



OTTAWA, June 19, 2015

## STATEMENT OF REASONS

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

**GREENHOUSE BELL PEPPERS  
ORIGINATING IN OR EXPORTED FROM THE NETHERLANDS**

## DECISION

On June 4, 2015, pursuant to paragraph 76.03(7)(a) of the *Special Import Measures Act*, the President of the Canada Border Services Agency determined that the expiry of the finding made by the Canadian International Trade Tribunal on October 19, 2010, in Inquiry No. NQ-2010-001, would likely result in the continuation or resumption of dumping of greenhouse bell peppers originating in or exported from the Netherlands.

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**Cet Énoncé des motifs est également disponible en français.  
This Statement of Reasons is also available in French.**

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## EXECUTIVE SUMMARY

[1] On February 4, 2015, the Canadian International Trade Tribunal (Tribunal), pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), initiated an expiry review of its finding made on October 19, 2010, in Inquiry No. NQ-2010-001, concerning the dumping of greenhouse bell peppers originating in or exported from the Netherlands.

[2] As a result of the Tribunal's notice, on February 5, 2015, the Canada Border Services Agency (CBSA) commenced an investigation to determine whether the expiry of the finding is likely to result in the continuation or resumption of dumping of the goods.

[3] The Ontario Greenhouse Vegetable Growers (OGVG) provided information to the CBSA on behalf of its member producers taking the position that the expiry of the finding is likely to result in the continuation or resumption of dumping of the goods. No parties provided information in support of the position that the expiry of the finding is not likely to result in the continuation or resumption of dumping of the goods.

[4] The CBSA received complete submissions from the British Columbia Vegetable Marketing Commission (BCVMC) and the British Columbia Greenhouse Growers Association (BCGGA) representing growers of greenhouse bell peppers in British Columbia.

[5] The CBSA also received a complete submission from a grower of greenhouse bell peppers in Ontario that is a member of the OGVG and a complete submission from a grower of greenhouse bell peppers in British Columbia that is a member of the BCGGA. No other submissions were received by the CBSA.

[6] Additional information relevant to the CBSA's investigation is contained in the record of the Tribunal, including information on the production and sale of greenhouse bell peppers by growers in the Netherlands and statements by Frugi Venta, the marketing board for producers for fruit and vegetables in the Netherlands. The record of the Tribunal was transferred to the CBSA on February 4, 2015.

[7] An analysis of the information on the record shows that there was dumping of the subject goods while the finding was in effect and inability to compete at non-dumped prices; there is a propensity to overproduce greenhouse bell peppers in the Netherlands; producers of greenhouse bell peppers in the Netherlands are dependent on export markets; and there is increased competition in the export markets for greenhouse bell peppers from the Netherlands that is likely to lead to exporters seeking new markets such as the Canadian market and at lower prices due to the increased competition. The CBSA's record also contains a statement of Frugi Venta on the likelihood of continued or resumed dumping.

[8] For the foregoing reasons, the President of the Canada Border Services Agency (President), having considered the information on the record, determined on June 4, 2015, pursuant to paragraph 76.03(7)(a) of SIMA that the expiry of the finding in respect of greenhouse bell peppers originating in or exported from the Netherlands is likely to result in the continuation or resumption of dumping of the goods.

## **BACKGROUND**

[9] On March 22, 2010, following a complaint filed by Canadian industry, the CBSA initiated an investigation regarding the dumping of the subject goods. The complaint was made by the OGVG and was supported by the BCGGA.

[10] On June 21, 2010, the President made a preliminary determination of dumping, and on September 20, 2010, the President made a final determination of dumping concerning the subject goods. On October 19, 2010, the Tribunal issued an injury finding in Inquiry No. NQ-2010-001.

[11] On December 18, 2013, the CBSA concluded a re-investigation to update the normal values and export prices of greenhouse bell peppers from the Netherlands. No exporters participated in the re-investigation. Imports of subject goods are therefore subject to a ministerial specification pursuant to section 29 of SIMA, which specifies that the normal value shall be determined based on the export price plus an amount equal to 193% of that export price, resulting in anti-dumping duties equal to 193% of the export price.

[12] On December 16, 2014, the Tribunal issued a notice concerning the upcoming expiry of its finding, scheduled to occur on October 18, 2015. Based on the available information and the information submitted by the interested parties, the Tribunal decided that a review of the finding was warranted.<sup>1</sup> As a result, on February 4, 2015, the Tribunal gave notice and initiated an expiry review of its finding made on October 19, 2010.<sup>2</sup>

[13] On February 5, 2015, the CBSA commenced an expiry review investigation to determine whether the expiry of the finding is likely to result in the continuation or resumption of dumping of greenhouse bell peppers from the Netherlands.

## **PRODUCT DESCRIPTION**

[14] The goods subject to this expiry review are defined as:

“Greenhouse bell peppers originating in or exported from the Netherlands.”

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<sup>1</sup> Exhibit 1 NC, “Notice of Expiry of Finding”.

<sup>2</sup> Exhibit 20 NC, “CITT Administrative Record”, “Notice of Expiry Review of Finding”.

[15] Greenhouse bell peppers are greenhouse-grown bell peppers of the family *Solanaceae* and the species *Capsicum annuum L.* A greenhouse is an enclosed structure with a controllable dynamic system, managed for intensive production of high-quality, fresh market produce. Greenhouse production allows for crop production under very diverse conditions. By controlling a number of variables, such as air temperature, root zone temperature, vapour pressure deficit, fertilizer feed, carbon dioxide enrichment, selection of growing media and plant maintenance, the greenhouse growers aim to obtain maximum performance from the crop over the production season. High fruit quality and yield of coloured bell peppers are difficult to obtain in open field environments. Therefore, they are usually grown in protected environments, such as high passively ventilated greenhouses. Greenhouse peppers are grown from specialized cultivars.

[16] Young, unripe bell peppers are bright green. As they mature, according to the cultivar, they turn the following colours, among others: yellow, orange, red, purple, brown, white and lilac. In Canada, the majority of commercial production of greenhouse bell peppers is sold as red peppers, followed by yellow and orange peppers.

[17] Bell peppers vary in size, from approximately 3 1/2 to 5 1/2 inches long and from 2 1/2 to 4 inches wide.

