



POT 2020 ER

OTTAWA, January 8, 2021

## STATEMENT OF REASONS

Concerning an expiry review determination  
under paragraph 76.03(7)(a) of the *Special Import Measures Act* regarding

**THE DUMPING OF WHOLE POTATOES  
IMPORTED FROM THE UNITED STATES OF AMERICA,  
FOR USE OR CONSUMPTION IN THE PROVINCE OF BRITISH COLUMBIA**

## DECISION

On December 24, 2020, pursuant to paragraph 76.03(7)(a) of the *Special Import Measures Act*, the Canada Border Services Agency determined that the expiry of the order made by the Canadian International Trade Tribunal on September 9, 2015, in Inquiry No. RR-2014-004, would likely result in the continuation or resumption of dumping of certain whole potatoes imported from the United States of America, for use or consumption in the province of British Columbia.

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## EXECUTIVE SUMMARY

[1] On July 29, 2020, the Canadian International Trade Tribunal (CITT), pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), initiated an expiry review of its order made on September 9, 2015, in Inquiry No. RR-2014-004, concerning the dumping of certain whole potatoes imported from the United States of America (US), for use or consumption in the province of British Columbia (BC).

[2] As a result of the CITT's notice of expiry review, on July 30, 2020, the Canada Border Services Agency (CBSA) initiated an expiry review investigation to determine, pursuant to paragraph 76.03(7)(a) of SIMA, whether the expiry of the order is likely to result in the continuation or resumption of dumping of the subject goods.

[3] The CBSA received a response to its Canadian Producer Expiry Review Questionnaire (ERQ) from the British Columbia Vegetable Marketing Commission (BCVMC)<sup>1</sup>, which provided information defending the position that the expiry of the order is likely to result in the continuation or resumption of dumping of the goods. The CBSA also received complete submissions from four potato producer agencies under the BCVMC and one importer, who is also a potato producer agency for the subject goods. No parties provided information in support of the position that the expiry of the order is not likely to result in the continuation or resumption of dumping of the goods.

[4] In addition to responding to the ERQ, the BCVMC submitted supplementary information prior to the closing of the administrative record<sup>2</sup>, and also made a case brief which includes arguments supporting their position that continued or resumed dumping of whole potatoes from the US is likely if the CITT's order is rescinded.<sup>3</sup>

[5] No importers in Canada, nor exporters or producers located in the subject countries, provided a case brief or reply submission.

[6] Analysis of information on the administrative record shows that:

- dumping of the subject goods was in effect during the period of review (POR);
- overall demand for potatoes is decreasing;
- there is persistent oversupply of potatoes in the US market;
- there is a strong inverse relationship between the supply of potatoes and the selling prices of the goods;
- the major US producers are located within close proximity to the BC market and US exporters have well established channels of distribution in BC; and,
- no other trade measures were in effect during the POR.

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<sup>1</sup> Exhibit 13 (PRO) & 14 (NC) – ERQ Response of BCVMC

<sup>2</sup> Exhibit 25 (PRO) & 26 (NC) – Close of record - attachments from BCVMC

<sup>3</sup> Exhibit 23 (PRO) & 14 (NC) – ERQ Response of BCVMC

[7] For the forgoing reasons, the CBSA, having considered the relevant information on the record, made a determination on December 24, 2020, pursuant to paragraph 76.03(7)(a) of SIMA that the expiry of the order in respect of certain whole potatoes imported from the US, for use or consumption in the province of BC is likely to result in the continuation or resumption of dumping of the goods.

## **BACKGROUND**

[8] This case was originally two separate dumping investigations concerning whole potatoes.

[9] The first case was initiated on September 30, 1983, following a complaint filed by the BCVMC. A preliminary determination of dumping was made on March 5, 1984. On June 4, 1984, the Anti-dumping Tribunal (subsequently known as the Canadian International Trade Tribunal) issued an injury finding with respect to whole potatoes with netted or russeted skin, excluding seed potatoes, in non-size A, from the state of Washington (Washington), for use or consumption in BC. A final determination of dumping was made by the Deputy Minister of National Revenue for Customs and Excise on October 12, 1984 (at that time, the legislation required the Anti-dumping Tribunal to render its final decision regarding injury prior to the final determination of dumping).

[10] A second investigation was initiated on October 18, 1985, with regard to whole potatoes from the US for use or consumption in BC, excluding seed potatoes and excluding those potatoes covered by the previous finding. A preliminary determination of dumping was made on December 20, 1985, and a final determination of dumping was made on March 20, 1986. The CITT issued an injury finding on April 18, 1986.

