



OTTAWA, October 5, 2010

4214-28
AD1387

STATEMENT OF REASONS

Concerning the making of a final determination of dumping with respect to

GREENHOUSE BELL PEPPERS ORIGINATING IN OR EXPORTED
FROM THE NETHERLANDS

DECISION

On September 20, 2010, pursuant to paragraph 41(1)(a) of the *Special Import Measures Act*, the President of the Canada Border Services Agency made a final determination of dumping respecting greenhouse bell peppers originating in or exported from the Netherlands.

Cet énoncé des motifs est également disponible en français. Veuillez vous reporter à la section « Renseignements ».

This *Statement of Reasons* is also available in French. Please refer to the “Information” section.

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SUMMARY OF EVENTS

[1] On January 29, 2010, the Canada Border Services Agency (CBSA) received a complaint from the Ontario Greenhouse Vegetable Growers (OGVG), on behalf of its members. The complaint alleged that imports of greenhouse bell peppers originating in or exported from the Netherlands were being dumped and that the dumping of these goods was causing injury to the Canadian industry.

[2] The complaint contained evidence to support the allegations that the imports of greenhouse bell peppers from the Netherlands into Canada have been dumped, and that the dumping has caused injury and is threatening to cause injury to the Canadian industry. On February 19, 2010, pursuant to subsection 32(1)(a) of the *Special Import Measures Act*¹ (SIMA), the CBSA informed the complainant that the complaint was properly documented. The CBSA also notified the Government of the Netherlands that it had received a properly documented complaint.

[3] On March 22, 2010, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated an investigation respecting the dumping of greenhouse bell peppers originating in or exported from the Netherlands. The President was of the opinion that there is evidence that greenhouse bell peppers originating in or exported from the Netherlands had been dumped, and evidence that discloses a reasonable indication that the dumping has caused injury or is threatening to cause injury.

[4] On March 22, 2010, the Canadian International Trade Tribunal (Tribunal) commenced a preliminary injury inquiry pursuant to subsection 34(2) of SIMA into whether the evidence discloses a reasonable indication that the dumping of greenhouse bell peppers originating in or exported from the Netherlands has caused injury or is threatening to cause injury.

[5] On May 21, 2010, pursuant to subsection 37.1(1) of SIMA, the Tribunal made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping of greenhouse bell peppers originating in or exported from the Netherlands has caused injury.

[6] On June 21, 2010, after estimating the margin of dumping and specifying the goods to which the preliminary determination applies based on the information available at the time, the President of the CBSA made a preliminary determination of dumping with respect to greenhouse bell peppers originating in or exported from the Netherlands, pursuant to paragraph 38(1)(a) of SIMA.

[7] On June 21, 2010, pursuant to subsection 8(1) of SIMA, provisional duty was imposed on imports of dumped goods that are of the same description as any goods to which the preliminary determination applies, and that are released during the period commencing on the day the preliminary determination is made and ending on the earlier of the day on which the President of the CBSA causes the investigation to be terminated pursuant to subsection 41(1) of SIMA, the day on which the President of the CBSA accepts an undertaking pursuant to subsection 50(a)(ii)

¹ *Special Import Measures Act*, R.S.C. 1985, c. S-15

of SIMA, or the day the Tribunal makes an order or finding pursuant to subsection 43(1) of SIMA.

[8] On June 21, 2010, pursuant to section 42 of SIMA, the Tribunal commenced an inquiry to determine whether the dumping of greenhouse bell peppers originating in or exported from the Netherlands has caused injury or is threatening to cause injury.

[9] On August 20, 2010, the CBSA received formal undertaking proposals from exporters of greenhouse bell peppers originating in or exported from the Netherlands. The proposals were submitted by exporters who undertook to revise the price at which they sell the subject goods to importers in Canada. The exporters proposed a minimum price level, which they claimed was sufficient to eliminate the injury to Canadian producers caused by the dumping. Upon receipt of the undertaking proposals, the CBSA consulted with interested parties in the manner prescribed in subsection 49(5) of SIMA.