### **CLASSIFICATION OF IMPORTS**

[18] The subject goods are normally imported into Canada under the following Harmonized System (HS) classification numbers:

0709.60.90.10

0709.60.90.20

[19] This listing of HS codes is for convenience of reference only. Refer to the product definition for authoritative details regarding the subject goods.

### **PERIOD OF REVIEW**

[20] The Period of Review (POR) is January 1, 2012, to December 31, 2014. The President considered information placed on the administrative record, up to the closing of the record date, which was March 26, 2015.

### **CANADIAN INDUSTRY**

[21] Canadian growers produced \$408 million of greenhouse bell peppers in 2014<sup>3</sup>, based on farm gate value (the price of the product at which it is sold by the farm)<sup>4</sup>. Of this total, 98% were produced by growers in Ontario and British Columbia.<sup>5</sup>

<sup>3</sup> Statistics Canada CANSIM data, <http://www5.statcan.gc.ca/cansim/>.

<sup>4</sup> [http://en.wikipedia.org/wiki/Farm\\_gate\\_value](http://en.wikipedia.org/wiki/Farm_gate_value).

<sup>5</sup> Statistics Canada CANSIM data, <http://www5.statcan.gc.ca/cansim/>.

[22] The OGVG was formed in 1967 and is a marketing board formed by the *Ontario Farm Products Marketing Act*, R.S.O. 1990, Chapter F-9, as amended. It is a not-for-profit organization currently representing 231 members in Ontario.<sup>6</sup> Of these, 50 currently produce greenhouse bell peppers.<sup>7</sup> All greenhouse bell peppers produced in Ontario must be sold through board-approved marketers.<sup>8</sup> The OGVG has no jurisdiction over imported product.<sup>9</sup>

[23] The BCGGA is a non-profit organization established in 1996 under the *BC Society Act*.<sup>10</sup> It represents 30 greenhouse bell peppers growers in British Columbia.<sup>11</sup> Growers in British Columbia are licensed by the BCVMC.<sup>12</sup> The BCVMC is a regulatory agency whose purpose is to “promote, control and regulate in any respect the production, transportation, packing, storage and marketing of regulated products”.<sup>13</sup> Commercial greenhouse bell pepper growers in British Columbia are members of both organizations.

### CANADIAN MARKET

[24] While the total value of Canadian production of greenhouse peppers is publicly available from CANSIM data from Statistics Canada, the value of Canadian production for domestic consumption is only available from the confidential submissions of the Canadian growers associations. The CBSA has prepared the following tables to show data for greenhouse bell peppers imported into Canada during the POR.

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<sup>6</sup> Exhibit 28 NC, “Producer Case Brief – OGVG”.

<sup>7</sup> Ibid.

<sup>8</sup> Exhibit 17 NC, “Producer Submission – OGVG”.

<sup>9</sup> Ibid.

<sup>10</sup> Exhibit 16 NC, “Producer Submission – BCVMC”.

<sup>11</sup> Ibid.

<sup>12</sup> Exhibit 13 NC, “Producer Submission – BCVMC”.

<sup>13</sup> Ibid.

**Table 1**  
**Imports into Canada<sup>14</sup>**  
**Greenhouse bell peppers (Metric Tonnes)**

Source	2012	2013	2014
Mexico	27,293	34,421	35,080
United States	963	1,437	2,318
Spain	908	1,052	1,472
Belgium	864	274	164
Israel	519	234	406
Dominican Republic	210	254	1,030
The Netherlands	4	0	1
All Other Countries	320	200	134
<b>Total Imports</b>	<b>31,081</b>	<b>37,871</b>	<b>40,605</b>

Note: Totals may differ from sum of cells as individual cells have been rounded.

**Table 2**  
**Imports into Canada<sup>15</sup>**  
**Greenhouse bell peppers (Value in CAD)**

Source	2012	2013	2014
Mexico	67,045,118	88,378,453	98,002,758
United States	1,896,674	2,888,653	4,867,272
Spain	3,109,371	3,802,923	5,770,347
Belgium	2,618,568	1,198,086	618,523
Israel	1,736,967	1,133,562	1,371,917
Dominican Republic	235,536	335,784	1,731,945
The Netherlands	23,607	0	83
All Other Countries	1,017,852	770,611	562,044
<b>Total Imports</b>	<b>\$77,683,693</b>	<b>\$98,508,072</b>	<b>\$112,924,889</b>

[25] During the POR, the total imports of subject goods from the Netherlands represented less than 0.01% of the total Canadian market for greenhouse bell peppers with respect to volume and value. The volume of imports from the Netherlands was 3,836 kilograms in 2012, zero in 2013, and 1000 kilograms in 2014.

<sup>14</sup> Exhibit 26 NC, "Import, market and enforcement statistics".

<sup>15</sup> Exhibit 26 NC, "Import, market and enforcement statistics".



## **CASE ENFORCEMENT**

[26] 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.

[27] Throughout the entire POR, normal values for imports of subject goods were determined by means of a ministerial specification, pursuant to section 29 of SIMA, which specifies that the normal value shall be determined based on the export price plus an amount equal to 193% of that export price, resulting in anti-dumping duties equal to 193% of the export price. Normal values have been determined in this manner since October 19, 2010, the day of the Tribunal finding.

[28] On December 18, 2013, the CBSA concluded a re-investigation to update the normal values and export prices of greenhouse bell peppers from the Netherlands. No exporters participated in the re-investigation.

[29] During the POR, 100% of imports of subject goods were assessed anti-dumping duty. The CBSA collected \$43,005 in anti-dumping duties on imports of subject goods in 2012. The CBSA did not collect any anti-dumping duty on subject goods in 2013 as there were no imports of subject goods. The amount of anti-dumping duty collected by the CBSA on imports of subject goods in 2014 is protected and cannot be disclosed, as the duty was paid by a single importer in Canada.

## **PARTIES TO THE PROCEEDING**

[30] On February 5, 2015, the Expiry Review Questionnaires (ERQ) and Notice of Expiry Review Investigation were sent to all known Canadian producers and to all known importers and exporters of the subject goods.

[31] The ERQs requested information needed to consider the expiry review factors, as found in subsection 37.2(1) of the *Special Import Measures Regulations* (SIMR), relevant to this expiry review investigation.