[11] Since the original investigations, there have been six expiry reviews that have resulted in the case being continued with or without amendments. The CBSA has also conducted several re-investigations to update the normal values and export prices for enforcement purposes. Anti-dumping duties have been assessed throughout this period when necessary.

[12] The first expiry review resulted in an order issued by the CITT on September 14, 1990, in Review No. RR-89-010, continuing the two findings without amendments. On September 14, 1995, in Review No. RR-94-007, the order was continued with amendments to exclude imports during the period from May 1 to July 31, inclusive, of each calendar year. On September 13, 2000, in Review No. RR-99-005, the order was continued without amendments. On September 12, 2005, in Review No. RR-2004-006, the order was continued with amendments to exclude red potatoes, yellow potatoes, exotic potato varieties and white and russet potatoes in 50-lb cartons in certain count sizes. On September 10, 2010, in Review No. RR2009-002, the order was continued without amendments. On September 9, 2015, in Review No. RR-2004-006, the order was continued with amendments to exclude whole potatoes certified as organic by a recognized certification agency.

[13] On June 9, 2020, the CITT issued a notice of expiry of the CITT's order in Expiry Review No. RR-2014-004 and invited comments from all interested parties. On the basis of the information filed during the expiry process, the CITT was of the opinion that an expiry review of the order was warranted. Therefore, on July 29, 2020, pursuant to subsection 76.03(3) of SIMA, the CITT initiated an expiry review of its order.

[14] On July 30, 2020 the CBSA commenced an expiry review investigation to determine whether the expiry of the order is likely to result in the continuation or resumption of dumping of the goods from the US.

## **PRODUCT DEFINITION**

[15] The goods subject to this expiry review investigation 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 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, for use or consumption in the province of British Columbia”

[16] Hereafter, the subject and the like goods will be referred to as “potatoes”.

## **CLASSIFICATION OF IMPORTS**

[17] The subject goods are usually classified under the following Harmonized System (HS) classification number: 0701.90.00.20.

[18] This listing of tariff classification number is for convenience of reference only. The tariff classification number provided may include goods that are not subject goods and subject goods may be imported into Canada under tariff classification numbers other than those provided.

## **PERIOD OF REVIEW**

[19] The period of review (POR) for the CBSA's expiry review investigation is from August 1, 2016 to June 30, 2020.

## **REGIONAL MARKET**

[20] The CITT order relates to potatoes imported into a regional market, namely, BC.

[21] In accordance with SIMA, two conditions must be met for the existence of a regional market. As per subsection 2(1.1) of SIMA, they are that:

- the producers in that market sell all or almost all of their production of like goods in the market; and,
- the demand in that market is not to any substantial degree supplied by producers of like goods located elsewhere in Canada.

[22] Further, where subsection 2(1.1) of SIMA applies, subsection 42(5) of SIMA provides that the CITT shall not find that the dumping of the goods has caused injury or is threatening to cause injury unless:

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

[23] On July 6, 2020, in response to the CITT's notice of the expiry review of the order, the BCVMC submitted that BC continues to be a regional market because almost all of the potatoes grown in that province are sold in the BC market and the demand in that market is not to any substantial degree supplied by producers of like goods located elsewhere in Canada. More specifically, it detailed that, for the crop years occurring during the POR, its producers have marketed a vast majority of their subject potatoes in the BC market. When the volumes marketed by BC producers through on-farm stands, farmer's markets and manifest sales to smaller outlets are also taken into account, these percentages increase to levels well above the range accepted by the CITT in determining that BC is a regional market.<sup>4</sup>

[24] Further, at the last expiry review, the CITT concluded that, based on the data collected from its questionnaires and Statistics Canada, total shipments of potatoes from other provinces in Canada did not, to any substantial degree, supply the demand for potatoes in the BC market.<sup>5</sup>

[25] The CITT will again give consideration to the issue of regional market as part of its expiry review to determine whether the continued or resumed dumping is likely to result in injury.