[10] The CBSA continued its investigation and, on the basis of the results, the President is satisfied that greenhouse bell peppers originating in or exported from the Netherlands have been dumped and that the margin of dumping of the goods is not insignificant. Further, after consideration of representations received and all other information available on the record, the President was of the opinion that the observance of the undertaking would not eliminate the margin of dumping or the injury caused by the dumping. Consequently, on September 20, 2010, pursuant to paragraph 41(1)(a) of SIMA, the President made a final determination of dumping with respect to greenhouse bell peppers originating in or exported from the Netherlands.

[11] The Tribunal's inquiry into the question of injury to the Canadian industry is continuing. Provisional duty will continue to be imposed on the dumped goods until the Tribunal makes an order or finding with respect to the goods to which the final determination applies. The Tribunal will issue its decision, pursuant to subsection 43(1) by October 19, 2010.

PERIOD OF INVESTIGATION

[12] The dumping investigation covered all subject goods imported into Canada from January 1, 2009 to December 31, 2009, the period of investigation (POI).

INTERESTED PARTIES

Complainant

[13] The complainant, OGVG, is an association which represents the major proportion of greenhouse bell pepper producers in Canada. The complainant's address is:

Ontario Greenhouse Vegetable Growers
245 Talbot Street West, Suite 103
Leamington, Ontario
N8H 1N8

Other Canadian Producers

[14] The CBSA identified five other domestic associations of producers potentially growing greenhouse bell peppers in Canada: the British Columbia Greenhouse Growers' Association, the Alberta Greenhouse Growers Association, the Red Hat Cooperative in Alberta, the Saskatchewan Greenhouse Growers Association and the Greenhouse Growers Association of Nova Scotia.

Exporters

[15] At the initiation of the investigation, the CBSA identified 44 companies potentially exporting the subject goods, based on the CBSA's Customs Commercial System (CCS) import data and the complaint. The CBSA sent a Request for Information (RFI) to each of these exporters. Based on the information obtained during the investigation, there are now 34 companies exporting the subject goods.

Importers

[16] At the initiation of the investigation, the CBSA identified 23 companies importing the subject goods, based on CCS import data and the complaint.

[17] The CBSA sent an RFI to each of these potential importers of the goods. Two additional importers were identified by exporter responses. The CBSA also determined that one party originally identified as a possible exporter was in fact an importer. As such, based on the information obtained during the investigation, there are now 26 importers.

PRODUCT INFORMATION

Definition

[18] For the purpose of this investigation, the subject goods are defined as:

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

Additional Product Information

[19] According to the complainant,² greenhouse bell peppers are greenhouse grown bell peppers of the family *Solanaceae*, species *Capsicum annuum* L. A greenhouse is 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

²OGVG Complaint (NC), Exhibit 002, Page 1

environments. Therefore, they are usually produced in protected environments such as high passively ventilated greenhouses.

[20] When young, the majority of bell peppers are a rich, bright green, but there are also yellow, orange, red, purple, brown, white and lilac bell peppers, among others. Green peppers are these same products at an unripe stage of fruit development.

[21] Bell peppers vary from 3½ to 5½ inches long and from 2½ to 4 inches wide.

Production Process

[22] According to the complainant,³ greenhouse bell pepper production is based on a full year cycle. The transplants go into the production greenhouse in approximately mid to late December at six weeks of age. The first harvest of fruit begins in about late March/early April and continues to the following December.

[23] The greenhouses are empty for only two or three weeks during the year to allow for the removal of the old crop, the thorough cleaning of the greenhouse and to set up the greenhouse for the new crop. One crop a year is grown, that is, production for the entire year is based on the same set of plants. Normally, it takes approximately 20 weeks (four months), from seeding the crop to first pick.

Classification of Imports

[24] The subject goods are normally imported under the following Harmonized System (HS) classification number: 0709.60.90.10.

[25] The identification of the HS code is for convenience of reference only. Refer to the product definition for authoritative details regarding the subject goods.

CANADIAN INDUSTRY

[26] In terms of volume, OGVG producers account for approximately 58% of all peppers grown in Canada, while the British Columbia Greenhouse Growers' Association represents approximately 39%. These two associations, therefore, account for the vast majority of domestic production. Alberta growers account for approximately 2% of domestic pepper production, while all other producers represent less than 1% of total production. The CBSA considers these proportions to be representative of the domestic greenhouse bell pepper industry.