[32] The OGVG, the BCVMC and the BCGGA participated in the expiry review investigation and responded to the ERQ. Two individual growers in Canada, Willow Spring Hydroponic Farms of Ontario and Cheam View Greenhouse of British Columbia, also participated in the expiry review investigation and responded to the ERQ.

[33] No responses to the CBSA's ERQs were received from exporters or importers of the subject goods.

[34] The OGVG provided a case brief to the CBSA in support of its position that continued or resumed dumping of greenhouse bell peppers from the Netherlands is likely if the Tribunal finding is rescinded.



[35] No other case briefs or reply submissions were received by the CBSA from parties to the proceeding.

## **INFORMATION CONSIDERED BY THE PRESIDENT**

### **Administrative Record**

[36] The information used and considered by the President for purposes of this expiry review investigation is contained on the CBSA's administrative record (the record). The record consists of the exhibits listed on the CBSA's Exhibit Listing, which is comprised of the Tribunal's administrative record on which the Tribunal based its decision to initiate an expiry review, CBSA exhibits, and information submitted by interested persons, including information which they believe is relevant to the decision as to whether dumping is likely to continue or resume, if the finding is rescinded.

[37] For purposes of an expiry review investigation, the CBSA sets a date after which no "new" information submitted by interested parties may be placed on the 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 record as of the closing of the record date. For the CBSA's expiry review investigation, the record closed on March 26, 2015.

## **POSITION OF THE PARTIES**

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

#### **Position of the Ontario Greenhouse Vegetable Growers**

[38] The OGVG provided a case brief presenting its position, on behalf of its members, that continued or resumed dumping is likely should the finding be rescinded.<sup>16</sup> It argued that the finding should remain in place.

[39] The OGVG's position is summarized as follows:

- the continuing propensity of producers of greenhouse bell peppers in the Netherlands to overproduce;
- export dependency of greenhouse bell peppers growers in the Netherlands;
- competition in the export markets of greenhouse bell peppers growers in the Netherlands;
- the potential for the foreign producers to produce the goods in facilities that are currently used to produce other goods;

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<sup>16</sup> Exhibit 28 NC, "Case Brief – OGVG".

- trade sanctions of Russia banning imports of agricultural products from the European Union, including greenhouse bell peppers from the Netherlands;
- inability of exporters in the Netherlands to sell at normal values; and
- a statement by Frugi Venta of the Netherlands regarding dumping.

### *Overproduction*

[40] The OGVG cited production capacity in the Netherlands of 4,840 hectares of greenhouse vegetable operations in 2014, down 50 hectares from 4,890 hectares in 2013.<sup>17</sup> Of these amounts, 1,160 hectares were dedicated to the production of bell peppers in 2014, down 80 hectares from 1,240 hectares in 2013.<sup>18</sup> The OGVG argues that the Netherlands' entire greenhouse capacity is a potential source of greenhouse bell peppers.<sup>19</sup>

[41] The OGVG cites evidence that after a drop in hectares of greenhouses in the Netherlands used to produce bell peppers from 2013 to 2014, new capacity is being added with harvest available in 2015.<sup>20</sup>

[42] The OGVG quotes Cor Hendriks, manager for horticulture at Rabobank Group, described by the Wall Street Journal as the largest agricultural lender in the Netherlands<sup>21</sup>, as saying, "Holland produces more greenhouse vegetables than they can market ... the situation isn't sustainable".<sup>22</sup>

[43] The OGVG argues that the overcapacity for the production of greenhouse bell peppers in the Netherlands is likely to result in the continuation or resumption of the dumping into Canada of greenhouse bell peppers from the Netherlands if the finding of the Tribunal is rescinded.<sup>23</sup>

### *Dependency on Export Markets*

[44] The OGVG describes the agricultural industry in the Netherlands as export-oriented, and states that 90% of Dutch greenhouse vegetable production is exported.<sup>24</sup> Export statistics show that greenhouse bell peppers from the Netherlands were shipped to 95 countries from 2011 to 2013, with export sales of such goods totalling a value of one billion U.S. dollars in each of those years.<sup>25</sup>

<sup>17</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 26, and Exhibit 20 NC, "CITT Administrative Record", p.54.

<sup>18</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 26, and Exhibit 20 NC, "CITT Administrative Record", p.54.

<sup>19</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 30, and Exhibit 20 NC, "CITT Administrative Record", p.77-78.

<sup>20</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 29, and Exhibit 20 NC, "CITT Administrative Record", p.76.

<sup>21</sup> Exhibit 20 NC, "CITT Administrative Record", pp.63-64.

<sup>22</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 28, and Exhibit 20 NC, "CITT Administrative Record", pp.74-75.

<sup>23</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraphs 26, 28-30, and 52.

<sup>24</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 33, and Exhibit 20 NC, "CITT Administrative Record", p.79.

<sup>25</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraphs 33 and 34, and Exhibit 20 NC, "CITT Administrative Record", pp.95-98.

## *Competition in Export Markets*

[45] The OGVG cited changes that have increased competition in the Netherland's export markets for greenhouse bell peppers and are likely to result in the continuation or resumption of the dumping into Canada of greenhouse bell peppers from the Netherlands if the finding of the Tribunal is rescinded.<sup>26</sup>

[46] In a typical year, Dutch growers ship over 50% of their annual production to Germany and Britain.<sup>27</sup> An article cited by the OGVG from Freshplaza.com, a global fresh produce news web site based in the Netherlands, stated in reference to greenhouse bell peppers that "in the period January to July [2013] exports from the Netherlands to Germany continued (including re-exports) more than a quarter behind the same period in 2012" and "in the same period, there were a third more peppers imported from Spain to Germany".<sup>28</sup> Data provided on the record show a decline in imports into Germany of greenhouse bell peppers from the Netherlands from a range of 162,000 – 182,000 metric tonnes in the years 2009 through 2012 to 144,000 metric tonnes in 2013.<sup>29</sup> The decline from 2012 to 2013 was from 180,000 metric tonnes to 144,000 metric tonnes, or 20%.<sup>30</sup> The OGVG argues that the loss of market share in Germany to greenhouse bell peppers from Spain has led to very low price levels in 2014, with some sales in the range of 0.05 euros to 0.35 euros per kilogram.<sup>31</sup> The OGVG argues that these low price levels constitute strong evidence of a propensity to sell at dumped prices to Canada.<sup>32</sup>