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<sup>4</sup> Exhibit 25 (PRO) & 26 (NC) – Close of record - attachments from BCVMC, Tab A2

<sup>5</sup> CITT 2015 Expiry Review Order, Para. 59 <https://decisions.citt-tcce.gc.ca/citt-tcce/a/en/item/354345/index.do>

## BRITISH COLUMBIA INDUSTRY

[26] There are approximately 60 producers of potatoes in BC.<sup>6</sup>

[27] The BCVMC is a commission established by legislation under the *Natural Products Marketing (BC) Act* empowered to regulate the production and marketing of certain vegetables grown in BC, including potatoes. It administers this legislative scheme by way of a sub-delegation of powers to various sales agencies in the province, of which the producers are members. These agencies (namely, the BC Fresh Vegetables Inc., Okanagan Grown Produce Ltd., Island Vegetable Co-operative Association, Vancouver Island Produce Ltd. and Fraserland Organics Inc.) provide producers with a provincial sales outlet for their products and derive virtually all of their revenue from marketing potato and vegetable crops. Potato sales represent a significant portion of this revenue.<sup>7</sup>

[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.<sup>8</sup>

[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.

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<sup>6</sup> Exhibit 25 (PRO) & 26 (NC) – Close of record - attachments from BCVMC, Tab A2

<sup>7</sup> Exhibit 25 (PRO) & 26 (NC) – Close of record - attachments from BCVMC, Tab A2

<sup>8</sup> Exhibit 25 (PRO) & 26 (NC) – Close of record - attachments from BCVMC, Tab A2

## BRITISH COLUMBIA MARKET

[32] The B.C. potato market during the POR is estimated as follows by value (Table 1) and percentage (Table 2):

**Table 1**  
**Estimated BC Market<sup>9</sup>**  
(Value in CAD)

Source	2016 Crop Year	2017 Crop Year	2018 Crop Year	2019 Crop Year
BC Production Sales	\$16,258,906	\$17,715,811	\$17,542,739	\$17,925,884
Imports from the US into BC	\$7,478,977	\$7,478,977	\$5,766,237	\$7,206,180
Total Imports from all other Countries	-	-	-	-
Total BC Market	\$22,695,999	\$25,194,788	\$23,308,976	\$25,132,064

**Note:** The crop year is from August 1<sup>st</sup> to July 31<sup>st</sup> each year. Statistics shown are for potatoes subject to anti-dumping enforcement.

**Table 2**  
**Estimated BC Market<sup>10</sup>**  
(As Percentage of Total Market Value)

Source	2016 Crop Year	2017 Crop Year	2018 Crop Year	2019 Crop Year
BC Production Sales	71.6%	70.3%	75.3%	71.3%
Imports from the US into BC	28.4%	29.7%	24.7%	28.7%
Total Imports from all other Countries	-	-	-	-
Total BC Market	100%	100%	100%	100%

[33] Market statistics used to demonstrate the estimated BC market are expressed by value only, and do not include volume. The reason for this is that the volume data obtained from the CBSA database is not expressed in a consistent unit of measurement. Their quantities are often expressed in different units of measure, such as metric tons, hundredweight (cwt), number of packages, etc. Accordingly, the CBSA data could not be used to calculate total volume or perform any meaningful calculations of unit value.

<sup>9</sup> Exhibit 27 (NC) – Compliance statistics - day 50

<sup>10</sup> Exhibit 27 (NC) – Compliance statistics - day 50



## **BC Production**

[34] Overall, the BC producers' share of the apparent BC market remained stable at over 70% during the entire POR. The BC producers' share of the market value was 71.6% in the 2016 crop year, increased to 75.3% in 2018 and returned to 71.3% in 2019.

## **Imports**

[35] The volume of subject goods imported from the US represented 28.4% of the apparent BC market in the 2016 crop year. The volume of imports declined to 24.7% in 2018 but returned to 28.7% in 2019. There were no imports of the subject goods from any other countries during the POR.

## **ENFORCEMENT DATA**

[36] In the making of a determination regarding the likelihood of continued or resumed dumping, the President may consider, pursuant to paragraph 37.2 (1)(a) of the *Special Import Measures Regulations* (SIMR), whether there has been dumping of the goods while an order in respect of the goods is in effect and, if applicable:

- (i) the period during which the dumping occurred;
- (ii) the volume and prices of the dumped and non-dumped goods;
- (iii) the margin of dumping; and,
- (iv) for non-dumped goods, the amount by which the export prices exceed the normal value of the goods.

[37] Dumping occurs and anti-dumping duties are payable when export prices are less than the normal values of the goods. The margin of dumping is the amount by which the normal value exceeds the export price.

[38] In examining these factors, it is important to understand how normal values and export prices were determined during the POR, in light of some unusual circumstances surrounding this case.

[39] Throughout the entire POR, normal values were determined by means of a ministerial specification, pursuant to section 29 of SIMA, on the basis of published cost of production data, using total costs and expenses associated with growing and harvesting potatoes, an amount for packing and selling the goods, and a reasonable amount for profit. Normal values were determined in this manner because no exporters provided company specific cost and sales data during the re-investigations. Some general information regarding costs, such as cost studies, was provided by the BCVMC. This information was given due consideration by the CBSA in determining the normal values.