Ontario Greenhouse Vegetable Growers

[27] According to the complaint⁴ the OGVG was formed in 1967 with the mandate to provide market access for producers and to ensure opportunities for economic success. It represents greenhouse growers spanning from Windsor to Niagara and as far north as Ottawa.

³OGVG Complaint (NC), Exhibit 002, Appendix 1

⁴ OGVG Complaint (NC), Exhibit 002, Page 4

[28] Ontario leads all of North America in greenhouse vegetable production, with more than 1,820 acres devoted to tomatoes, cucumbers and peppers. All Ontario greenhouse vegetable marketers, shippers and growers are required to go through a third party certification process to ensure all the required steps are taken to reduce food safety related risks.

[29] The OGVG represents a majority of production in Canada of greenhouse bell peppers. It is a marketing board formed by the *Ontario Farm Products Marketing Act*, R.S.O. 1990, Chapter F-9, as amended. It licenses both growers and marketers of products grown in Ontario. It currently represents 236 greenhouse growers in Canada. Of these, 41 produced greenhouse bell peppers in 2009. There are no other commercial greenhouse growers of bell peppers in Ontario, due to the operation of the marketing board legislation.

British Columbia Greenhouse Growers' Association

[30] The British Columbia Greenhouse Growers' Association represents greenhouse vegetable farmers in British Columbia (B.C.). Their growers produce 96% of all of B.C.'s greenhouse vegetable production. Of this production, 43% is bell peppers.

Other Canadian Producers

[31] As indicated earlier, the following producer associations represent a very small proportion of the overall market for greenhouse bell peppers in Canada: the Alberta Greenhouse Growers Association, the Red Hat Cooperative in Alberta, the Saskatchewan Greenhouse Growers Association and the Greenhouse Growers Association of Nova Scotia.

[32] The CBSA contacted the British Columbia Greenhouse Growers' Association for the purpose of determining whether they support the OGVG's filing of the dumping complaint. The British Columbia Greenhouse Growers' Association has canvassed their members, and has indicated its support for the OGVG's complaint.⁵

[33] Based on an analysis of information provided in the complaint and additional information received from the British Columbia Greenhouse Growers' Association, the CBSA has determined that the complaint is supported by producers whose production represents 100% of the domestic producers who expressed an opinion regarding the complaint. In addition, the CBSA is satisfied that the complaint is supported by domestic producers whose production represents more than 50% of the total production of like goods. The CBSA is satisfied that the standing requirements of subsection 31(2) of SIMA have been met.

THE CANADIAN MARKET

[34] The annual Canadian market for greenhouse bell peppers is estimated to be approximately \$140 million, and is supplied by domestic production as well as imports. Imports of greenhouse bell peppers mainly originate from Mexico, the Netherlands, Spain and the

⁵ Letter of support by the British Columbia Greenhouse Growers' Association (PRO), Exhibit 064, Page 1

United States. From 2006 to 2009, Mexico was the largest exporter of greenhouse peppers to Canada, followed by the Netherlands.

[35] In estimating the size of the Canadian market, the CBSA analyzed the Canadian production figures provided by the complainant, its own CCS import data, statistics regarding Canadian exports of greenhouse peppers to the United States from the United States Department of Agriculture (USDA), as well as data published by Statistics Canada. While this data includes a small amount of greenhouse peppers that are not bell peppers, the CBSA believes that these statistics nevertheless provide reasonably accurate information regarding the greenhouse bell pepper market. The CBSA's analysis reveals that greenhouse bell peppers represent the vast majority of all peppers produced in Canada, as well as those imported into Canada.

Sales Process

[36] Canadian greenhouse pepper growers normally sell their products (i.e., like goods) domestically through licensed marketers. The licensed marketers may then sell peppers wherever they wish, and much of the domestic production is ultimately destined for the United States. For peppers sold for domestic consumption, they are sold to retailers which are primarily larger grocery stores, as well as wholesalers who supply the food service industry. Importers of greenhouse peppers also sell the subject goods to the same group of retailers and wholesalers.