[47] The OGVG refers to an article from Hortidaily contending that the devaluation of the Russian currency has had an impact on greenhouse bell peppers producers in Israel who export to Russia.<sup>33</sup> In the article, Mr. Avi Kadan of the Israeli company Adafresh is quoted as stating "a lot of peppers that were intended for Russia will now end up in Europe, so there is risk the market may collapse".<sup>34</sup> The OGVG contends that the issue of the Russian currency devaluation has pushed Israeli greenhouse bell peppers that would have previously gone to Russia into other markets, putting them in competition with product from the Netherlands in those other markets, which according to Mr. Kadan in the article cited by the OGVG could lead to a collapse in prices in those other markets.<sup>35</sup> The OGVG argues that this is a factor likely to result in the continuation or resumption of the dumping into Canada of greenhouse bell peppers from the Netherlands if the finding of the Tribunal is rescinded.<sup>36</sup>

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<sup>26</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraphs 26-40, and 52.

<sup>27</sup> Exhibit 20 NC, "CITT Administrative Record", pp.93.

<sup>28</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraphs 27 and 35, and Exhibit 20 NC, "CITT Administrative Record", pp.55-56.

<sup>29</sup> Exhibit 20 NC, "CITT Administrative Record", p.90.

<sup>30</sup> Ibid.

<sup>31</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 35, and Exhibit 20 NC, "CITT Administrative Record", pp.55-57, and 93.

<sup>32</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 52.

<sup>33</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 37, and Exhibit 20 NC, "CITT Administrative Record", p.65.

<sup>34</sup> Exhibit 20 NC, "CITT Administrative Record", p.65.

<sup>35</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 37.

<sup>36</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 52.

[48] An article cited by the OGVG claims “Mexico is well on its way to become the number one, year-round supplier of greenhouse vegetables for the North American market”.<sup>37</sup> The OGVG also cites an article in which Honduras “aims to become one of the major suppliers for the U.S., competing with major producers such as Mexico” in the market for greenhouse bell peppers.<sup>38</sup> The OGVG claims that this will “put pressure on Dutch pepper exporters to that market”<sup>39</sup>, and these competitive factors in the export markets of the Netherlands are likely to result in the continuation or resumption of the dumping into Canada of greenhouse bell peppers from the Netherlands if the finding of the Tribunal is rescinded.<sup>40</sup>

[49] The OGVG provided an article titled “Japanese greenhouse industry on the dawn of a new era”, which cites the Japanese Minister of Agriculture announcing that he wants to “revitalize local economies by increasing local food production”.<sup>41</sup> The OGVG argues that this is an example of domestic producers of greenhouse bell peppers in the export markets of the Netherlands increasing their domestic production.<sup>42</sup> The OGVG argues that increased domestic production of greenhouse bell peppers in the Netherlands’ export markets such as Japan increases competition in those markets, which is likely to result in the continuation or resumption of the dumping into Canada of greenhouse bell peppers from the Netherlands if the finding of the Tribunal is rescinded.<sup>43</sup>

[50] The OGVG argues that oversupply exists not just in the Netherlands, but also throughout Europe.<sup>44</sup> The OGVG cited an article from FreshPlaza.com, a fresh produce news website based in the Netherlands, stating that greenhouse bell peppers production in Spain, Turkey and Eastern European countries has increased competition for producers in the Netherlands when selling to their European markets, and as a result producers in the Netherlands have turned increasingly to markets other than Europe to clear their production and to avoid driving down prices in their European markets.<sup>45</sup> The OGVG argues that these competitive factors in the export markets of the Netherlands are likely to result in the continuation or resumption of the dumping into Canada of greenhouse bell peppers from the Netherlands if the finding of the Tribunal is rescinded.<sup>46</sup>

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<sup>37</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 39, and Exhibit 20 NC, “CITT Administrative Record”, p.71.

<sup>38</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 39, and Exhibit 20 NC, “CITT Administrative Record”, p.68.

<sup>39</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 39.

<sup>40</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraphs 39 and 52.

<sup>41</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 40, and Exhibit 20 NC, “CITT Administrative Record”, pp.81-82.

<sup>42</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 40.

<sup>43</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraphs 40 and 52.

<sup>44</sup> Exhibit 20 NC, “CITT Administrative Record”, pp.74-75.

<sup>45</sup> Exhibit 20 NC, “CITT Administrative Record”, pp. 55-56.

<sup>46</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 52.

### ***Potential to produce subject goods in facilities that are currently used to produce other goods***

[51] The OGVG argues that the Netherlands' entire greenhouse capacity is a potential source of greenhouse bell peppers.<sup>47</sup> According to the OGVG, producers of one greenhouse product (for example roses) can readily convert production to a greenhouse vegetable if the alternative becomes more appealing.<sup>48</sup> The OGVG argues this ability to convert production to greenhouse bell peppers in the Netherlands is likely to result in the continuation or resumption of the dumping into Canada of greenhouse bell peppers from the Netherlands if the finding of the Tribunal is rescinded.<sup>49</sup>

### ***Effect of Russian trade sanctions***

[52] The OGVG cited a news item by the Reuters news agency, "the Baltic States sell hundreds of millions of euros worth of Dutch produce, including tomatoes, cucumbers and peppers, to Russia".<sup>50</sup> The OGVG cites a one-year ban imposed by Russia on August 7, 2014 on all agricultural products from the European Union, which includes greenhouse bell peppers from the Netherlands.<sup>51</sup> According to Rabobank Group, the ban "is mostly hurting producers of tomatoes, bell peppers and pears".<sup>52</sup> The Wall Street Journal reported from Amsterdam, the Netherlands, that "farmers complain that the ban is already creating oversupply that is causing prices to tumble".<sup>53</sup> The OGVG argues that the removal of Russia as an export market for greenhouse bell peppers from the Netherlands is likely to result in the continuation or resumption of the dumping into Canada of such goods if the finding of the Tribunal is rescinded.<sup>54</sup>

### ***Inability of exporters in the Netherlands to sell at normal values***

[53] The OGVG cited publicly available import data showing a "disappearance" of Dutch peppers from the Canadian market after the Tribunal finding in NQ-2010-001 as evidence of the inability of growers from the Netherlands to compete in the Canadian market without dumping.<sup>55</sup>

[54] The OGVG provided an estimate of the cost per kilogram to produce greenhouse bell peppers in the Netherlands<sup>56</sup>, adjusted for different wage rates in the Netherlands, and the cost of air freight from the Netherlands to central Canada<sup>57</sup>, and compared the sum of those figures to average prices for greenhouse bell peppers in Canada during the POR.<sup>58</sup>

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<sup>47</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 30, and Exhibit 20 NC, "CITT Administrative Record", p.77-78.