[40] Normal values currently in place have been in effect since September 18, 2014, the day that the CBSA concluded its latest re-investigation of normal values. These values are based on the costs of producing like goods during the 2012-2013 crop year. Three university studies from Washington, Idaho and California were used for this purpose. Two of the studies, from Washington and Idaho, referred to the costs of producing russet potatoes while the third, from California, simply referred to the costs of producing potatoes destined for the fresh market. The costs of production were also adjusted to reflect the difference in cost from the date of study to the 2012-2013 crop year. These studies were available to all participating parties prior to the issuance of the values and no opposition to them was voiced.

[41] The following chart details the anti-dumping duties collected, within the period the order was in effect:

**Table 3**  
**Anti-Dumping Duties Collected<sup>11</sup>**  
(Value in CAD)

	<b>Anti-dumping Duties Collected</b>			
	<b>Aug. 1, 2016 – Apr. 30, 2017</b>	<b>Aug. 1, 2017 – Apr. 30, 2018</b>	<b>Aug. 1, 2018 – Apr. 30, 2019</b>	<b>Aug. 1, 2019 – Apr. 30, 2020</b>
Imports from the US into BC	\$216,562	\$130,058	\$63,068	\$31,873

## **PARTIES TO THE PROCEEDING**

[42] On July 30, 2020, a notice concerning the CBSA’s initiation of the expiry review investigation was sent to all known Canadian producers, importers and US associations representing the producers of potatoes. All of these parties were also sent an ERQ.

[43] The ERQs requested information relevant to the consideration of the expiry review factors, as listed in subsection 37.2(1) of the *Special Import Measures Regulations* (SIMR).

[44] The BCVMC and its five marketing agencies provided responses to the Canadian producer ERQ. In addition to responding to the ERQ, the BCVMC submitted supplementary information prior to the closing of the administrative record, and also made a case brief which includes arguments supporting their position that continued or resumed dumping of whole potatoes from the US is likely if the CITT’s order is rescinded. The Canadian producer agencies referred to the BCVMC submissions regarding the opinion that dumping is likely to continue or resume if the CITT’s order is rescinded.<sup>12</sup>

[45] No importers in Canada, nor exporters or producers located in the United States, provided a case brief, a reply submission, nor did they express an opinion.

<sup>11</sup> Exhibit 27 (NC) – Compliance statistics - day 50

<sup>12</sup> Exhibit 23 (PRO) & 14 (NC) – ERQ Response of BCVMC

## **INFORMATION CONSIDERED BY THE CBSA**

### **Administrative Record**

[46] The information considered by the CBSA for purposes of this expiry review investigation is contained in the administrative record. The administrative record includes the information on the CBSA's exhibit listing, which is comprised of the CITT's administrative record relating to the initiation of the expiry review, the CBSA's exhibits and information submitted by interested parties, including information which the interested parties feel is relevant to the decision as to whether dumping is likely to continue or resume absent the CITT. This information may consist of expert analysts' reports, excerpts from trade magazines and newspapers, orders and findings issued by authorities of Canada or of a country other than Canada, documents from international trade organizations such as the World Trade Organization (WTO) and responses to the ERQs submitted by Canadian producers, exporters and importers.

[47] For purposes of an expiry review investigation, the CBSA sets a date after which no new information submitted by interested parties will be placed on the administrative record or considered as part of the CBSA's investigation. This is referred to as the "closing of the record date" and is set to allow participants time to prepare their case briefs and reply submissions based on the information that is on the administrative record as of the closing of the record date. For this investigation, the administrative record closed on September 22, 2020.

## **POSITION OF THE PARTIES – DUMPING**

### **Parties Contending that Continued or Resumed Dumping is Likely**

[48] The BCVMC provided a case brief presenting its position, on behalf of its five agencies and all registered BC potato producers, that continued or resumed dumping is likely should the order be rescinded. It argued that the order should remain in place.