Imports into Canada

[37] During the final phase of the investigation, the CBSA estimated the volume of imports during the POI based on information from CCS import data and other information received from exporters and importers.

[38] The following table presents the CBSA's estimates of the volume of imports of greenhouse bell peppers for purposes of the final determination:

**Imports of Greenhouse Bell Peppers
(January 1, 2009 –December 31, 2009)**

Imports into Canada	Volume (Kg)	% of Total Imports
Originating in or exported from the Netherlands	6,279,643	27.5%
All Other Countries	16,540,768	72.5%
Total Imports	22,820,411	100%

INVESTIGATION PROCESS

Importer Responses

[39] The CBSA has received responses to the importer RFI from seven importers: Les Entrepôts Fruigor Inc., Star Produce, JAG Worldwide, Minnaar Canada, Krown Produce, Mastronardi Produce and Jem-D International. These importers account for approximately 66% of the total quantity of imports during the POI.

Exporter Responses

[40] The CBSA received letters from 11 exporters, each stating that they would not respond to our RFI due to its extent, as well as the high cost of hiring counsel. These exporters account for approximately 96% of the quantity of total imports of subject goods into Canada from the Netherlands during the POI. Three of these exporters did provide some very limited sales and costing information. No exporters provided a complete response to the CBSA's RFI in the course of the investigation.

Canadian Producer Responses

[41] Given that none of the exporters responded to the RFI, the information required to determine normal values under the normal provisions of SIMA is not available. The CBSA sought information from alternative sources and, after consideration was given to all information available on the record, found that the Canadian industry data consisted of the best information available for this purpose. In this regard, during the course of the investigation, the CBSA requested costing information from the Canadian industry to use as a substitute for Dutch costing data.

[42] Three Canadian producers (members of OGVG) provided a response to the CBSA's request for costing information. The information provided included financial statements for 2009, as well as sales and costs of production of greenhouse bell peppers during the POI. The three growers that provided information are located in different areas of Southern Ontario. They vary by size, scale of production and product mix.

Verification

[43] As mentioned above, given that no exporter provided a complete response to the CBSA's RFI, the CBSA requested costing information from some Canadian producers. During the final phase of the investigation, the CBSA conducted on-site verifications of three Canadian producers who provided the requested information to the CBSA. All three Canadian producers fully cooperated during the on-site verifications.

[44] The CBSA also verified the responses of the seven co-operative importers.

DUMPING INVESTIGATION

Normal Value

[45] The normal value of goods sold to importers in Canada is generally based on the domestic selling prices of like goods in the country of export pursuant to section 15 of SIMA, or on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits, pursuant to paragraph 19(b) of SIMA.

[46] Given that the information required to determine normal values under the normal provisions of SIMA was not available (i.e., none of the exporters responded to the RFI), the CBSA sought information from alternative sources in order to determine normal values. Section 29 of SIMA provides that where, in the opinion of the President, sufficient information has not been furnished or is not available to enable the determination of normal value or export price as provided in sections 15 to 28, the normal value or export price, as the case may be, shall be determined in such manner as the Minister specifies. The information available in this case consisted mainly of costing information provided by the complainant, as well as public information collected by the CBSA. Therefore, normal values were determined pursuant to a ministerial specification under subsection 29(1) of SIMA.

[47] As mentioned, the CBSA requested detailed cost data from members of the OGVG. This data consists of the 2009 costs of production and sale, as provided by 3 of the 41 member producers of the OGVG, and verified by CBSA officers.

[48] Further to its analysis of all available information, the CBSA concluded that using the highest average full cost found for a Canadian producer in 2009, plus an amount for profit as provided by the OGVG, was an appropriate methodology to determine normal values, given the circumstances surrounding this case. This methodology is based on the provisions of paragraph 19(b) of SIMA (the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits), with the Canadian producer costs being substituted for unavailable exporter costs.

[49] In addition, the CBSA added an amount for profit of 5% in order to determine the normal value. This amount represents the amount of profit for Canadian producers provided by the OGVG in its complaint. After analysing various options, the CBSA concluded that the amount provided in the complaint was reasonable and appropriate, and consisted of the best information available.