<sup>48</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 30, and Exhibit 20 NC, "CITT Administrative Record", p.77-78.

<sup>49</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 52.

<sup>50</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 36, and Exhibit 20 NC, "CITT Administrative Record", p.60.

<sup>51</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 36, and Exhibit 20 NC, "CITT Administrative Record", p.60.

<sup>52</sup> Ibid.

<sup>53</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 36, and Exhibit 20 NC, "CITT Administrative Record", p.63.

<sup>54</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 52.

<sup>55</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 41, and Exhibit 6 NC, "Import and enforcement statistics for the period of review".

<sup>56</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 49 and Exhibit 25 PRO, "Case Brief – OGVG", attachment 2.

<sup>57</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 49.

<sup>58</sup> Exhibit 28 NC, "Case Brief", paragraph 46 and Exhibit 20 NC, "CITT Administrative Record".



[55] Promotional materials of greenhouse bell peppers producers in the Netherlands advertise that they can transport their product from the Netherlands to North America in one day.<sup>59</sup>

[56] The OGVG estimated the cost to produce greenhouse bell peppers in the Netherlands averaged \$2.42 per kilogram in 2014, and estimated the cost of freight for transporting them from the Netherlands to Canada at \$1.64 per kilogram.<sup>60</sup> According to the OGVG, adding the estimated cost to produce greenhouse bell peppers in the Netherlands to the cost of freight results in a delivered price that exporters of greenhouse bell peppers in the Netherlands would have to charge importers in Canada to cover all costs including freight. The OGVG alleges that below that price level, exporters in the Netherlands would be dumping.<sup>61</sup>

[57] The OGVG cites a report from Hortidaily from November 3, 2014 which quotes Johan Joosen of vegetable trader and warehouse Scherpenhuizen of the Netherlands as saying in reference to peppers, “we’re currently looking at price levels between 5 and 35 cents [per kilogram]. There’s some exports going to Eastern Europe, but for very little money. Growers are already clearing their greenhouses, cutting their losses. ... Orange peppers did alright earlier this week, but now they’ve dwindled to 30 cents. Spain has had some exceptional weather recently, and is now saturating the market with huge volumes”.<sup>62</sup> The OGVG claims that the low prices for greenhouse bell peppers exported by the Netherlands, as cited by Mr. Joosen, are evidence of a propensity for exporters of greenhouse bell peppers in the Netherlands to dump the goods.<sup>63</sup>

[58] Referring to the upper end of the range of prices for exports of greenhouse bell peppers from the Netherlands near the end of 2014 as cited by Johan Joosen of Scherpenhuizen<sup>64</sup>, the OGVG argues that delivered pricing from exporters of greenhouse bell peppers from the Netherlands can get as low as 1.55 euros per kilogram (1.20 for freight plus 0.35 for the goods), or \$2.12 Canadian based on an exchange rate of 1.37 (April 6, 2015 exchange rate used by the OGVG).<sup>65</sup> The OGVG argues that a potential price of \$2.12 delivered for greenhouse bell peppers from the Netherlands is well below average farm gate prices in Canada for the period 2011 through 2013.<sup>66</sup>

[59] The OGVG indicates that there is a cost to dispose of unsold produce, and argue that exporters of greenhouse bell peppers in the Netherlands may be willing to sell unsold produce at prices as low as 0.05 euros per kilogram plus air freight in order to clear inventory.<sup>67</sup>

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<sup>59</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 38, and Exhibit 20 NC, “CITT Administrative Record”, p.66.

<sup>60</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 49.

<sup>61</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 49.

<sup>62</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 44, and Exhibit 20 NC, “CITT Administrative Record”, p.57.

<sup>63</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 44.

<sup>64</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 44, and Exhibit 20 NC, “CITT Administrative Record”, p.57.

<sup>65</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 46, and Exhibit 20 NC, “CITT Administrative Record”, p.57.

<sup>66</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 46, and Exhibit 20 NC, “CITT Administrative Record”, pp.87-88.

<sup>67</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 47.

[60] The OGVG cites export data showing pricing to one-half of the export markets of greenhouse bell peppers from the Netherlands as being below the average of all its export markets.<sup>68</sup> While it is to be expected that when looking at a series of data some will be below average, the OGVG cited prices to one export market for greenhouse bell peppers of the Netherlands, the Czech Republic, as being 36% below its average price to all markets in 2013.<sup>69</sup> An analysis of the information from Eurostat Statistics, a leading provider of statistics on Europe, shows that 17 of 46 export markets of greenhouse bell peppers growers from the Netherlands have prices that are 10% or more below the average pricing including several that are 20% or 30% below the average in 2013.<sup>70</sup>

[61] The OGVG cites a report that the greenhouse bell peppers industry in the Netherlands operated at a loss from 2009-2012 and that 50% of vegetable growers in the Netherlands were unable to pay their bills between 2011 and 2013. The OGVG indicates this is evidence of the need to generate cash flow.<sup>71</sup>

#### ***Statement by Frugi Venta regarding dumping***

[62] The OGVG states that Frugi Venta has “confirmed in its submissions to the Tribunal that removing dumping duties would likely result in the resumption of dumping of subject goods”.<sup>72</sup> The statement from Frugi Venta to the Tribunal and cited by the OGVG in support of its position is:

The nature of trade in agricultural goods is such that some goods will inevitably be sold at less than production cost. [...] Although Frugi Venta does not admit to the existence of dumping, it cannot take the position that dumping would not resume because methodologies used by the Canada Border Services Agency to determine margin of dumping are such that a finding of dumping is virtually inevitable in an investigation concerning agricultural products.<sup>73</sup>

#### **Parties Contending that Continued or Resumed Dumping is Not Likely**

[63] None of the parties to the CBSA proceeding provided a submission to the CBSA in support of the position that continued or resumed dumping is not likely should the finding be rescinded.