[49] The main arguments made by the BCVMC can be summarized as follows:

- US potato producers have regularly and persistently sold large volumes of potatoes at dumped prices into the BC market while the 2015 order has been in effect;<sup>13</sup>
- there is an overall decline in consumer demand for the subject goods<sup>14</sup>;
- the continuing propensity of US producers to overproduce;<sup>15</sup>
- US potato processing production can be easily diverted to the fresh market<sup>16</sup>;
- overproduction results in a decline in price<sup>17</sup>;
- proximity of the major US producers to the BC market is a significant factor;<sup>18</sup> and,
- dependency of Oregon, Washington State and Idaho (the Western States) on export markets.<sup>19</sup>

### ***Large Volumes of Dumped Goods***

[50] The BCVMC stated that the CBSA has collected significant duties on the subject goods while the CITT's 2015 order has been in effect and that these amounts are understated due to outdated normal values that do not reflect the current cost of production in the US. The BCVMC estimates that based on data in updated university cost studies, the cost of production of the subject goods had increased by 7-10% from the 2014 normal values.<sup>20</sup>

[51] The BCVMC provided an analysis of the frequency of dumping and the margins of dumping that would have occurred in the absence of the CITT's 2015 order for the two most popular products sold into BC from Washington, the 5 x 10 lb and 10 x 5 lb poly bags of russet potatoes. Washington was used for this exercise, due to its proximity, large production capacity and the established supply chains of its producers in BC. The normal values used were those that were in effect during the relevant time periods. These values were compared to export prices estimated using published "high mostly prices" selling prices (FOB Vancouver), as per USDA National Potato and Onion Reports.

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<sup>13</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, pages 5-19

<sup>14</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, pages 23-25

<sup>15</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, pages 26-33

<sup>16</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 34-36

<sup>17</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 40-42

<sup>18</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 46-48

<sup>19</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, pages 48-49

<sup>20</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, pages 5-10

[52] A summary of the analysis is as follows:

**Table 3**  
**Margin of Dumping**  
**5 X 10 Lb Poly Bags of Russet Potatoes<sup>21</sup>**

Crop Year	Weeks Sold Below Normal Value	Total Weeks in Period	% of weeks with duty	Margin of Dumping	
				Minimum	Maximum
2016	39	39	100%	33%	83%
2017	37	39	95%	5%	33%
2018	39	39	100%	13%	46%
2019	25	39	64%	5%	46%

**Table 4**  
**Margin of Dumping**  
**10 X 5 Lb Poly Bags of Russet Potatoes<sup>22</sup>**

Crop Year	Weeks Sold Below Normal Value	Total Weeks in Period	% of weeks with duty	Margin of Dumping	
				Minimum	Maximum
2016	39	39	100%	22%	58%
2017	34	39	87%	13%	22%
2018	39	39	100%	6%	32%
2019	18	39	46%	16%	32%

[53] Based on this analysis, the BCVMC contended that for the crop years from 2016-2019, the 5 x 10 lb poly bags were sold below the normal values 90% of the time and that the 10 x 5 lb poly bags were sold below the normal values 83% of the time.

[54] According to the BCVMC, the results further revealed that, throughout this period, had the CITT's order not been in effect, the subject goods would have been dumped into BC by significant margins of dumping. For the 5 x 10 lb poly bags, the margin of dumping ranged from 5% - 83%, and for the 10 x 5 lb poly bags, the margins of dumping ranged from 6% - 58%. The BCVMC contends that the margins of dumping would be considerably higher had the normal values been updated to reflect the increased cost of production of the subject goods.

<sup>21</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 18

<sup>22</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 18

[55] The BCVMC is of the opinion that this analysis is reflective of the trends that will continue and also illustrate the serious problems facing BC potato producers today and in the future, particularly if the 2015 CITT order is rescinded and BC producers were forced to compete with these dumped prices.

### ***Decline in Consumer Demand***

[56] The BCVMC stated that since the 2015 Order was put in place, there has been a continuing decline in the demand for fresh potatoes in the US and Canada. Fresh potatoes are goods that are not destined for the processing industry for further transformation into fries, chips, flakes and starch. With the exception of a small chip producer, BC does not have a potato processing industry. All BC grown potatoes and the majority of subject imports are destined for the fresh market.<sup>23</sup>

[57] It noted that the main contributing factors for the decline in fresh potato demand include a shift away from home prepared foods towards more convenient “fast” foods and meal kit delivery, the perception that carbohydrates are bad for health and cause weight gain, and changing consumer preferences, stemming from changing demographics in the population.<sup>24</sup>

[58] The BCVMC indicated that faced with declining demand, US exporters rely on exports to absorb excess production and are more willing to aggressively compete in foreign markets, increasing the likelihood of dumping.

### ***Overproduction***

[59] The BCVMC stated that US producers have historically overproduced the subject goods and that current information shows that this is continuing. The BCVMC indicated that the CITT’s 2015 order had noted this overproduction and oversupply problem and that the situation has not improved since the last review by the CITT.