[50] On the basis of the aforementioned methodology, the CBSA determined the normal value during the POI to be **CAD 3.55** per kg.

Export Price

[51] The export price of goods sold to importers in Canada is generally based on the lesser of the exporter's sale price for the goods or the importer's purchase price, pursuant to section 24 of

SIMA. These prices are adjusted where necessary by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods, as provided for in subparagraphs 24(a)(i) to 24(a)(iii) of SIMA.

[52] Since no exporter provided a response to the CBSA's RFI, the exporters' sale prices and other costs, charges, expenses, duties and taxes resulting from the exportation of the goods were unavailable. The CBSA was, therefore, unable to determine export price pursuant to section 24 of SIMA. However, the CBSA did receive complete responses to the RFI from some importers. The CBSA used the information provided by importers, along with additional information contained in its own CCS database, and also collected commercial invoices and import documents, for purposes of determining the export prices.

[53] The CBSA also collected a number of airway bills related to imports of subject goods. The analysis of the airway bills indicates that the weighted average air freight from the Netherlands to a Canadian airport during the POI was CAD 1.90 per kg. Since it was determined that peppers are generally sold at delivered prices (cost and freight included), and that no deductions were made to the declared value for duty, this freight charge must be deducted from the price paid by the importer in order to determine the export price. This deduction is very significant in the case of peppers shipped to Canada from Europe, because they are most often shipped by air due to their perishable nature.

[54] Accordingly, pursuant to subsection 29(1) of SIMA, the CBSA determined export prices on the basis of information contained in the submissions of the co-operative importers as well as adjusted information in CCS import data. The export price was determined on the basis of the importers purchase price (the declared value for duty where CCS import data was used) less an amount for air freight. When the actual freight was not provided or was not otherwise available, the CBSA deducted an amount equal to the weighted average freight cost per kilogram as found on the basis of available information with respect to imports of subject goods during the POI.

[55] On the basis of the aforementioned methodology, the weighted average export price found during the POI was **CAD 1.22 per kg**.

Results of the Investigation

[56] For purposes of the final determination, the CBSA compared the total normal value determined on the basis of the methodology described above for all shipments from an exporter, with the total export price found for the shipments of subject goods from the exporter during the POI.

[57] The margin of dumping by exporter is equal to the amount by which the total normal value exceeds the total export price of the goods, expressed as a percentage of the total export price. Where the total normal value of the goods does not exceed the total export price of the goods, the margin of dumping is zero.

[58] The determination of the volume of dumped goods was calculated by taking into consideration each exporter's net aggregate dumping results. Where a given exporter has been

determined to be dumping on an overall or net basis, the total quantity of exports attributable to that exporter (i.e. 100%) is considered dumped. Similarly, where a given exporter's net aggregate dumping result is zero, then the total quantity of exports considered to be dumped by that exporter is zero.

[59] In calculating the margin of dumping for the Netherlands, the margins of dumping found in respect of each exporter were weighted according to each exporter's volume of subject goods exported to Canada during the POI.

[60] The results reveal that 99.4% of the greenhouse bell peppers originating in or exported from the Netherlands was dumped by a margin of dumping of 193%, expressed as a percentage of export price.

SUMMARY OF RESULTS

[61] The table below provides a summary of the results for the final phase of the investigation.

Period of Investigation - January 1, 2009 to December 31, 2009

Country of Origin or Export	Dumped Goods as Percentage of Country Imports	Margin of Dumping as Percentage of Export Price	Country Imports as Percentage of Total Imports	Dumped Goods as Percentage of Total Imports
The Netherlands	99.4 %	193 %	27.5 %	27.3 %

[62] Pursuant to subsection 41(1) of SIMA, the President shall cause the investigation to be terminated if, where on the available evidence, he is satisfied that the margin of dumping of the goods by country is insignificant. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% is defined as insignificant.

[63] As shown in the table above, the margin of dumping of greenhouse bell peppers originating in or exported from the Netherlands is above 2% and is, therefore, not insignificant.