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<sup>68</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 43, and Exhibit 20 NC, “CITT Administrative Record”, pp.92-94.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 31, and Exhibit 20 NC, “CITT Administrative Record”, pp.58-59, 74-75.

<sup>72</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 50.

<sup>73</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 50, and Exhibit 20 NC, “CITT Administrative Record”, p.123.



### **Other Relevant Information**

[64] Frugi Venta was sent an exporter ERQ by the CBSA but did not respond. However, Frugi Venta provided a submission<sup>74</sup> and a reply submission<sup>75</sup> to the Tribunal after it sent a *Notice of Expiry*. These documents became a part of the CBSA's record when the Tribunal transferred its administrative record to the CBSA when the expiry review was initiated. The submissions of Frugi Venta include information and arguments relevant to the determination of the President pursuant to paragraph 76.03(7)(a) of SIMA.

[65] Frugi Venta provided evidence to the Tribunal from the Central Statistics Bureau of the Netherlands that the production of greenhouse bell peppers in the Netherlands declined from 365 million kilograms in 2010, the year of the Tribunal finding, to 345 million kilograms in 2012 and further to 325 million kilograms in 2013.<sup>76</sup> Similarly, the Central Statistics Bureau reported the number of hectares of greenhouses used to produce greenhouse bell peppers declined from 1,400 hectares in 2010 to 1,310 hectares in 2012 and further to 1,240 hectares in 2013, with an estimate of a further decline to 1,160 acres in 2014.<sup>77</sup>

[66] Frugi Venta provided evidence to the Tribunal from the Quality Control Bureau of the Netherlands that export volumes of greenhouse bell peppers from the Netherlands have declined to nearly all export markets and the total export volume has declined from 321 million kilograms in 2010, the year of the Tribunal finding, to 294 million kilograms in 2012 and further to 269 million kilograms in 2013.<sup>78</sup>

[67] Frugi Venta contends in its submission to the Tribunal that the reductions in capacity for the production of greenhouse bell peppers in the Netherlands and export volumes of greenhouse bell peppers from the Netherlands are indications that "there exists no condition of oversupply".<sup>79</sup>

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<sup>74</sup> Exhibit 20 NC, "CITT Administrative Record", pp.100-163.

<sup>75</sup> *Ibid.*, pp.186-207.

<sup>76</sup> *Ibid.*, pp.111, 129.

<sup>77</sup> Exhibit 20 NC, "CITT Administrative Record", pp.111, 128.

<sup>78</sup> Exhibit 20 NC, "CITT Administrative Record", pp.113, 135-137.

<sup>79</sup> *Ibid.*, p.114.

[68] In its reply submission to the Tribunal, Frugi Venta contended that the low prices of 0.05 to 0.35 euros per kilogram for greenhouse bell peppers exported by the Netherlands as quoted by Mr. Joosen in an article cited by the OGVG were in respect of inferior “class 2” peppers, which are not sold in North American markets.<sup>80</sup> Further, Frugi Venta indicated in its reply submission to the Tribunal that “P8”, an association of greenhouse bell peppers producers representing approximately 80-85% of total greenhouse bell pepper acreage in the Netherlands, estimates that the average farm gate price (i.e. non-delivered price) for greenhouse bell peppers sold by producers in the Netherlands was 1.00 euro or \$1.47 per kilogram.<sup>81</sup> In addition, Frugi Venta indicates this price includes a mix of “class 1” and “class 2” greenhouse bell peppers, and that only the more expensive “class 1” greenhouse bell peppers would be exported to North America.<sup>82</sup>

[69] In its reply submission to the Tribunal, Frugi Venta indicated the average price of greenhouse bell peppers from the Netherlands imported into the United States was US\$2.44 in 2012 and US\$4.27 in 2013 in contrast to the price of greenhouse bell peppers from the Netherlands on a worldwide basis which was US\$2.13 in 2012 and US\$2.52 in 2013.<sup>83</sup> Frugi Venta stated that “the price of Dutch pepper imports into the United States may also provide guidance to the Tribunal as to the realistic price range at which the subject goods would likely have entered the Canadian market during this period”.<sup>84</sup>

[70] In its reply submission to the Tribunal, Frugi Venta contended that OGVG’s statement that greenhouse space producing other products can be “readily” converted to produce greenhouse bell peppers is not correct due to the high costs involved. According to Frugi Venta:

“Bell peppers require expensive, specialized machinery and equipment that are not required for other crops, such as loading wagons, transport systems for bulk bins, packaging lines, and computerized sorting and quality control machines that typically cost between 120,000 and 250,000 euro each. Frugi Venta’s members estimate that the cost of switching a greenhouse from tomatoes [to] peppers is approximately 1 million euro for a 5 hectare greenhouse, and to switch from cauliflowers to peppers would cost about 2 million euro for a 5 hectare greenhouse. Also, some greenhouses designed for lighter weight crops, such as cut flowers, are not structurally suitable for pepper production because the weight of fruit would cause the greenhouse infrastructure to collapse.”<sup>85</sup>

[71] In its reply submission to the Tribunal, Frugi Venta addresses the ban by Russia of all agricultural products from the European Union, including greenhouse bell peppers from the Netherlands. Frugi Venta notes that the ban is a one-year ban that is scheduled to end in August 2015, two months before the expiry of the Tribunal finding.<sup>86</sup>

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<sup>80</sup> Exhibit 20 NC, “CITT Administrative Record”, p.196.

<sup>81</sup> Ibid., pp.196-197.

<sup>82</sup> Ibid., p.197.

<sup>83</sup> Ibid., pp.93, 197.

<sup>84</sup> Ibid., p.197.

<sup>85</sup> Exhibit 20 NC, “CITT Administrative Record”, p. 199.

<sup>86</sup> Ibid., p. 200.