[60] The BCVMC provided evidence demonstrating that since 2015, acreages planted in the Western States increased by 2.1% from the prior five-year average despite decreasing demand. Production in the Western States represents approximately 59% of all potato production in the US. The BCVMC states that the increase in planted acreages is driven by falling prices for alternative crops.<sup>25</sup>

[61] In addition to the acres planted, potato yields have been steadily increasing for decades and this trend shows no signs of a reversal in the foreseeable future. The BCVMC states that various factors, including growing conditions, disease pressure, cultural practices, higher-yielding varieties, and inputs of seed, water, fertilizer and chemicals impact yields. Yields have increased by 3.7% throughout the US in the period between 2015 and 2019 with the Western States consistently reporting substantially higher average yields than the remaining US states.

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<sup>23</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 35

<sup>24</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 25

<sup>25</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 28

[62] The BCVMC stated that the BC industry is particularly sensitive to overproduction from the Western States due to the close proximity of the BC market. Together, Oregon, Idaho and Washington State reported an average production of over 262 million cwt, up 6% from the 2010-2014 period. The BCVMC notes that the combined production of the Western States represents, by itself, multiple orders of magnitude of that of the annual production in BC.<sup>26</sup>

[63] The BCVMC emphasized the enormous size of the US potato industry relative to the BC industry. It stated that US production capacity, as compared to the BC market, is a significant consideration in determining the likelihood of continued or resumed dumping. Specifically, they submitted that any fluctuations in US production must be considered in context to the size of the much smaller BC industry.

### ***Processing Production can be Easily Diverted to the Fresh Market***

[64] Although a decrease in demand for fresh potatoes has a direct effect on the fresh market, the BCVMC pointed out that any decrease in demand for processing potatoes also affects fresh potato sales, as excess processing potatoes can be easily diverted to the fresh market.<sup>27</sup>

[65] The BCVMC also explained that in the processing market, potato growers are able to enter into contracts with processors, in advance of planting, in which they agree to grow a certain number of acres of potatoes for a set price. This reduces demand uncertainty for the producers and ensures that their selling price is above their cost of production.

[66] The BCVMC noticed that the vast majority of the potato production in the western states is grown for processing purposes, whereas the BC industry only grows potatoes for the fresh market. The fresh potato market is a frequent target of these surplus processing potatoes.

[67] The BCVMC emphasized that this is a significant issue as the processing market is considerably larger than the fresh market; therefore, only a very small portion of processing potatoes diverted to the fresh potato market could send the prices of fresh potatoes tumbling while the US processing market remains stable and profitable.

### ***Decline in Selling Prices***

[68] The BCVMC stated that there is a direct inverse relationship between the supply of the potatoes and the selling prices of the goods. As supply increases, the selling prices decrease. While both excess potato production and decreased demand have historically led to decreases in selling prices, anomalous weather events in the Western States in 2019 and the uncertainty caused by COVID-19 pandemic in 2020 dramatically affected pricing during the POR, temporarily reversing long-term trends.<sup>28</sup>

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<sup>26</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, pages 30-33, 38

<sup>27</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, pages 34-36

<sup>28</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, pages 39-41

[69] The BCVMC noted that the continued propensity of US producers to overproduce will continue to drive down prices to well below the US cost of production.

### ***Proximity of Major Producers***

[70] The BCVMC stated that the close proximity of the US producers to the BC potato market is yet another significant factor that must be considered. It stated that US potato producers have long targeted the BC market because of its close proximity and well established channels of distribution in BC.<sup>29</sup>

[71] The BCVMC emphasized that the lower mainland of BC and the Vancouver market (where all of the distribution centres for the rest of BC are located) are an important outlet for dumped goods from the Western States. It is also only four hours by truck from the Columbia Basin (Washington State's primary potato growing region), making it the second largest target market for producers from that region.

### ***Dependency on Export Markets***

[72] The BCVMC is of the opinion that the US potato industry is heavily dependent upon its export markets.<sup>30</sup>

[73] The BCVMC states that US exporters have established distribution networks and relationships with BC importers that could be readily used as a foundation to increase its sales should the order be rescinded.

[74] Washington is of particular concern and the BCVMC believes that the Washington potato industry continues to aggressively target and pursue the BC market, in constant search for new opportunities, given the supply and demand imbalance situation in the US.

### **Parties Contending that Continued or Resumed Dumping is Unlikely**

[75] No parties provided a submission in support of the position that continued or resumed dumping is not likely should the order be rescinded.

