.01(protected) at Table 9.

¹¹² The Tribunal notes that there is no evidence on the record that suggests that the resumed or continued dumping of the subject goods would only cause injury to a subset of growers in British Columbia, i.e. evidence that would indicate that the expiry of the order would not result in injury to the growers of all or almost all of the production of like goods in British Columbia, as is required by paragraph 42(5)(b) of *SIMA*. Therefore, the Tribunal concludes that the conditions of paragraph 42(5)(b), which it typically adopts and applies in the context of expiry reviews involving a regional market, are satisfied in this case.

¹¹³ Paragraph 37.2(2)(k) of the *Regulations* refers to “any other factor pertaining to the current or likely behaviour or state of the domestic or international economy, market for goods or industry as a whole or in relation to individual producers, exporters, brokers or traders.”

[113] On balance, the Tribunal finds that the resumption or continuation of the dumping of the subject goods will likely result, in and of itself, in material injury to all or almost all of the potato production in B.C. over the next 24 months.

CONCLUSION

[114] On the basis of the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its order in respect of the subject goods.

Cheryl Beckett

Cheryl Beckett

Presiding Member

Susan D. Beaubien

Susan D. Beaubien

Member

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