DECISION

[64] On the basis of the results of the investigation, the President of the CBSA is satisfied that greenhouse bell peppers originating in or exported from the Netherlands have been dumped and that the margin of dumping is not insignificant. Consequently, on September 20, 2010, the President of the CBSA made a final determination of dumping pursuant to paragraph 41(1)(a) of SIMA respecting the subject goods.

REPRESENTATIONS

[65] During the preliminary phase of the investigation, the European Commission submitted representations regarding the initiation of the investigation. These representations were addressed in the *Statement of Reasons* issued for the preliminary determination. During the final

phase of the investigation, no representations were filed, other than those regarding the undertaking proposals discussed below.

FUTURE ACTION

[66] The provisional period began on June 21, 2010, and will end on the date the Tribunal issues its order or finding. The Tribunal is expected to issue its decision by October 19, 2010. Subject goods imported during the provisional period will continue to be assessed provisional duties as determined at the time of the preliminary determination. For further details on the application of provisional duties, refer to the *Statement of Reasons* issued for the preliminary determination, which is available on the CBSA's Web site at: www.cbsa-asfc.gc.ca/sima-lmsi.

[67] If the Tribunal finds that the dumping of the goods has not caused injury and does not threaten to cause injury, all proceedings relating to this investigation will be terminated. In this situation, all provisional duties paid or security posted by importers will be returned.

[68] If the Tribunal finds that the dumping of the goods has caused injury, the anti-dumping duty payable on subject goods released by the CBSA during the provisional period will be finalized pursuant to section 55 of SIMA. Imports released by the CBSA after the date of the Tribunal's finding will be subject to anti-dumping duty in an amount equal to the margin of dumping.

[69] The importer in Canada shall pay all applicable duties. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in customs accounting documents, an administrative monetary penalty could be imposed. The provisions of the *Customs Act* apply with respect to the payment, collection or refund of any duty collected under SIMA. As a result, failure to pay duty within the prescribed time will result in the application of interest.

[70] In instances in which information has been requested but not provided, or is not available, the normal value will be established by advancing the export price by 193% based on a ministerial specification pursuant to section 29 of SIMA. Anti-dumping duty will apply based on the amount by which the normal value exceeds the export price of the subject goods.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[71] Under certain circumstances, anti-dumping duty can be imposed retroactively on subject goods imported into Canada. When the Tribunal conducts its inquiry on material injury to the Canadian industry, it may consider if dumped goods that were imported close to or after the initiation of the investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry. Should the Tribunal issue a finding that there were recent massive importations of dumped goods that caused injury, imports of subject goods released by the CBSA in the 90 days preceding the day of the preliminary determination could be subject to anti-dumping duty.

UNDERTAKINGS

[72] After a preliminary determination of dumping, exporters may give a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated.

[73] Acceptable undertakings must account for all, or substantially all, of the exports to Canada of the dumped goods. Furthermore, the President must be of the opinion that the observance of the undertaking or undertakings, as the case may be, will eliminate the margin of dumping of or the subsidy on the goods if they are sold by the exporter to importers in Canada, or any injury, retardation or threat of injury that is being caused by the dumping or subsidizing, pursuant to paragraphs 49(1)(a) and 49(1)(b) of SIMA.

[74] In the event that an undertaking is accepted, the required payment of provisional duty on the goods would be suspended. Furthermore, the investigation would be suspended, unless a request for continuation is made, as provided for under subsection 49(3) of SIMA.

[75] In view of the time needed for consideration of undertakings, written undertaking proposals should be made as early as possible, and no later than 60 days after the preliminary determination of dumping. Further details regarding undertakings can be found in Memorandum D14-1-9, *Information Pertaining to the Acceptance, Enforcement, and Renewal of Undertakings in Dumping and Subsidy Investigations*, available on the CBSA Web site at www.cbsa-asfc.gc.ca, in the section called "Publications and Forms".