### **CONSIDERATION AND ANALYSIS – DUMPING**

[76] In making a determination under paragraph 76.03(7)(a) of SIMA whether the expiry of the order is likely to result in the continuation or resumption of dumping of the goods, the CBSA may consider factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant in the circumstances.

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<sup>29</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 48

<sup>30</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 48



[77] Guided by the aforementioned factors and having considered the information on the administrative record, the following list represents a summary of the CBSA's analysis conducted in this expiry review investigation with respect to dumping:

- whether the subject goods were dumped while the order was in effect;
- overall demand for the goods;
- performance of the exporters in respect of production, supply and selling prices;
- proximity of the US industry to the BC market and existing channels of distribution; and,
- other trade measures;

[78] A discussion of these factors is presented below. The subject goods will be considered as a whole, regardless of whether they are produced for the fresh or processing market, since processed potatoes can be sold into the fresh market.

### **Dumping of the Subject Goods While the Order was in Effect**

[79] The anti-dumping duties collected throughout the POR are presented in the "Enforcement Data" section of this report. The information discloses that during the POR, there was dumping of the subject goods into the BC market. As stated previously, margins of dumping result when export prices are less than the normal values of the goods.

[80] During the POR, the CBSA determined the export price of the subject goods based on the declared selling price to Canadian importers as reflected on the customs documentation, adjusted by deducting from the selling price all costs, charges, expenses, duties and taxes described in subparagraphs 24(a)(i) to (iii) of SIMA. This allowed for the possibility of exporters to increase the selling price of the subject goods to above normal value. The reduction in SIMA duties assessed during the course of the POR indicate that exporters have generally been increasing selling prices to avoid the imposition of SIMA duties.

[81] The BCVMC has provided its own analysis of the margins of dumping throughout the POR for the two most common selling packages, the 5 x 10 lb and 10 x 5 lb poly bags of russet potatoes. While the analysis does not reflect the extent of the dumping for the subject goods, it does indicate that in the absence of the CITT's 2015 order, there would have been a high likelihood that dumping would have occurred.

[82] In accordance with this information and the actual anti-dumping duties collected during the POR, the CBSA has observed that the majority of US producers have been able to sell into BC at non-dumped prices during the POR. This does not indicate that there is no propensity for exporters to dump but that most exporters have preferred to increase selling prices during the POR to avoid the assessment of anti-dumping duties. Despite this, anti-dumping duty was collected in each year of the period reviewed, indicating that several exporters continued to sell at dumped prices.

## Overall Demand

[83] Information on the record indicates that the overall demand for fresh potatoes decreased in both US and Canada during the POR.<sup>31</sup> The main contributing factors include the shift from home prepared foods to the use of convenience or “fast” foods, meal kit delivery, the perception that carbohydrates are bad for health and cause weight gain, and the changing consumer preference. Faced with declining demand, US exporters rely on exports to absorb excess production and are more willing to aggressively compete in foreign markets, increasing the likelihood of dumping.

## Performance of Exporters

### *Surplus Production*

The US has enormous potato production in comparison to that of the BC industry. In this regard, the US fall crop is of specific importance, as this is the crop that the BC industry competes with.<sup>32</sup> Fall acreage is defined as potatoes planted in the spring and typically harvested in the July through October period, with surplus going into storage and marketed throughout the year up until the next harvest.

[84] USDA data for US fall planted acreage and production statistics indicate that from 2016 to 2019, the US averaged approximately 1 million acres of potatoes planted and almost 450 million hundredweight produced. Idaho had by far the largest fall crop, while Washington was second. Planted acreage throughout the POR has remained consistently high, despite low demand and increasing yields.

[85] In general terms, production in Washington, Idaho and Oregon is multiple orders of magnitude greater than the size of BC’s production.<sup>33</sup> Clearly, the US potato industry has the ability to more than supply the entire BC potato market.

[86] Anomalous weather factors negatively affected the 2019 production yields and the COVID-19 pandemic has significantly impacted both supply and demand in the potato market. Despite the fact that the future is uncertain due to COVID-19, the historic trends are expected to maintain their trajectories.

[87] Information on the record supports the fact that the US potato industry is in surplus as it produces more than it sells.<sup>34</sup> Throughout the POR, the oversupply problem has been exacerbated by the consistently high potato crop yields that are being realized in the Western States. Specifically, as production remained constant and demand decreased, the gap between supply and demand widened.