## **CONSIDERATION AND ANALYSIS**

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

[73] Guided by the aforementioned regulations and having examined the information on the administrative record, the following is a summary of relevant factors considered in this analysis:

- Dumping of goods while Tribunal finding in effect and inability to compete at non-dumped prices [SIMR 37.2(1)(a),(c),(d) and (h)]
- Propensity to overproduce [SIMR 37.2(1)(c),(d) and (h)]
- Dependency on export markets [SIMR 37.2(1)(c),(d) and (h)]
- Competition from the international market [SIMR 37.2(1)(e),(d) and (h)]
- Potential to convert facilities to the production of subject goods [SIMR 37.2(1)(e)]
- Statement from Frugi Venta [SIMR 37.2(1)(j)]

[74] A discussion of these factors is presented below.

### **Dumping of Goods While Tribunal Finding in Effect and Inability to Compete at Non-Dumped Prices**

[75] Information on anti-dumping duties collected during the POR is presented in the “Case Enforcement” section. Anti-dumping duties were collected on 100% of the subject goods imported into Canada from the Netherlands during the POR.<sup>87</sup>

[76] Based on evidence on the record, the CBSA analyzed whether or not exporters of subject goods would likely be able to compete in the Canadian market at non-dumped prices. The OGVG provided the CBSA with an estimate of the total cost per kilogram of greenhouse bell peppers produced in the Netherlands, based on the 2014 costs of a large Canadian grower of greenhouse bell peppers and adjusted for differences in labour costs between Canada and the Netherlands.<sup>88</sup>

[77] The CBSA calculated the average price of greenhouse bell peppers sold in the Canadian market in 2014 based on evidence on the record.<sup>89</sup> The CBSA adjusted that price downward to account for the cost of freight from the Netherlands to Canada, which the exporter would have to pay or offset in the price to the importer in Canada in order to be competitive with prices prevailing in the Canadian market. The adjusted price is less than the estimated total cost of the goods produced in the Netherlands as detailed above. This indicates that exporters from the Netherlands would have been unable to sell subject goods to importers in Canada at non-dumped prices during the POR.

<sup>87</sup> Exhibit 20 NC, “CITT Administrative Record”, p.200.

<sup>88</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 49.

<sup>89</sup> Exhibit 27 PRO, “Import, market and enforcement statistics”.

[78] Evidence on the record indicates that there is a cost to dispose of unsold produce and that exporters of greenhouse bell peppers in the Netherlands may be willing to sell unsold produce at prices as low as 0.05 euros per kilogram plus air freight in order to clear inventory.<sup>90</sup> This is an indication that exporters in the Netherlands may be willing to sell greenhouse bell peppers at dumped prices to clear inventory.

[79] An analysis of the information from Eurostat Statistics shows 17 of 46 export markets of greenhouse bell peppers growers from the Netherlands at prices 10% or more less than the average including several at 20% or 30% less than average in 2013.<sup>91</sup> Prices to the Czech Republic were 36% below its average price to all markets in 2013.<sup>92</sup> That is a high degree of price variability to different markets in the same year, indicating exporters in the Netherlands are willing to accept lower prices to obtain sales, which could lead to selling at dumped prices.

### Overproduction

[80] Cor Hendriks, manager for horticulture at Rabobank Group, described by the Wall Street Journal as the largest agricultural lender in the Netherlands<sup>93</sup>, is quoted as saying, “Holland produces more greenhouse vegetables than they can market ... the situation isn’t sustainable”.<sup>94</sup>

[81] As cited by Mr. Joosen of vegetable trader and warehouse Scherpenhuizen of the Netherlands, low prices for greenhouse bell peppers exported by the Netherlands may indicate that exporters of greenhouse bell peppers in the Netherlands are willing to sell at prices lower than their production cost.<sup>95</sup> The willingness of exporters from the Netherlands to sell at prices that are below production costs may indicate that greenhouse bell peppers are overproduced.

[82] Frugi Venta has indicated that some low prices for exported greenhouse bell peppers from the Netherlands may be due to sales of less expensive “class 2” peppers instead of the more expensive “class 1” peppers it would normally sell to a North American market like Canada.<sup>96</sup> However, the product definition includes all greenhouse bell peppers originating in or exported from the Netherlands, and there is no evidence on the record to show that growers in the Netherlands would not export “class 2” peppers to Canada.

[83] A report on the record indicates that the greenhouse bell peppers industry in the Netherlands operated at a loss from 2009-2012 and that 50% of vegetable growers in the Netherlands were unable to pay their bills between 2011 and 2013.<sup>97</sup> This indicates an inability

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<sup>90</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 47.

<sup>91</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 44.

<sup>92</sup> Exhibit 20 NC, “CITT Administrative Record”, pp.91-94.

<sup>93</sup> Exhibit 20 NC, “CITT Administrative Record”, pp.63-64.

<sup>94</sup> Ibid., pp.74-75.

<sup>95</sup> Exhibit 28 NC, “Case Brief – OGVG”, paragraph 44.

<sup>96</sup> Exhibit 20 NC, “CITT Administrative Record”, p.197.

<sup>97</sup> Exhibit 20 NC, “CITT Administrative Record”, pp.58-59, 74-75.

to obtain prices that cover costs, which can be an indication of overproduction compared to demand.

[84] Producers in the Netherlands have reduced, in each year of the POR, the number of hectares of greenhouse devoted to the production of greenhouse bell peppers. This may indicate that they have had a propensity to overproduce greenhouse bell peppers given market demand.<sup>98</sup>

[85] Evidence on the record, as detailed above, indicates that there is a propensity to overproduce greenhouse bell peppers in the Netherlands.

### **Dependency on Export Markets**

[86] Of the 325 million kilograms of greenhouse bell peppers produced in the Netherlands in 2013, 269 million kilograms, or 82.8%, were exported.<sup>99</sup> This indicates producers of greenhouse bell peppers in the Netherlands are dependent on export markets without which a significant portion of production of greenhouse bell peppers in the Netherlands would not have a market.

### **Competition in the International Market**

[87] Evidence on the record shows that Germany is the largest export market by volume and value for greenhouse bell peppers from the Netherlands, with exports to Germany accounting for about 35% of all exports of greenhouse bell peppers from the Netherlands.<sup>100</sup> Data provided on the record indicates a decline in imports into Germany of greenhouse bell peppers from the Netherlands from a range of 162,000 – 182,000 metric tonnes in the years 2009 through 2012 to 144,000 metric tonnes in 2013.<sup>101</sup> The decline from 2012 to 2013 was from 180,000 metric tonnes to 144,000 metric tonnes, or 20%.<sup>102</sup> Based on this information, there has been a loss of market share of greenhouse bell peppers from the Netherlands in the German market at the same time as product from Spain has increased its share of the German market. Increased competition and loss of market share in Germany, the largest export market for greenhouse bell peppers from the Netherlands, is likely to lead to exporters in the Netherlands seeking new markets to replace lost market share.