[76] On August 20, 2010, the sixtieth day after the preliminary determination, the CBSA received formal undertaking proposals from exporters of greenhouse bell peppers originating in or exported from the Netherlands. These exporters represented over 95% of shipments of subject goods during the POI. Upon receipt of the undertaking proposals, the CBSA posted a notice on its Web site and contacted all interested parties, which were invited to submit representations regarding the acceptability of undertakings. Interested parties were provided until August 30, 2010, to provide their representations, which is consistent with the nine prescribed days for such consultations. On August 30, 2010, representations were received on behalf of the OGVG and on behalf of the exporters that submitted the undertaking proposals. Additional information was filed on behalf of the exporters on September 13, 2010. This information was submitted too late to be considered by the CBSA.

[77] Counsel for the OGVG submitted representations, suggesting that the proposed prices were not acceptable. The OGVG argued that the undertaking prices were below the cost of production estimated by the CBSA at the time of the preliminary determination. Further the OGVG claimed that an undertaking price should also consider the increases in certain cost elements in 2010, plus a mechanism to increase prices if the cost of natural gas increases. The OGVG also expressed concerns with the potential for other Dutch exporters to ship subject goods.

[78] Representations were also filed on behalf of the exporters who provided the undertaking proposals. The exporters claimed that the proposed prices were sufficiently high to eliminate the injury allegedly caused by the dumping. The exporters claim that: "The undertaking prices were

based on commercial intelligence respecting the actual fully absorbed cost incurred by the growers of the Canadian industry in producing, marketing, and delivering the subject greenhouse peppers to the domestic growers' customers."⁶ The exporters also provided additional information which became available since the undertaking proposals were filed. This information consisted of costing data filed by Canadian growers with the Tribunal in the ongoing proceedings. In their submission, the exporters provided an analysis suggesting that the proposed prices would result in total cost to the importers that would be higher than the Canadian producers average cost and thus non-injurious. The exporters also claimed that the average actual cost to Canadian growers is lower than the cost estimated by the CBSA at the time of preliminary determination.

[79] As a starting point, the CBSA estimated that in order to eliminate injury to Canadian growers, the minimum threshold for undertaking prices should be the highest actual full cost found for domestic producers, as verified by case officers, plus a reasonable amount for profit. For this purpose, the CBSA used the verified costs for fiscal year 2009, and adjusted the two principal cost elements (i.e. energy and labour) upward to reflect known increases in their costs in 2010. Such adjustments were considered to be appropriate because the undertaking prices are for future sales to Canada and should be sufficiently high to eliminate the injury to all Canadian producers at the time of import.

[80] Using this methodology, the minimum threshold price established by the CBSA to eliminate injury was significantly higher than the final price offered by Dutch exporters. In fact, even with no upward adjustment to the 2009 costs, the proposed undertaking prices were lower than the verified costs plus an amount for profit.

[81] Regarding the exporters representation, the CBSA notes that the undertakings should not eliminate the injury to only those Canadian producers whose costs are below average, which is the reason why the CBSA used the highest verified cost.

[82] In addition, the proposed delivered price in the undertaking proposals for most peppers was even lower than the average delivered price found during the POI. The CBSA's investigation found significant margins of dumping during the POI (i.e. 193%) at those prices. Further, the Tribunal found in its preliminary inquiry of injury on June 21, 2010, that there is evidence that discloses a reasonable indication that the dumping of greenhouse bell peppers originating in or exported from the Netherlands has caused injury. Given that the proposed prices would do little to reduce the margin of dumping, which was preliminarily found to be injurious, it was concluded that the proposed prices were not sufficient to eliminate the injury, pursuant to subsection 49(1)(b).

[83] On the basis of the above, the President formed the opinion that the undertakings would not eliminate the margin of dumping on the goods if they are sold by the exporters to importers in Canada, or any injury, retardation or threat of injury that is being caused by the dumping. As a result, the CBSA did not accept the undertaking proposals.

⁶ Exhibit 125 NC, par. 5.

PUBLICATION

[84] A notice of the final determination of dumping shall be published in the Canada Gazette pursuant to paragraph 41(3)(a) of SIMA.

INFORMATION

[85] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA Web site at the address below. For further information, please contact the officers identified as follows:

Mail: SIMA Registry and Disclosure Unit
Anti-dumping and Countervailing Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th Floor
Ottawa, Ontario K1A 0L8
CANADA

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