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<sup>31</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, pages, page 23

<sup>32</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, pages, page 22

<sup>33</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 39

<sup>34</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 27

[88] The evidence of uncontrolled overplanting together with increasing yields suggests that the pattern of overproduction in the US will likely continue.<sup>35</sup>

[89] With continued overproduction, US producers will continue to seek to dump potatoes in BC's market in an attempt to alleviate the pressure on potato prices and absorb excess production.

### ***Selling Prices***

[90] The large volume of production and the surplus of supply had a direct impact on the selling prices of the goods in the US during the POR.

[91] Information on the record reveals that there is a strong inverse relationship between the supply of potatoes and the selling prices of the goods. As supply increases, selling prices decrease and vice versa.

[92] The BCVMC identifies an inverse relationship between increased potato supply and decreased prices.<sup>36</sup> Such strong price elasticity means that an increase in production will have a very negative effect on prices if there is no corresponding increase in demand. Similarly, a decrease in the demand will have an equally negative impact on prices if there is no corresponding decrease in supply. As already noted, production and supply remained constant during the POR while demand decreased.

[93] Supply and demand conditions in the US determine prices in the Canadian market. Specifically, the much smaller BC regional market and Canadian market are effectively "price takers" when it comes to potato sales.

### **Proximity to BC Market and Existing Channels of Distribution**

[94] The US is Canada's closest neighbour and largest trading partner. Its major potato producers are located just south of the BC border. The lower mainland of BC market is the fourth largest market on the west coast of North America and is lucrative to the Washington, Idaho and Oregon industries. Of particular concern are those producers located in Washington and Idaho because of the large production volumes and historically low selling prices to the BC market.

[95] For US exporters, selling into the BC market is very similar to selling in their own market. The freight differential is believed to be negligible and the exporters have well established channels of distribution in BC. These distribution networks could be readily used and enhanced to increase sales into the BC market, should the order be rescinded.<sup>37</sup>

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<sup>35</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 31

<sup>36</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 40

<sup>37</sup> Exhibit 28 (PRO) & 29 (NC) – Case Brief of the BCVMC, page 47

## **Other Trade Measures**

[96] The CBSA may also consider anti-dumping and other trade measures by other jurisdictions when determining the likelihood of continued or resumed dumping. During the POR, however, no other trade measures were in effect.

[97] While the CBSA considers that anti-dumping measures with respect of the subject goods in other jurisdictions may be indicative of a likelihood of continued or resumed dumping, it does not necessarily agree that the reverse supports the contention that there is a lack of a propensity to continue or resume dumping. For example, exporters may not have exported significant volumes into these other jurisdictions or these other jurisdictions may not have had a domestic industry that would have supported a dumping complaint.

## **CONCLUSION**

[98] In summary, there was dumping of the subject goods while the order was in effect; overall demand is decreasing; United States production is large; there is a surplus of United States supply; United States selling prices are sensitive to overproduction and surplus supply; United States producers are located within close proximity of the B.C. market; United States exporters have well established channels of distribution in the B.C. market and United States exporters are likely to continue to sell large volumes of subject goods into the B.C. market at low prices in the foreseeable future.

[99] For the purpose of making a determination in this expiry review investigation, the CBSA conducted its analysis within the scope of the factors found under subsection 37.2(1) of the SIMR. Based on the foregoing consideration of pertinent factors and analysis of information on the record, on December 24, 2020 the CBSA made a determination pursuant to paragraph 76.03(7)(a) of SIMA that the expiry of the order made by the CITT on September 9, 2015, in Inquiry No. RR-2014-004, in respect of certain whole potatoes imported from the United States of America, for use or consumption in the province of British Columbia is likely to result in the continuation or resumption of dumping of the goods into Canada.

## **FUTURE ACTION**

[100] The CITT has now initiated its inquiry to determine whether the expiry of the order with respect to the dumping of the goods from the United States is likely to result in injury. The CITT's Expiry Review schedule indicates that it will make its decision by June 2, 2021.

[101] If the CITT determines that the expiry of the order with respect to the goods is likely to result in injury, the order will be continued in respect of those goods, with or without amendment. If this is the case, the CBSA will continue to levy anti-dumping duties on dumped importations of the subject goods.

[102] If the CITT determines that the expiry of the order with respect to the goods is not likely to result in injury, the order will be rescinded in respect of those goods. Anti-dumping duties would then no longer be levied on importations of the subject goods, and any anti-dumping duties paid in respect of goods that were released after the date that the order was scheduled to expire will be returned to the importer.

## INFORMATION

[103] For further information, please contact the officer listed below:

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