[88] The recent devaluation of the Russian currency has had an impact on greenhouse bell peppers producers in Israel who export to Russia and who may have to divert product away from Russia to other markets in competition with exports of greenhouse bell peppers from the Netherlands.<sup>103</sup> This is likely to contribute to increased competition in other markets from greenhouse bell peppers diverted away from Russia, which could lower the prices in other markets.

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<sup>98</sup> Exhibit 20 NC, "CITT Administrative Record", p.128.

<sup>99</sup> Exhibit 20 NC, "CITT Administrative Record", pp.113, 129, 137.

<sup>100</sup> Exhibit 20 NC, "CITT Administrative Record", p.93.

<sup>101</sup> Exhibit 20 NC, "CITT Administrative Record", p.90.

<sup>102</sup> Ibid.

<sup>103</sup> Exhibit 28 NC, "Case Brief – OGVG", paragraph 37, and Exhibit 20 NC, "CITT Administrative Record", p.65.



[89] Statistics Canada data on the record indicates that during the period 2011 through 2013, two thirds of imports into Canada of greenhouse bell peppers from Mexico have occurred during the December to March period, when Canadian greenhouses have limited to no production due to light conditions and replanting schedules.<sup>104</sup> The same data on the record from Statistics Canada shows that Mexico is expanding its presence in the Canadian market for greenhouse bell peppers throughout the year, including outside the December to March period.<sup>105</sup> As a result, if exporters from the Netherlands attempt to re-enter the Canadian market for greenhouse bell peppers, they would have to compete against exporters from Mexico. Increased competition tends to lead to lower prices.

[90] In 2013, Japan was the sixth largest export market by value for greenhouse bell peppers from the Netherlands.<sup>106</sup> Evidence on the record indicates that the government of Japan intends to invest in sustainable greenhouse technology. This indicates that there will be increased competition for greenhouse bell peppers in Japan, the sixth largest export market for the Netherlands, from new domestic production. Increased competition tends to lead to lower prices or lost market share that needs to be diverted to new markets.

#### **Potential to Convert Facilities to the Production of Subject Goods**

[91] The OGVG argues that the Netherlands' entire greenhouse capacity is a potential source of greenhouse bell peppers. As alleged by the OGVG, producers of one greenhouse product can readily convert production to a greenhouse vegetable if the alternative becomes more appealing.<sup>107</sup> However, evidence provided by Frugi Venta to the Tribunal and placed on the CBSA's record demonstrates a significant cost to convert a greenhouse from another product to greenhouse bell peppers.<sup>108</sup> Based on this evidence, it is not conclusive that the entire greenhouse capacity of the Netherlands is readily convertible to the production of greenhouse bell peppers.

#### **Statement of Frugi Venta**

[92] Frugi Venta stated:

“The nature of trade in agricultural goods is such that some goods will inevitably be sold at less than production cost. [...] Although Frugi Venta does not admit to the existence of dumping, it cannot take the position that dumping would not resume because methodologies used by the Canada Border Services Agency to determine margin of dumping are such that a finding of dumping is virtually inevitable in an investigation concerning agricultural products.”<sup>109</sup>

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<sup>104</sup> Exhibit 20 NC, “CITT Administrative Record”, p.90, and Exhibit 28 NC, “Case Brief – OGVG”, paragraph 24.

<sup>105</sup> Ibid.

<sup>106</sup> Exhibit 20 NC, “CITT Administrative Record”, p.93.

<sup>107</sup> Exhibit 20 NC, “CITT Administrative Record”, p.77-78.

<sup>108</sup> Exhibit 20 NC, “CITT Administrative Record”, p.199.

<sup>109</sup> Exhibit 20 NC, “CITT Administrative Record”, p.123.

[93] Frugi Venta is the marketing board for producers of fruit and vegetables in the Netherlands and a respondent in the expiry review of the Tribunal on behalf of producers of greenhouse bell peppers in the Netherlands. From the statement above, Frugi Venta considers that “some goods will inevitably be sold at less than production cost” and that a finding of dumping by the CBSA is “virtually inevitable in an investigation concerning agricultural products” due to “methodologies used by the Canada Border Services Agency to determine margins of dumping”.<sup>110</sup>

## **CONCLUSION**

[94] In summary, there was dumping of the subject goods while the finding was in effect and an inability to compete at non-dumped prices; there is a propensity to overproduce greenhouse bell peppers in the Netherlands; producers of greenhouse bell peppers in the Netherlands are dependent on export markets; and there is increased competition in the export markets for greenhouse bell peppers from the Netherlands that is likely to lead to exporters of seeking new markets such as the Canadian market and at lower prices due to the increased competition.

[95] 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 an analysis of the evidence on the record, on June 4, 2015, pursuant to paragraph 76.03(7)(a) of SIMA, the President determined that the expiry of the finding made by the Tribunal on October 19, 2010, in Inquiry No. NQ-2010-001, concerning greenhouse bell peppers originating in or exported from the Netherlands, is likely to result in the continuation or resumption of dumping of the goods into Canada.

## **FUTURE ACTION**

[96] On June 5, 2015, the Tribunal commenced its inquiry to determine whether the expiry of the finding with respect to the goods from the Netherlands is likely to result in injury. The Tribunal’s Expiry Review schedule indicates that it will make its decision by October 16, 2015.

[97] If the Tribunal determines that the expiry of the finding with respect to the goods is likely to result in injury, the finding 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 imports of dumped greenhouse bell peppers originating in or exported from the Netherlands.

[98] If the Tribunal determines that the expiry of the finding with respect to the goods is not likely to result in injury, the finding will be rescinded in respect of those goods. Anti-dumping duties would then no longer be levied on importations of greenhouse bell peppers originating in or exported from the Netherlands beginning on the date the finding is rescinded.

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<sup>110</sup> Exhibit 20 NC, “CITT Administrative Record, p.123.



## INFORMATION

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

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